INTERNATIONAL LAW AND GLOBAL GOVERNANCE

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Introduction:

The term 'law of nations" was first coined by Jeremy Bentham in 1780. The term international law is synonymous with the term law of nations. It is a set of rules and principles that govern the conduct and relations of members of the international community. It provides the indispensable framework for the practice of stable and orderly international relations. International law differs from national legal systems in that it primarily concerns states rather than private individuals. In the age of globalization and increasing interdependence among the various countries of the world, international law can provide a viable system for regulating domestic relations and activities. In the absence of any codified law on the sources of international Law, Article 38 of the statute of the international court of justice has become relevant which directs the court to apply.

International law has the following objectives:

International peace and security and Promotion of friendly relations among member states (the members of the international community, i.e., the United Nations). Municipal law, or state law, provides certain rights and duties for citizens of the state, so that citizens are called subjects of state law. Similarly, international law deals with the rights and duties of nations or states.

Three theories of the subjects of international law

1. **States are alone the Subjects of the International Law**–

According to this proposition, countries alone are the subjects of International Law. The sympathizers of this proposition have been editorialized that transnational law regulates the conduct of countries and countries alone are the subjects of transnational law. Prof. L. Oppenheim, strong supporter of this theory holds that, since the law of nations is primarily a law between states, states are, to that extent, the only subjects of the law of nations. Percy E. Corbett opined that, states are the only subjects of international law and individuals are only incumbents of rights and duties at international law in so far as they are objects and not subjects.

Criticism– This theory is subject to criticism on the ground that it failed to explain the cases of slaves and pirates. Under international law, slaves have been conferred some rights by the community of states. Similarly, pirates are treated as the enemies of mankind and states may punish them for piracy.

2. **Individuals alone are the subjects of International Law-**

According to this theory, the duties and rights of states are only the rights and duties of men who compose them. According to this theory, state does not mean mud but men. Prof. Kelsen is the chief exponent of this theory; he is of the opinion that, in international law, the duties of the states are ultimately the duties of the individuals. There is no difference between international law and state/municipal law. Both laws are made to apply to individuals.The Nuremberg Tribunal, too, has held that international law imposing duties and liabilities upon individuals as well as upon states has long been recognized. Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the

provisions of international law be enforced.

Criticism– Kelsen's view appears to be logically sound. But so far as the practice of the states is concerned it is seen that the primary concern of the international law is with the rights and duties of the states. From time-to-time certain treaties have been entered into which have conferred certain rights upon individuals. Although the Statute of the International Court of Justice adheres to the traditional view that only states can be parties to international proceedings.

3. **States, Individuals and certain Non-State Entities are the subjects of International Law**–

The third view not only combines the first and second views but goes a step ahead to include international organizations and certain other non-state entities as subjects of international law. This theory appears to be far better than the first two views. Following arguments may be put forward in support of this view:

- At present, there are several treaties, which conferred on individuals' certain rights and duties. For example, International Covenants on Human Rights.
- In 1949, General Convention on the Prisoners of War conferred on the prisoners, certain rights.
- The Genocide Convention of 1948has imposed certain duties directly upon the individuals. According to this Convention, persons guilty of crime of genocide may be punished, no matter whether they are the heads of the state, high officials or ordinary individuals.

Sources of Law

Since there is no world government, there is no world Congress or parliament to make international law the way domestic legislatures create laws for one country. Various sources, however–principally treaties between states–are considered authoritative statements of international law.

Codification:

Code is a consolidation of the statute law or statute collecting all the law relating to a particular subject. Codification is the process of translating into statutes or conventions, customary law and their rules arising from the decisions of tribunals, with little or no alteration of the law.

The committee on the progressive development of international law and its codification, set up by the **United Nations General Assembly** resolved the controversy between the second and third meaning of codification. Article 15 of the statutes of the International Law Commission distinguishes between the progressive development of international law and its codification. According to Professor Woosley, the Codification of Law of nations (International law) must entail two processes –

- The scientific determination of the law, and
- the achievement of the universal acceptance of the law of so defined by means of a multilateral convention Generally Accepted. He admitted that in character the second process was the legislative and political system.

Recognition of a State under International Law

The international community is the community of sovereign states at an international platform. For any state to enjoy the rights, duties and obligations of international law and to be a member of the international community, recognition of the entity as a state is very important. Only after recognition of the entity as a state, it becomes acknowledged by other states who are a member of the International Community. Recognition of state under the International Legal System can be defined

as “the formal acknowledgement or acceptance of a new state as an international personality by the existing States of the International community”.

Essentials for recognition as a state:

Under the International Law, Article 1 of the Montevideo Conference, 1933 defines the state as a person and lays down following essentials that an entity should possess in order to acquire recognition as a state:

Theories of recognition

The recognition of a new entity as a sovereign state is based on two main theories:

There are two modes of recognition of State:

Modes of peaceful settlement of International Disputes

Purposes of International Law: –

The purposes and objects have been established are laid down in Article 1 of the Charter: –

1. To maintain international peace and security.
2. To develop friendly relations among nations.

3. For removal of social, economic, cultural and human problems soliciting of international co-operation.
4. To make the UN an International Centre for harmonization.

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