

Impact of International Law on A Nation's Politics in Modern Era

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Introduction - International law is not just a result of few treaties of 19th and 20th centuries but its origin can be traced back to ancient times. Peace treaties between the Mesopotamian city of Lagash and Umma are considered as beginning of international law. The concept of governance and international relations were developed by the Greeks, which laid down the foundation of the international legal system. The concept 'Jus Gentium' (Law of Nation) was evolved during the reign of the Roman empire, which defined and governed the relation between foreigners and Roman citizens and the status of foreigners living in Rome. Later, development of concept of Natural Law emphasized that certain rights are inherent to all humans, which helped in widening the scope of international law.

Congress of Vienna is known as watershed moment in the evolution of international law. It is also referred as Vienna Congress, held in 1815. It was chaired by Klemen's Von Metternich, an Austrian statesman. It was attended by ambassador of European states with the objective to provide a long-term peace plan for Europe. Solving critical issues aroused from the French Revolutionary War and the Napoleonic War were main agenda of the Congress. It laid down the international rules such as rules with regard to International River, categorization of diplomatic agent etc.¹

Foundation Of Modern International Law - The spark that ignited World War I was struck in Sarajevo, Bosnia, where Archduke Franz Ferdinand—heir to the Austro-Hungarian Empire—was shot to death along with his wife, Sophie, by the Serbian nationalist Gavrilo Princip on June 28, 1914. Princip and other nationalists were struggling to end Austro-Hungarian rule over Bosnia and Herzegovina. The assassination of Franz Ferdinand set off a rapidly escalating chain of events: Austria-Hungary, like many countries around the world, blamed the Serbian government for the attack and hoped to use the incident as justification for settling the question of Serbian nationalism once and for all. However, since the Serbia was supported by the mighty Russia and had the possibility of involving France and Great Britain as well, Austria and Hungary had

to wait for assurance from Germany for declaring war upon Serbia. Finally an assurance from Germany led to the initiation of 1st World War on 28th July 1914 which lasted till 11th November 1918. This was fought throughout the Middle East, Africa, and portions of Asia, and engaged most of Europe, also Russia, the United States, and Turkey. About 9 million people were murdered in warfare, while over 5 million perished as a result of the siege, bombing, famine, or illness. This was one of the worst conflicts in history. Numerous millions more died as a result of the Ottoman genocides and also the 1918 Spanish flu virus, which was transmitted by the movement of fighters throughout the conflict.

When the leaders of Western nations met at the Paris Peace Conference, they decided to form an international organization which can solve international disputes and should not allow repeat of incidents like World War. This led to the establishment of League of Nations under Treaty of Versailles. Therefore League of Nations is also known as Child of First World War. The main provision of the covenant of League of Nations was to settle disputes through peaceful methods such as arbitration, negotiation etc., before resorting to disputes. If any member resorted to war, going against the principle of covenant of League of Nations, then the member will be considered as an enemy of whole League of Nations. Permanent court of International justice was established by the League of Nations.

Failure Of League Of Nations And Emergence Of United Nations Organisation - Following World War I, the victorious Allied Powers met to decide Germany's future. Germany was forced to sign the Treaty of Versailles. Under this treaty, Germany had to accept guilt for the war and to pay reparations. Germany lost territory and was prohibited from having a large military. The humiliation faced by Germany under this treaty, paved the way for the spread of Ultra-Nationalism in Germany. Hitler openly denounced the Treaty of Versailles and began secretly building up Germany's army and weapons. Although Britain and France knew of Hitler's actions, they thought a stronger Germany

would stop the spread of Communism from Russia. The German invasion of Poland on 1 September 1939 and subsequently two days later, Britain and France declared war on Germany. This marked the beginning of World War II. Further, the Japanese, tired of American trade embargoes, mounted a surprise attack on the US Navy base of Pearl Harbor, in Hawaii, on 7 December 1941. This ensured that global conflict commenced, with Germany declaring war on the US, a few days later. Also, within a week of Pearl Harbor, Japan had invaded the Philippines, Burma and Hong Kong. The Russians reached Berlin (capital of Germany) on 21 April 1945.

