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"International Obligation: Law and Practice"

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Abstract

The concept of international obligation forms the cornerstone of the modern global legal framework, shaping the conduct of states and entities in the international arena. The multifaceted dimensions of international obligations, delving into both the theoretical underpinnings and practical applications that define this crucial aspect of international law. At its core, international obligation refers to the legal duties and responsibilities that states assume towards each other, arising from treaties, customary practices, and general principles of international law. The evolution of these obligations reflects the dynamic nature of the international legal system, adapting to changing geopolitical landscapes and emerging global challenges. The sources of international obligations, emphasizing the role of treaties as primary instruments that bind states to specific commitments. It also considers customary international law, which derives from consistent state practice and the belief that such practices are legally required (opinio juris). The practical implementation of international obligations involves intricate processes of treaty negotiation, ratification, and enforcement. The mechanisms by which states become bound by international obligations, emphasizing the role of consent and the principle of 'pacta sunt servanda' – the idea that agreements must be honoured in good faith. It also scrutinizes the challenges associated with enforcement, including the role of international organizations and tribunals in resolving disputes and holding states accountable for breaches of their obligations. Furthermore, the evolving nature of international obligations in the context of contemporary issues such as human rights, environmental protection, and transnational crime. It inspects the interconnectedness of global challenges and the need for a collaborative approach to address shared responsibilities. It provides a comprehensive overview of the theoretical foundations and practical applications of international obligations. By navigating the intricate interplay between legal doctrines and real-world practices, it contributes to a nuanced understanding of the role that international obligations play in fostering cooperation, resolving disputes, and promoting a just and harmonious international order.

Keywords- International Obligation, Treaty Law, State Sovereignty, Human Right, Global Challenges

Introduction

International obligations refer to the legal commitments and responsibilities that states and international entities undertake under various international agreements, treaties, conventions, and customary international law. These obligations outline the actions that parties must take or refrain from taking in order to comply with international legal norms and ensure the peaceful coexistence of nations.

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International obligations are established through treaties, which are formal agreements negotiated and ratified by states[1]. These treaties can cover a wide range of topics, including human rights, environmental protection, trade, disarmament, and more. Once a state becomes a party to a treaty, it is legally bound to adhere to the obligations outlined in that treaty.

Customary international law also plays a significant role in shaping international obligations. Customary law consists of practices and rules that have evolved over time and are accepted as binding by states, even if they have not explicitly ratified a treaty on the matter. Such obligations arise from consistent state practice followed by a belief that such practice is legally required (opinio juris[2]).

The enforcement and implementation of international obligations can vary. Diplomacy, negotiation, and international organizations are often used to facilitate compliance and resolve disputes[3]. International courts and tribunals, such as the International Court of Justice, exist to settle legal disputes between states and ensure adherence to international law.

The practice of international obligations involves not only states but also international organizations, non-state actors, and individuals. States must balance their obligations under various treaties and customary laws while considering their national interests and capabilities. Non-state actors, including multinational corporations and non-governmental organizations, also play a role in holding states accountable for their international obligations.

International obligations refer to the legal commitments and responsibilities that countries undertake under international law[4]. These obligations are designed to regulate interactions between states, ensure global stability, promote cooperation, and protect common interests. They encompass a wide range of areas, including human rights, trade, environment, and security. The enforcement and practice of international obligations vary across countries, and a comparison of the approaches taken by the United States, India, and England provides insight into their legal systems and administrative practices.

In the United States, international obligations are typically upheld through a dualist approach. International treaties require Senate approval for ratification, after which they become part of domestic law. However, they do not automatically become enforceable in U.S. courts. Instead, implementing legislation is often necessary to align domestic laws with treaty obligations. The supremacy of the U.S. Constitution remains a pivotal factor, with conflicts between treaties and constitutional provisions resolved in favor of the latter.

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India takes a monist approach to international obligations, where treaties are automatically incorporated into domestic law upon ratification, without the need for specific legislation. The Indian Constitution provides a framework for aligning international law with national principles. The Supreme Court of India has upheld the supremacy of international law in cases where it does not conflict with fundamental rights enshrined in the Constitution. However, in instances of conflict, domestic law prevails.

