Volume 1 Issue 4 ISSN NO : 2582-6034

LEGALFOXES LAW TIMES

Treaties- History, Importance and role in modern International Law

By Yashraj Singh Jakhar

"Treaty" basically is a term, which means an agreement that is concluded between states in a written form and is governed by international law. They can also be known as international agreements, pacts, conventions, pacts, declarations, covenants, charters, and general acts. Treaties are not something that has come into existence recently; they have been there in some of the other form for centuries.

A Brief history of international law

Modern international law developed and came out of the renaissance period in Europe, because of the development of concepts such as nation-states and sovereignty, interstate relations and standards of conducts came into existence. The origins of modern international law can be traced back to 400 years ago, but it has existed in various forms for thousands of years. The earliest example of a treaty dates back to 2100 B.C during the Mesopotamian civilization, it was an agreement between the rulers of Lagash and Umma which were city-states during that period, the agreement was inscribed on a stone block. The ancient Greeks before Alexander the Great came into existence were divided into many small states and evidence suggests that there was constant interaction between these states during peace and in war and an interstate culture existed similar to what we see in modern times. The early principles of Islamic law talked about military conduct and prisoners of war, these are considered as the beginnings of modern international

humanitarian laws.[1] One of the most important ideas behind international laws is the idea of state sovereignty; this idea was enforced to a very large extent by the Westphalian treaties of 1648. These were peace treaties that ended the majority of European wars of religion including the 'thirty-year war'.[2]

Importance of treaties-

Treaties are important because they form the very basis of most parts of modern international law; in the modern world it is the fundamental need of states to resolve matters of common concern by mutual consent, they become a very important instrument in ensuring stability, the order in international relations and reliability, because of this they become a very important element in ensuring peace and security. This is the primary reason because of which treaties have always been the primary source of legal relations between states. The rules, procedures, and contents of international agreements might have changed through the centuries but the fundamental importance of treaties continues to remain and they will be there till relations between states continue to exist.

International Law and Treaties in modern times-

Treaties form a very important part in the modern world they form the basis of international relations between countries. After the World War I ended there was a huge global outcry to form an international organization, so that the civilian populations could be protected and warfare rules be established, the League of Nations was established after the war on 10th January 1920,

[1]Grant, J. (2010). NATURE AND HISTORY OF INTERNATIONAL LAW. In *International Law Essentials* (pp. 1-10). Edinburgh University Press. Retrieved May 11, 2020, from www.jstor.org/stable/10.3366/j.ctt1g0b3rw.6

[2]Hershey, A. (1912). History of International Law Since the Peace of Westphalia. *The American Journal of International Law, 6*(1), 30-69. doi:10.2307/2187396

the primary purpose of this organization was make member nation sign treaty agreements so that economic and military sanctions could be levied against member nations in case of aggression by them, it was formed basically so that invasions could be curbed. International court was also established during this period, which was called the Permanent Court of International Justice so that arbitration could take place between countries and disputes could be sorted out without a war. Many countries during this period signed treaties and were willing to accept international arbitration rather than warfare. Less than two decades later there was again a severe international crisis and World War II took place and this clearly explained that nations were not yet ready to accept any external interference of an international body in their internal affairs, the aggression by Italy, Germany and Japan went uncurbed by international law and led to a massive loss of Human life. The horrors of World War II led to a massive desire among nations that such man made disasters aren't repeated. The League of Nations was dissolved and it was again re-attempted through a new treaty organization that we today know as the United Nations, the Permanent Court of International Justice also ceased to exist and was replaced by International Court of Justice. The post-war period has been fairly successful for International Law; definitely it is not universal but more than 200 countries have voluntarily become members of the U.N and signed their charter. The most powerful of nations in the world have resorted to international agreements for settling of disputes.[3]

- Vienna Convention on Law of Treaties (VCLT)

