PUBLIC INTERNATIONAL LAW

Lecture 1

UNIT 1:-INTRODUCTION TO THE PUBLIC INTERNATIONAL LEGAL ORDER

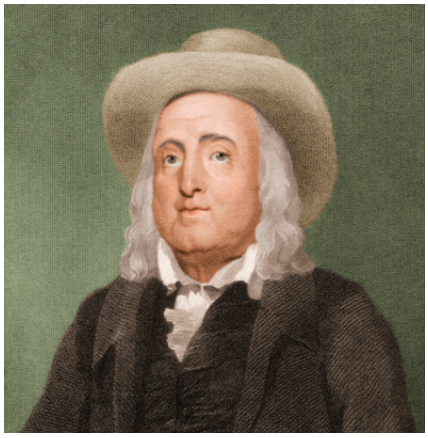
1. The Structure of the International Community
2. Historical Development and Specificities of Public International Law
3. The Relationship between International Law and Domestic Law
4. The Main Legal Features of the International Community

International community: When two or more nations relate to each other in any form, like treaties or covenant or disputes etc, such act is international.

Therefore, we can say that **international community** represents the countries of the world collectively.

What is International Law?

The term was introduced by **Jeremy Bentham** in the year 1789. Prior to it, International law was known by the name 'Law of Nations'. It acts as a legal framework at global level to ensure stable and organised international relations.



Jeremy Bentham

Definitions of International Law:

Many different scholars have tried to define the international law in the following ways:

a) **Prof L. Oppenheim:** Law of Nations or International Law is the name for the body of customary and conventional rules which are considered legally binding upon civilised states in their course with each other.

b) **Gray:** International law or the law of nations is the name of a body of rules which according to their usual definition regulate the conduct of states in their intercourse with each other.

c) **Hall:** International law consist of certain rules of conduct which modern civilised state regards as binding on them in their relation with one another with a force comparable in nature and degrees to that binding the conscientious person to obey the laws of his country and which they regard as being enforceable by appropriate means in case of infringement.

d) **J G Starke:** It is that body of law comprise of greater part of its principles and rules of conduct, which States feel themselves bound to observe and therefore do commonly observed in their relations with each other.

e) **J L Brierly:** the law of nations or international law may be defined as the body of rules and principles of action, which are binding upon civilised state in the relation with one another.

Two Schools Of International Law:

- **The Naturalist**

Grotious, Starke, Vattel, Pufendorf etc, were chief exponents of this theory. According to this theory, basic principles of all law (National or international) not from any deliberate human choice or decision, but from principles of justice which had a universal and eternal validity and which could be discovered by pure reason. The theory further stipulated that law was to be found and not made. Grotius considered that the existence of natural law was the automatic consequence of the fact that men lived in a society and were capable of understanding that certain rules were necessary for the preservation of the society.

- **The Positivist**

Bynker- Shock is the chief exponent of the positivism. Brierly and Anzilotti are also other supporters of this theory.

It is based on the principle of law of positivism, which means facts as contrasted with law which ought to be. The doctrine of positivism teaches that international law is the sum of rules by which States have consented to be bound and that nothing can be law to which they have not consented to be bound. According to this theory, what is state actually do was the key, not what state ought to do, given basic rules of the law of nature.

Evolution of International Law

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.

Concept of **'Jus Gentium' (Law of Nations)** 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' emphasised that certain rights are inherent to all humans, which helps in widening the scope of international law.

Hugo Grotius is considered as most eminent personality in the field of international law. He had articulated international order that consist of a society of a state which should be governed by the law's, mutual agreement and custom rather than by force or warfare.

Hugo Grotius-Father of public international law

Nature Of International Law

Austin in his definition of law has given more importance to sanction and fear in compliance of law. In case of International law there is neither sanction nor fear for its compliance hence it is not law in proper sense of the term. But now the concept has changed and International Law is considered as law. There is no consideration of fear or sanction as essential part of law. If fear and sanction are considered necessary then there are sufficient provisions in UNO charter for compliance of the International Law as Law.

According to Oppenheim, International Law is law in proper sense because:-

i) In practice International Law is considered as law, therefore the states are bound to follow them not only from moral point of view but from legal point of view also.
ii) When states violate international law then they do not deny the existence of international law but they interpret them in such a way so that they can prove their conduct is as per international law.