England, being part of the United Kingdom, has an intricate relationship between international law and domestic law[5]. The principle of parliamentary sovereignty dictates that international treaties cannot override domestic law. However, international law is still influential and is considered a source of law in English courts. The Human Rights Act of 1998 further facilitated the incorporation of the European Convention on Human Rights into English law, allowing individuals to directly invoke these rights in domestic courts.

In all three countries, the practice of enforcing international obligations involves a complex interplay between constitutional law, administrative procedures, and international law. While each country employs a distinct approach, they share a common aim of balancing the obligations of international law with their domestic legal systems and principles. This comparison highlights the diversity of strategies utilized to navigate the intricate relationship between international obligations and domestic legal frameworks.

In the realm of international legal obligations, a profound interplay exists between theoretical constructs and practical applications, shaping the jurisprudential landscape of various nations. A comparative analysis of constitutional law, international law, and administrative law in the United States, India, and England reveals intriguing intersections. Numerous case laws illustrate these theoretical underpinnings in action. For instance, in the United States, the landmark case of Medellin v. Texas delved[6] into the intricacies of treaty implementation and its interaction with domestic law, highlighting the tension between international obligations and sovereign authority. Similarly, India's Kesavananda Bharati[7] case showcased the delicate equilibrium between fundamental rights and parliamentary supremacy, reflecting the nation's commitment to international human rights norms while preserving its constitutional identity. In England, the Factortame litigation shed light on the supremacy of EU law over national statutes, exemplifying the intricate interplay between international obligations and administrative prerogatives. Through these cases, the theoretical frameworks of international law blend with practical considerations, offering valuable insights into how these nations navigate complex legal landscapes while honoring their international commitments.

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The topic of international obligations, law, and practice, particularly in the context of comparing constitutional law, international law, and administrative law in the USA, India, and England. Here are the authors with brief explanations of their work:

- Martti Koskenniemi - "The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870-1960[8]"

  Martti Koskenniemi, a distinguished international legal scholar, delves into the historical evolution and impact of international law on inter-state relations during the period from 1870 to 1960. The book provides insights into how international law has influenced the conduct of nations over time.

- Upendra Baxi - "The Future of Human Rights[9]"

  In this work, Upendra Baxi examines the dynamic interplay between constitutional law and the realm of human rights. Focusing on India, the book addresses the evolving challenges and prospects of safeguarding human rights within the context of changing legal landscapes.

- Hersch Lauterpacht - "International Law and Human Rights[10]"

  Hersch Lauterpacht's scholarly exploration emphasizes the intricate relationship between international law and the realm of human rights. His work underscores the principles and norms that guide the behavior of states in the global arena, particularly concerning human rights matters.

- Granville Austin - "The Indian Constitution: Cornerstone of a Nation[11]"

  In his seminal book, Granville Austin extensively examines the Indian Constitution's drafting process, fundamental elements, and its profound impact on shaping the governance structure of India. The book underscores the pivotal role of the constitution as the foundation of the nation.

- Philip Allott - "Eunomia: New Order for a New World[12]"

  Philip Allott's thought-provoking book, "Eunomia," presents a visionary perspective on reconstructing international law to address contemporary global challenges and the

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evolving nature of state sovereignty. The book envisions a new framework for international order.

- Durga Das Basu - "Introduction to the Constitution of India[13]"

  Durga Das Basu's comprehensive work provides readers with a detailed overview of the Indian Constitution. Covering historical context, fundamental rights, and the structure of the Indian government, the book serves as an essential resource for understanding India's constitutional framework.

- Rosalyn Higgins - "Development of International Law through the Political Organs of the United Nations[14]"

  Rosalyn Higgins' insightful exploration focuses on the evolution of international law within the framework of the United Nations' political organs. The book sheds light on how international law evolves through interactions between legal principles and political dynamics.

Aims and Objective

To define and elucidate the concept of international obligations in legal and practical terms. And explore the historical evolution and philosophical underpinnings of international obligations. To investigate the sources of international obligations, including treaties, customary international law, and general principles. To evaluate the hierarchy and interplay of various sources in establishing obligations. Assess the challenges and strategies associated with aligning domestic laws with international obligations.

Hypothesis

Treaty Obligations, States assume binding commitments through international treaties, which can vary in scope and enforceability.