Germany surrendered unconditionally on 7 May, and the following day was celebrated as VE (Victory in Europe) day. On 6 August 1945 an atomic bomb was dropped on the Japanese city of Hiroshima. Three days later another was dropped on Nagasaki. With the surrender of Japan, World War II was finally over.

It is very much pertinent that the failure of League of Nations led to the Second World War. At the end of Second World War, a new organization came into existence i.e. the United Nations, with the aim to protect world from future war. It was established on 24th October, 1945, when heads of 50 governments met at San Francisco for a conference and drafted UN Charter. At present, this organization is nodal point of international law. It aims at maintaining international peace and security, ensuring friendly relation between nations and achieving international cooperation.

Relevancy (Or Irrelevancy) Of International Law In International Politics - International political science became an independent sector of intellectual endeavor immediately following the Second World War. A major unarticulated premise of this discipline is that international law is essentially irrelevant to a proper understanding of the dynamics of international politics and therefore irrelevant to the progressive development of international political theory as a science. International political science repudiates both the descriptive validity and the prescriptive worth of international legal considerations for that sector of international relations dealing with matters of "vital national interest" or of "high international politics." If we closely look at the reasoning for the Second World War, it's the solution itself which led to the event of mass destruction. The Treaty of Versailles and especially its first part, the Covenant of the League of Nations were not the perfect incarnations of truth, justice, peace, and righteousness they were alleged to be by the statesmen of the Allied and Associated powers, particularly Woodrow Wilson. Instead, they were instrumentalities of power politics designed by the victorious nations of the First World War to secure and perpetuate, with the maximum possible degree of legal and institutional coercion, the favorable political, economic, and military status quo granted to them after the armistices ending the Great War. This treaty was imposed *vi et armis* in contravention of express promises given to induce

surrender. If the peoples of the world believed anything else, they were sorely deluded by the ideological rhetoric deceptively manipulated by their leaders to fan the flames of patriotic fervor in order to hasten the prosecution of the war to its successful conclusion. If the victors of Versailles intended to keep their ill-gotten gains, they had to be willing to employ military force against a revanchist Germany whenever the latter attempted to effectuate resistance to the terms of the so-called peace. The Western democracies, however, lacked the requisite will; instead of fighting to preserve their hegemony, they preferred to trust in their own illusions. It is therefore, very much visible that self-interests overtook the necessity of universal peace. The international law seems to be losing its importance as the required or expected results could not be produced.

Modern Instances Of Failure Of International Law- Even if we ignore the past instances, the recent occurrences of flagrant violations of international law have brought the ghost back from the grave. The U.S. led attack on Iraq has further questioned the validity and relevancy of international law and the institutions responsible for implementing it. In the instant case, US govt. accused Iraq of accumulating Weapons of Mass Destruction and through a resolution of UN Security Council ordered for an inspection through United Nation Special Commission (UNSCOM) which was rejected by Iraq for years but was accepted in February 1998. But in October 1998 formally halted all the operations. This decision was criticized by Security Council at several occasions. However, after attacks of 9/11 U.S.A. was adamant on scrutinizing the possible threat posed by the then Iraqi Supremo Saddam Hussain. In October 2002 the U.S. Congress authorized President Bush to take military action. Thereafter Iraq allowed resumption of inspections claiming it has no biological weapons. However, U.S.A. with Britain launched a full fledged attack on Iraq on 20th March 2003.