  Treaties form a very important part of International Law and an apparatus was needed which could regulate treaties. Vienna Convention is an international agreement signed by 116 countries as of 2018, which regulates treaties between countries, it is also known as 'treaty of treaties'. The International Law Commission (ILC) has drafted the VCLT, which comes under the ambit of the United Nations. The work on the convention began way back in 1949 and it took almost twenty years for preparation, the convention was open to signature and adopted on 23rd May 1969 and it came into force on 27th January

[3]United Nations. (2018, April 4). https://www.history.com/topics/world-war-ii/united-nations

1980. VCLT is very important because it gives us the guidelines and establishes complete rules and procedures as to how treaties are drafted, amended, defined, and operate concerning the Law.[4]

- Process of treaty-making-

Treaties are by far the most important tools that can regulate international relations, the legal rules that apply to bilateral and multilateral treaties are the same, but the process in which these treaties are negotiated and concluded may differ. Conferences usually have before them various working paper and draft proposals prepared by some states and international organizations much in advance to the meeting. These form the basis of the negotiations and bargaining that ultimately results in the main text of the treaty. The power to make a treaty is dependent on each country's municipal regulation and it varies from state to state. In international law sovereign states can make agreements. There are two main modalities of treaty-making; treaties can either be concluded in a solemn form ora simplified form like executive agreements. The solemn form requires plenipotentiaries, diplomats who are given full authority to engage in negotiations with other parties. Once the written text is decided and agreed upon, it is given to the respective national authorities for ratification. Executive agreements are negotiated by civil servants, diplomats and officials of the governments, they become legally binding once the negotiators themselves or the foreign ministers of the states that are contracting give their consent to it. This type of agreement does not call for ratification hence no parliament is involved.

Consent- The consent of a state to be bound by a treaty can be expressed by a signature, ratification, acceptance, exchange of instruments that constituting a treaty, approval or accession or by any other means if so is agreed.

[4] Patricia, B. (n.d.) Vienna Convention on the Law of Treaties. https://www.britannica.com/topic/Vienna-Convention-on-the-Law-of-Treaties

Signature - Article 12 of the convention states that signature shall have an effect or where it is otherwise established that the negotiating states agreed that the signature should affect.

The legal consequence of the signature depends on whether it is subjected to acceptance, approval, or ratification.

Ratification- is a very significant act; it is an international act in which the state establishes on an international forum that it is giving its consent to be bound by a treaty. The VCLT does not provide any standard procedure of ratification to be followed by states. They are free to follow any internal ratification procedure that they are having, whether in a parliament or elsewhere, but ratification adheres to the basic principle of democracy that the government should consult the people before it can finally approve a treaty. The process of ratification was devised so that it could be ensured no representative of the state exceeds his power or instructions about the making of a particular agreement. Article 2 of the VCLT defines ratification as the international act whereby a State establishes on the international plane its consent to be bound by a treaty.

Exchange of instruments- Article 16 of the VCLT states that unless expressly provided in the treaty, exchange of instruments of ratification by the contracting party states shall constitute consent by a party state to be bound by it.

Accession- This refers to the act of the state whereby it establishes its consent to be bound by a treaty on an international plane. Article 15 of the VCLT regulates it. It is a very normal practice in International Law in which a state that has no part in the making and formation of a treaty can become a party to it, however, the state is not free to enter into any treaty unless the treaty provides or if it is established that the negotiating states agree or if subsequently, all the parties have agreed. In general cases, accession is the final act in a treaty and does not require ratification unless otherwise provided in the instrument of accession. The main reason behind

this is that the government already has prior access to the treaty and has ample time to deliberate before it finally decides to accede.[5]

Entry into force and registration of treaties- A treaty enters into force in such a manner and upon such date as the treaty may provide, or as the negotiating States may agree. Article 102 of the U.N charter states that every treaty that is entered into by any member nation of the U.N after the present charter comes into force should as soon as possible be registered by the secretariat and be published by it. Article 80 of the 1969 VCLT seeks to make the registration and transmission to the secretariat obligatory, the article also further states that if the parties fail to register a treaty with the secretariat, as it sometimes happens it does not make it void, but no party can invoke that treaty in front of any organ of the U.N, the primary reason for this is so that international organizations can prevent secret agreements between states.