Research Methodology

One might approach the research process from a doctrinal or non-doctrinal standpoint while examining international duties, which involve both legal concepts and real-world implications. The doctrinal method entails a thorough analysis of legal documents, treaties, conventions, and court rulings in order to deduce and determine the established legal norms and principles regulating international duties. The non-doctrinal approach, on the other hand, has a larger viewpoint and uses multidisciplinary methodologies, including empirical investigations, case

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[14] Janik, Ralph, "Rosalyn Higgins, Philippa Webb, Dapo Akande, Sandesh Sivakumaran, and James Sloan, Oppenheim's International Law: United Nations. Oxford University Press, Oxford, 2017. ISBN 9780198808312, Cxv + 1525 Pp., GBP 395.00" (2020) 23(1) Austrian Review of International and European Law Online 521, (published)

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studies, and qualitative analyses, to comprehend the actual execution of international responsibilities and their effects on many stakeholders. Researchers can develop a thorough grasp of the complexity of international duties in terms of both legal frameworks and practical dynamics by integrating both doctrinal and non-doctrinal techniques.

Treaties as International Obligations

Treaties are the principal source of Public International Law.

The Vienna Convention on the Law of Treaties defines a ‘treaty’ as ‘an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation’ (Article 2(1)(a)).

A treaty is an agreement between sovereign States (countries) and in some cases international organisations, which is binding at international law. An agreement between an Australian State or Territory and a foreign Government will not, therefore, be a treaty. An agreement between two or more States will not be a treaty unless those countries intend the document to be binding at international law.

Treaties can be bilateral (between two States) or multilateral (between three or more States). Treaties can also include the creation of rights for individuals.

Treaties are commonly called 'agreements', 'conventions', `protocols' or `covenants' , and less commonly `exchanges of letters'. Frequently, `declarations' are adopted by the UN General Assembly. Declarations are not treaties, as they are not intended to be binding, but they may be part of a process that leads ultimately to the negotiation of a UN treaty. Declarations may also be used to assist in the interpretation of treaties.

Concept of treaty

Treaty in common parlance may be defined as written agreements between parties, which may or may not be stated, to identify and follow a set of rules. They may also be referred to as pacts, agreements, charters, etc. Declarations and political statements are excluded from the scope of the definition of a treaty.

Treaties have been classified on the basis of many principles. On the basis of the object, they have been classified as political treaties (including alliances and disarmament treaties), constitutional and administrative treaties (e.g. WHO’s constitution, which is responsible for setting up the international body and to regulate it affairs), commercial treaties (trade and fishery agreements), criminal treaties (which define certain international crimes and may require the offender to be extradited), treaties codifying international law, and treaties for ensuring civil justice.

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A country that hasn't signed the treaty has no obligation to follow its norms. However, like the ICJ had stated in the North Continental Shelf Cases[15], that some treaties may give rise to international conduct, customs and be of a "fundamentally norm-creating character." Article 26[16] of the Vienna Convention on the Law of Treaties deals with the Latin maxim *"pacta sunt servanda",* i.e. every signatory is to follow the treaty in good faith and is binding upon them. This forms the basis of every international agreement.

"Reservations" are the way in which a signatory may escape having to follow all the provisions of the treaty and is a tactic used to become a party by agreeing to the basic principles of a treaty. However, reservations can only be made in cases where such reservation is not contrary to the object of the treaty.

Interpretation of a treaty should be bona fide and the object and purpose of the treaty needs to be kept in mind while doing so. In case the text is vague, "travaux preparatories" and other supplementary means of interpretation might be used. One such method of interpretation of a treaty is adopting a broader-purpose approach. Contrastingly, a purpose-oriented approach is adopted in cases where the treaty in question to be interpreted is the constitutional document of an international organization.

The binding force of Treaties

Vienna Convention on the Law of Treaties,1969

The International Law Commission of the United Nations drafted the Vienna Convention on the Law of Treaties, which was adopted on May 23, 1969. Entering into force on January 27, 1980, it is an international agreement between the states to govern and regulate treaties.