Here it is noteworthy to consider the relevant provisions which may grant any superpower to attack any other country. According to Art. 103 of UN Charter, the UN Charter is the highest treaty in the world, superseding states' conflicting obligations under any other international agreement. Under the UN Charter, there are only two circumstances in which the use of force is permissible: in collective or individual self-defense against an actual or imminent armed attack; and when the Security Council has directed or authorized use of force to maintain or restore international peace and security. Neither of those circumstances now exist. Absent one of them, U.S. use of force against Iraq is unlawful. There is only one legal basis for the use of force other than self-defense: Security Council directed or authorized use of force to restore or maintain international peace and security pursuant to its responsibilities under Chapter VII of the UN Charter. Article 42 of that chapter provides: "Should the Security Council consider that measures [not involving the use of force] provided for in Article 41 would

be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations."

In view of the above provisions the U.S. govt. has reiterated that its action on Iraq was legal and within the ambit of UN Charter. But on Sep. 15, 2004 the then Secretary General of United Nations Kofi Annan questioned the validity of military actions in an interview. He said that the invasion was not sanctioned by the UN security council or in accordance with the UN's founding charter. He had indicated it was not in conformity with the UN charter. From our point of view and from the charter point of view it was illegal. He added that if there were severe security grounds then what was the necessity of conducting elections in January 2005. The action attracted further hatred when after years of search no chemical weapons were found. Finally the Allied forces withdrew from Iraq in 2011 leaving the state devastated.

The most recent example of violation of International law is attack on Ukraine. The situation between Russia and Ukraine has been poor ever since the annexation of Crimea, a south-eastern Ukrainian province by Russia in 2014. The situation worsened when the Russian President ordered a special military operation within Ukraine, a sovereign nation. Putin invoked Article 51 of the UN Charter, which enshrines inherent right of individual or collective self-defence in order to protect Article 1 (the right to self-determination of Donbas region). Its been over a year since the attack was conducted and still no peaceful situation has been achieved. Violations that were made under the UN Charter are as follows:-

1. Article 1 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, provides that a group of people can freely determine their political status.
2. Article 2 of the UN Charter- This right has to be read with Article 2 of the UN Charter which states that recognition by an outside country involves interfering in the internal matters of a State. It is a direct contravention of the principle of equal sovereignty of all nations.
3. Article 51- Article 51 provides for self-defence against an armed attack. Russia cannot justify its actions since Russia faced no aggression from Ukraine.²

The world never reacted substantially to this derogatory act of the U.S. govt. No sanctions were put on it. There were no one to declare that it has severed its ties with the U.S.A. which should have been the case in case of breach of International law. This again seriously questions the existence of International law and indirectly proclaims that the politics of any nation will be determined by any Superpower and not through the provisions of International

law.

Indian Stance On International Law-Though UN came into existence after the Second World War, the Alliance system was in parallel existence. The poles of the two alliances were U.S.A. and U.S.S.R. India gained independence in 1947, within 2 years of UN coming into existence. At that period every nation of the world had to choose its alliance in order to remain objective in the world. India took a commendable step of remaining Non-Alligned. The term "Non-Alignment" was coined by India's first defence minister V. K. Menon during a speech at the United Nations in 1953 and later would be used by Prime Minister Jawaharlal Nehru from 1954 onwards. In a speech at Colombo, Sri Lanka that same year he laid down five principles that would be the cornerstone of NAM policy.

1. Mutual respect for each other's territorial integrity and sovereignty.
2. Mutual non-aggression.
3. Mutual non-interference in domestic affairs.
4. Equality and mutual benefit.
5. Peaceful co-existence.

These principles came to be known as Panchsheel Principles. India participated in the 1961 Belgrade Conference that officially established the Non-aligned Movement along with Egypt and Yugoslavia. There were several reasons that existed for not adopting any alliance. Some of them were:-

- 1) India's alignment with US or USSR would aggravate the situation instead of promoting international peace and harmony.
- 2) India was neither a great power nor it could allow itself to be treated as nation of no consequence. Thus, the policy of non-alignment was best suited to protect its national identity.
- 3) India could not join either blocs due to emotional and ideological reasons. It could not join US bloc as its several members countries were colonial or ex-colonial powers and some still practiced racial discrimination while the Eastern bloc followed communism which as an ideology was completely foreign to Indian thinking and way of life.
- 4) India launched several economic development programmes after the independence. Hence it was not a sensible idea of depending on any 1 bloc for foreign aid.