- Termination of Treaties

Termination of a treaty can take place on any of the following grounds-

Expiry of a specific period- when a treaty is designed for a specific period, which expressly provides that after the expiry of that period it comes to an end, then the treaty ipso facto comes to an end.

*When the main purpose/object of the treaty is fulfilled-*In a case where there is a treaty that does not enforce a continuing obligation, they cease to operate once the object of the treaty is fulfilled.

[5]Jones, F. (1897). Treaties and Treaty-Making. *Political Science Quarterly, 12*(3), 420-449. doi:10.2307/2139665

Termination by mutual consent- treaty comes into existence by mutual consent of the party states, so they can also be terminated by consent. There are three ways in which termination by mutual consent takes place, they are as follows-

1. Recession- in this the parties to a treaty or agreement should expressly declare that the treaty should be dissolved.
2. Substitution- in this when all the parties to the treaty conclude that for the interest of the parties, a new agreement must be bought in place of the old one, then the old treaty stands to be terminated and the new treaty becomes enforceable.
3. Renunciation- if a treaty imposes obligations upon one of the contracting states only, the other party can renounce its right in such cases, the state under an obligation must accept the renunciation.

One of the party-state extinct- when one of the party states cease to exist, this generally happens when one state merges with the other; in such case, the treaty stands terminated.

The War between party states- in a war if the party states are enemies of each other, then all the contractual obligations come to an end and the treaty stands terminated ipso facto.

Withdrawal by notice – a treaty can be dissolved by sending a notice to other parties if no period of existence of the treaty has been prescribed by parties. If there is a prescribed period given expressly it has to be strictly complied with.

The Doctrine of Rebus sic stantibus- this means that if any obligation, which is provided in the treaty, endangers the existence of one of the state, they have a right to be released from their contractual obligation. This doctrine is simply based on the principle of self-preservation and the development of a nation.

Doctrine of Jus Cogens- a treaty can be declared if it conflicts with the basic peremptory norm of general international law.

Landmark cases

Nicaragua v. United states of America- in this case, the International Court of Justice found in its verdict that the United States of America had trained, armed, equipped, financed, and supplied the contra forces and were responsible for supporting and aiding military and paramilitary activities against Nicaragua. In this, they had breached the obligation of not to intervene in the affairs of another state.

By attacking certain territories of the Nicaraguan state in 1983-84 namely an attack on Corinto, attacks on Puerto Sandino, and an attack on San Juan Del Sur, the United States had breached the obligation of not use force against another state.

Because the United States had directed and authorized rights over Nicaraguan territory, in this they were in breach of violating the sovereignty of another state.

The United States because of their acts were also found in breach of obligations under Article XIX of the treaty of friendship, commerce, and navigation that had been signed between U.S.A and Nicaragua in January 1956.[6]

[6]1986 I.C.J. 14

North Sea Continental Shelf case (Germany v Denmark and the Netherlands)- There were a series of disputes that came out and were heard by the International Court of Justice in 1969, the dispute involved agreements that were signed between Denmark, Germany, and the Netherlands. These agreements were regarding the delimitation of areas that were rich in oil and gas on the continental shelf of the North Sea. The area of dispute, in this case, was whether the equidistance rule would apply which is given in Article 6, of the 1958 Geneva Convention on Continental Shelf. Germany according to the equidistant rule would have got less share compared to the two other parties, Germany wanted the ICJ to divide the Continental Shelf to the proportion of the size of state's adjacent land, basically Germany wanted the decision based on the notion that each costal state is entitled to a just and equitable share of the continental shelf in question.

The North Sea Continental Shelf cases confirmed that both State practice (the objective element) and opiniojuris (the subjective element) are the essential prerequisites for the formation of a customary law rule. It was held that the equidistant principle was not binding on Germany by way of a treaty or customary international law. In this case, the principle had not gained a customary international law status at the time of entry into force of the Geneva Convention or thereafter, hence it was held that the use of the equidistant method was not obligatory for the delimitation of the concerned areas in this case.[7]

[7](1969) ICJ Rep 3