The treaty is limited to and encompasses written treaties only. Divided into many parts, the first part sets out the object, terms, and scope of the agreement, and the second part lays down rules for adoption, ratification, the conclusion of the treaties. The third part deals with the interpretation of treaties. The fourth part talks about the modification of treaties, and lastly, the fifth part delves into withdrawal, suspension, termination, and invalidation of a treaty. It also includes a necessary clause which gives the International Court of Justice jurisdiction over any possible disputes. The final parts discuss rules for ratification and effects on treaties due to change in government.

The document has not been ratified by the US, however, it follows its provisions usually. Till 1979, all the 35 member states of the UN had ratified the treaty.

As per the Latin maxim "*pacta sunt servanda*[17]", or as mentioned under Article 26 of the Convention, all treaties are binding on its signatories and shall be followed bona fide. The binding nature which this treaty serves to all other treaties is a reason why the US isn't a part

[15] https://www.icj-cij.org/public/files/case-related/52/052-19690220-JUD-01-00-EN.pdf
[16] https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf
[17] https://brill.com/display/book/9789004180796/B9789004180796_032.xml?language=en

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of it. There exists a tussle between Congress and the Executive branch, over who has the authority to validate a withdrawal from treaties on behalf of the country. Since treaties are binding, there is too much at stake between the two organs of the US government.

Customary International Law and Obligations

Customary International Law refers to the international obligations that may not be formally written in conventions and treaties but still exist as a part of usual international practices.

Multiple states have a sense of legal obligation and hence, follow a general and consistent practice, which resulted in Customary International Laws.

For example, granting diplomatic immunity was an unwritten international custom until the Vienna Convention on Diplomatic Relations came into force in 1961, which made granting such immunity legally binding.

Recognition of Customary International Law

Customary International Law has been defined under Article 38(1)(b)[18] of the International Court of Justice Statute as a "usual and general practice that is accepted as a law".

The ICJ (International Court of Justice) is an international judicial body and settles disputes arising between United Nations (UN) member states. Article 38 of the statute provides that the international customs and general practices of nations will be one of the sources of Customary International Law, and such Customary Law is one of the sources of International Law.

Sources

There are two sources of Customary International Law, those are:

- General state practice – There must be a widespread and consistent state practice. Such practices are unwritten and mostly based on humanitarian principles and inter-state diplomatic relations.

For example- States granting refuge to refugees and asylum seekers because they feel a threat of life and liberty in their home state.

- *Opinio Juris – It means 'opinion of the law'. In simplest terms, it refers to what has been accepted as law by the States.*

It is one of the elements that are necessary to set up a legally binding Customary Law. In order to establish unanimous customary practices in inter-state relations, the states codify some customary practices and accept them as laws. The states by way of ratification are bound to follow such law according to the doctrine of *opinio juris.*

[18] https://www.icj-cij.org/statute

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However, with Customary International Law, the concept of *opinio juris* is highly unsettled and disputed because customary practices vary from state to state, making it difficult for the states to settle on a uniform practice that they are bound to follow.

Jus cogens

In human rights conventions, some rights are considered to be so important that they are non-derogable in nature. Such as- the right to life and liberty, etc. These rights are referred to as *jus cogens* norms.

The norms in International Law formed by the principle of *Jus cogens* cannot be set aside. The Latin term *jus cogens* literally translate to 'compelling law'. There is no need for any codification of such laws as these exist anyway.

These are Customary Laws that are rooted in the principle of Natural Law. Any law in contradiction to it must be set aside. For example, laws that permit slavery, torture, genocide, crimes against humanity, etc., are contradictory of *jus cogens* and must be set aside. However, it is to be noted that all *jus cogens* are der Customary International Law, but not all Customary International Laws can rise to the status of *jus cogens.* These are the basic and most important norms around which other laws must be made.

Do Customary International Laws require ratification?

Any International Laws arising out of international conventions are not binding upon nation-states unless the countries consent to be bound by such laws by way of ratification.

But, Customary International Laws are norms that deal with Natural Laws and Humanitarian Laws and are so prevalent internationally that they need not be ratified in order to be binding. These laws do not require any state to expressly do something by using their resources, they are just required to not make any laws contradicting such laws. However, sometimes a state may object to Customary International Laws, such states are not bound by them unless the laws are considered *jus cogens.* Laws are binding as long as expressed objection is not made, which gives rise to the principle of "silence implies consent". This means that as long as no objection is made, consent to follow such laws is said to exist impliedly.