With the result of international treaties and conventions International Law is in existence. It is pertinent to mention here that from the above noted contents it is clear that the following grounds are supportive for accepting the International Law as law:

i) Now so many disputes are settled not on the basis of moral arguments but on the basis of International Treaties, precedents, opinions of specialists and conventions.

ii) States do not deny the existence of International Law. On the contrary they interpret International Law so to justify their conduct.

iii) In some states like USA and UK international Law is treated as part of their own law. A leading case on the point is the, Paqueta v/s Habanna-1900. Justice Gray

observed that the international law is a part of our law and must be administered by courts of justice.

iv) As per statutes of the International Court of Justice, it has to decide disputes as are submitted to it in accordance with International Law.

v) International conventions and conferences also treat international Law as Law in its true sense.

vi) The United Nations is based on the true legality of International Law.

vii) Customary rules of International Law are now being replaced by law making treaties and conventions. The bulk of International Law comprises of rules laid down by various law-making treaties such as, Geneva and Hague conventions.

Public and Private International Law

International law is divided into two types that is public and private international law.

Public international law	Private international law
When international law governs relations and intercourse between two states it is known as public international law.	When a part of international law deals with private citizen of different countries or other related issues, it is referred as private international law.
It covers the area like territorial boundary diplomatic relations, armed conflict, human rights issues et cetera. Public international law is implemented according to the provisions of the treaty and agreement.	Private international law is framed by a legislature of respective nation.

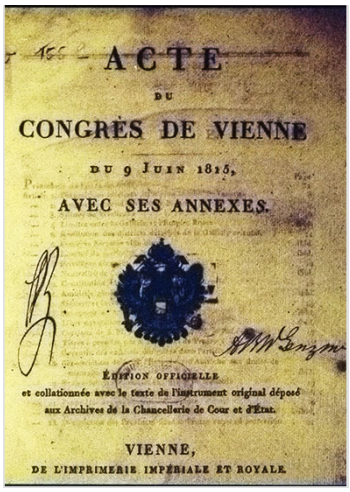
Evolution of Public International Law

During 19th and 20th centuries, International Law got its formal shape. Various pacts and treaties were signed in the period which finally concluded in the formation of United Nations:

- **Congress of Vienna (1815)**

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 attended by ambassador of European states with the objective to provide a long-term peace plan for Europe.

Solving critical issues arise from the French Revolutionary war and the Napoleonic war were the main agenda of the Congress. It led down the international rules such as rules with regard to international river, categorisation of diplomatic agent etc.


ACTE
DU
CONGRÈS DE VIENNE
DU 9 JUIN 1815,
AVEC SES ANNEXES.
ÉDITION OFFICIELLE
et collationnée avec le texte de l'instrument original déposé aux Archives de la Chancellerie de Cour et d'État.
VIENNE,
DE L'IMPRIMERIE IMPÉRIALE ET ROYALE

Title page of the collection of final document of he Vienna Congress

- **Paris Declaration (1856)**

In this declaration, 55 nations agreed on the diplomatic policy related with the maritime law. This declaration also laid down the rules relating with the naval warfare. The main principle that evolved in it was to prohibit attack on undefended people and before sinking enemy ships, attempt should be made to save the lives of the crew. It was codified by France and Great Britain.

Three agreed principles of the declaration were no privateering, effective blockade and freeship make free goods. This declaration redefined the relationship between belligerent and neutral nations. It paved with the new rules for the navigation in high seas.