However, circumstances changed after Indo-China war in 1962. Chinese aggression was a blow not only to the international prestige of India but also to the non-aligned movement. The Soviet Union did not lend us any support in times of need. Also the members of NAM did not criticize the Chinese action. A large section of people in India questioned the validity of Non Aligned Movement. However, Nehru refused to give up the commitment towards Non Alignment policy. The events of 1971 Indo-Pak war finally changed the course of India's foreign policy. India came

close to Soviet Union and Pakistan to United States. Indo-Soviet treaty of 1971 invited sharp criticism against India. It was said that the non-alignment had turned into alignment with USSR as latter pledged to help India when we needed it badly. Consequently, the Indo-USSR relations reached all time high while Indo-US relations reached an all-time low.

But this alignment towards USSR received a serious blow after the US President George Bush and Soviet President Gorbachev met at Malta in December 1989 and decided to end the decades old Cold war. The early 1990s demise of the bipolar world system, which had existed since the end of World War II, shook the underpinnings of India's foreign policy. The Cold War system of alliances had been rendered meaningless by the collapse of the East European communist states, the dissolution of the Warsaw Pact, and the dissolution of the Soviet Union. By 1992, bipolar world had somewhat changed into unipolar world with United States being the only remaining super power. It was generally believed that since the Cold war was the reason of inception of the non alignment policy, the policy should come to an end with the end of Cold war. But the then Prime Minister of India, P.V. Narsimha Rao, in his speech at Tokyo in 1992 reaffirmed India's adherence to the policy of Non Alignment and said that its relevance is even more today than it was ever before. Here we can see that India took the best possible steps to remain neutral yet circumstances or in better words, 'inability of the international law and relevant institutions' to support Indian procedure forced us to change our initial stance what could have been an path breaking step for other nations³.

India has been a consistent follower of UN directions given through conventions. Be it the applicability of human rights or child rights or reduction of carbon emission, India has been consistent in following the International order. But previous experiences have made the policy makers to be more cautious and keep the nation's interest at first place even if it is not in terms with the international law. One such example is Nuclear Non- Proliferation Treaty which India has been consistently refusing to sign keeping the security of the Nation at first place.

Conclusion And Suggestions : It's a common perception

that with the time circumstances, thinking and even law changes. But centuries before, a very celebrated proponent of Analytical school of Jurisprudence John Austin was so correct in putting forth the meaning of International law. According to him, International law is not a law but a mere positive morality as it lacks coercive force behind itself. This description fits even in 21st century as the international law is more irrelevant than it ever was. It was supposed to help nation in their politics but has proven to be ineffective. The above mentioned instances have made it evident that international law is not only a weak law but is a puppet of military giants who can mold it as per their convenience and bring about their needed results. Ukraine, which followed the Nuclear Non Proliferation Treaty and surrendered its nuclear weapons, is now being suffered with its sovereignty at stake. NATO which promised membership to Ukraine is not ready to help the bereft nation. The purpose behind introduction of International law was to unite the nations and help the nations during the time of sufferings. This purpose can be achieved but there is a dire need of substantial amendments. First of all, the military organisations such as NATO should be decommissioned.

The inter country military operations should only be conducted by United Nations under their peace keeping purposes. Any decision regarding the military operations on any country must be taken by majority of the members of United Nations and not through just 5 members of Security Council. Another suggestion is that the authority to put sanctions should not be a super power but a neutral organisation. Also while putting sanctions it should not differentiate between nations. The only criteria should be a substantial erring decision of such country. It is believed that such steps may bring about the unity between nations and reinstate the relevancy of International law.

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