International Obligations and State Sovereignty

Under current international law, sovereignty is defined as- "Sovereignty in the sense of contemporary public international law denotes the basic international legal status of a state that is not subject, within its territorial jurisdiction, to the governmental, executive, legislative, or judicial jurisdiction of a foreign state or to foreign law other than public international law[19] It is also defined as the 'ultimate authority, held by a person or institution, against which there is no appeal[20] In other words, Sovereignty is the ultimate power, authority and/or jurisdiction over

[19] H Steinberger, 'Sovereignty', in Max Planck Institute for Comparative Public Law and International Law, Encyclopaedia for Public International Law, vol 10 (North Holland, 1987) 414
[20] World Encyclopaedia (Oxford University Press, 2008) sovereignty.

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a people and a territory. No other person, group, tribe or state can tell a sovereign entity what to do with its land and/or people. A sovereign entity can decide and administer its own laws, can determine the use of its land and can do pretty much as it pleases, free of external influence (within the limitations of international law).

Origin and Evolution of the Sovereignty Concept

It is considered that the first known definition of sovereignty appears in Justinian's Digest in the following wording: “Liberi populus externus is qui nullius alterius populi potestatis est subiectus.

In the Romanian specialized literature the emergence sovereignty is put into the equation along with the emergence of states. Grigore Geamănu, for example, stated that sovereignty appears as an institution “from the moment the states begin to exist”. Another author considers similarly that “*sovereignty appeared with state power, as a feature, under the conditions of the decomposition of gentile society and the creation of the state.*”[21]

And in the foreign literature authors considered in the same sense, stating that *the issue of sovereignty occurred when there were at least two states near one another, in an attempt to maintain independently of one another.*” However, there are authors who believe that we can speak of sovereignty, broadly in terms of ancient Greek ancient state or the Roman State, considering that the name of the concept appeared only later on.

P. Negulescu stated that the concept of sovereignty appears in the 15th century for designating the position of the king in the feudal hierarchy and it comes from Vulgar Latin, the preposition *super* (above), from which arose the adjective *superanusand* the noun *supremitas*, which means the situation a man who, in terms of hierarchy, has no one above him, he is not subordinated to anyone.

The Issue of Sovereignty

State sovereignty is the concept that states are in complete and exclusive control of all the people and property within their territory. State sovereignty also includes the idea that all states are equal as states. In other words, despite their different land masses, population sizes, or financial capabilities, all states, ranging from tiny islands of Micronesia to vast expanse of Russia, have an equal right to function as a state and make decisions about what occurs within their own borders. Since all states are equal in this sense, one state does not have the right to interfere with the internal affairs of another state.

Practically, sovereignty means that one state cannot demand that another state take any particular internal action. For example, if Canada did not approve of a Brazilian plan to turn a large section of Brazil’s rainforest into an amusement park, the Canadian reaction is limited by Brazil’s sovereignty. Canada may meet with the Brazilian government to try to convince them to halt the project. Canada may bring the issue before the UN to survey the world’s opinion of

[21] /journals.univ-danubius.ro/index.php/juridica/article/view/2798/2585

the project. Canada may even make politically embarrassing public complaints in the world media. However, Canada cannot simply tell Brazil to stop the rainforest project and expect Brazil to obey.

Under the concept of state sovereignty, no state has the authority to tell another state how to control its internal affairs. Sovereignty both grants and limits power: it gives states complete control over their own territory while restricting the influence that states have on one another. In this example, sovereignty gives the power to Brazil to ultimately decide what to do with its rainforest resources and limits the power of Canada to impact this decision.

Conclusion and Suggestions

In conclusion, international obligations represent a fundamental framework governing relations between states and international actors. The dynamic interplay between international law and practice underscores the intricate balance between sovereignty and cooperation. Through treaties, customary norms, and international agreements, states commit to upholding a diverse array of obligations, ranging from human rights and environmental protection to security and trade. However, effective enforcement and compliance remain ongoing challenges, often highlighting the tension between legal commitments and real-world constraints. As global dynamics evolve, the evolution of international obligations continues to reflect the complex nature of our interconnected world, where the pursuit of common interests necessitates a delicate alignment of legal principles with pragmatic realities.

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