- **Geneva Convention (1864)**

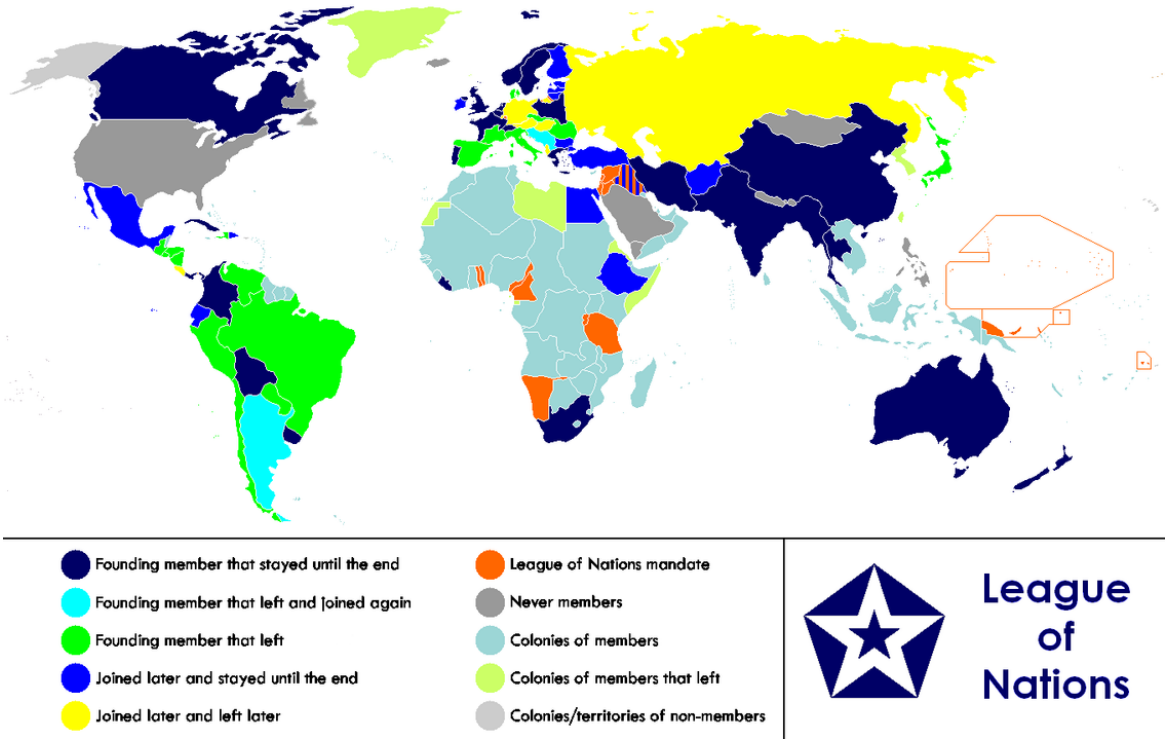
It formulated rules and regulations for the protection of victims armed conflict and people involved in providing care to them. The first Geneva convention treaty was adopted in 1864, which was reframe then amended in 1906, 1929 and in 1949. Overall, there are four treaties of Geneva convention. At present, the international committee of Red Cross mainly see the implementation of Geneva convention.

- **Hague Convention of 1899 and 1907**

Two conventions were held at the Hague in the Netherlands with an objective to sort out international law for peaceful settlement of international dispute. This convention was important from the viewpoint of laying international law during conflicts. Duties and rights of national states, prohibiting bombardment on undefended people, limiting armaments etc were important outcomes of this convention.
This convention also led to establishment of permanent Court of arbitration.

- **League of Nations (1919)**

League of Nations is also referred as child of first world war. When the leader of Western nations met at the Paris peace conference, they decided to form an international organisation which can solve international disputes and should not allow repeat of incidents like world war. It was established under the Treaty of Versailles.



The main provision of the covenant of the league of Nations was to settle disputes through peaceful methods such as arbitration, negotiation et cetera, before resorting to disputes. If any member resorted to war going against the principle of common nations, a member will be considered as an enemy of whole league of Nations.
But at last, League of Nations was not able to fulfil its objective and miserably failed due to the outbreak of Second World War.

- **United Nations (1945)**

At the end of the Second World War, a new organisation came into existence that is the United Nations, with the aim to protect the world from future war. It was established on 24 October 1945, which heads of 50 governments met at San Francisco for a conference and drafted UN charter.
At present, this organisation is nodal point of international law. It aims at maintaining international peace and security, ensuring friendly relation between nations in achieving international cooperation.

The Relationship between International Law and Domestic Law (Municipal law)

While international law is applied in the relations of the states and to other subjects of international law, national or state law which is called municipal law is applied within a state to the individuals and corporate entities which are the bearer of rights and duties thereunder apparently it might be looking that there is hardly any relationship between the two systems as they constitute two different legal systems each of which is designed to operate in its own sphere and they are applied distinctly to their subjects by different courts, but it is not so.

Originally, the relationship between the two laws was of a matter of theoretical importance i.e, whether international law and municipal law are parts of a universal legal order or they formed two distinct systems of law. But at present the question has acquired practical significance as well. When there exists a conflict between the rules of international law and municipal law, a court is faced with the difficulty of arriving at a decision. Before an international tribunal, the question is one of primacy - whether international law takes primacy over municipal law, or vice versa. The conflict arises before a municipal court, the answer depends on how far the constitutional law of the state allows international law to be applied directly. For instance, diplomatic immunities granted by international law would become meaningless unless they are recognised by municipal law.

This has resulted in domestic law and international law into penetrating each other in a number of fields such as environment and human rights where same topics are subject to regulation at both the domestic and international level. This phenomena and has given rise to questions regarding the relationship between the internal legal order of a country and the rules and principles governing the international community as a whole. Several theories have been propounded to explain this relationship.

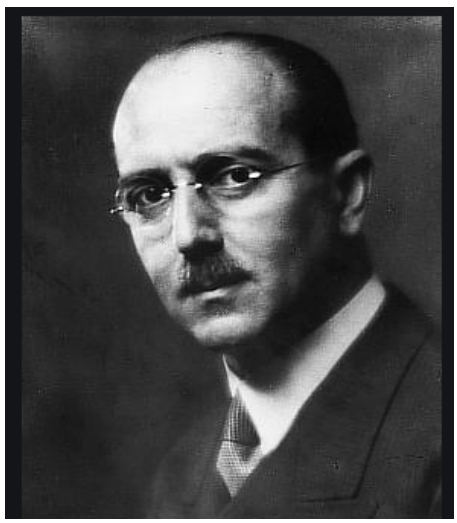
a) Dualistic Theory

Fig. Heinrich Triepel

- Adding to dualist scholars, international law and municipal law or two distinct, separate and self-contained legal systems.
- Being separate systems, international law would not have such form part of internal law of a state, to the extent that in particular instance rules of international law may apply within a state they do so by virtue of their adoption by the internal law of the state, and apply as part of that internal law and not as international.
- Such a view avoids any question of the supremacy of the one system of law over the other since they share no common field of application, each is supreme in its own sphere.
- This theory was developed by a prominent German scholar Triple in 1899. For him, international law and domestic or municipal law was existed on separate planes.
- The theory was later on followed by Italian legal Anzilotti.

b) Monistic Theory

- It was put forward by two German Scholars **Moser** (1701-85) and **Martens** (1756-1821).
- According to this doctrine there exist only one set of legal system, i.e. the domestic legal order. It has been denied by the exponents of this theory International Law is distinct and autonomous body of law.
- It followed that there was obviously no need for international rules to be incorporated into municipal legislation since they have been made by the states themselves.
- The monistic doctrine was later developed in the early 20th century by those three and jurist **Kelsen**.



Hans Kelsen

- Monism maintains that all laws are made for individuals only. While municipal law is binding on them directly, international law is binding on them through states. Both the laws are meant to solve the problems of human beings in different areas; they both are related to each other.

c) Transformation Theory

This theory says that with the time international law undergoes transformation into municipal law. Hence, international law acts as a source of municipal law. Through transformation procedure rules set by international treaties are extended to individual of state through ratification of treaty and in act meant of law.

Adoption of Kyoto protocol, convention on child labour by the nations are some of example of transformation theory.

d) Delegation Theory

In reaction to transformation theory, delegation theory came into existence. According to this theory, international law did not directly transformed into municipal law, but it is decided by state on its own when the provisions of a treaty or convention are to be made effective and in which manner. Legislature of the state is final body in formulating international law into municipal law.

e) Specific Adoption Theory

This theory laid down the principle of adoption, which is based on the principle that international law cannot be directly enforced through municipal law therefore to execute international law into country, country has to adopt it.

This adoption principle is based on the international convention such as a convention 1970, when a convention et cetera which provided that law in acted by international organisation or convention may be adopted by the nations to include in their municipal law.

In the case of Jolly George versus bank of Cochin 1980, the court held that any agreement does not automatically become part of municipal law but the positive commitment of the state parties inspire their legislative action.