

Historical Milestones

- Peace of Westphalia 1648
 - The principle of the *sovereignty* of nation-states and the fundamental right of political self determination
 - The principle of (legal) *equality* between nation-states
 - The principle of *pacta sunt servanda* (*treaties are to be observed*)
 - The principle of *non-intervention* of one state in the internal affairs of another state
- Final Act of the Congress of Vienna 1815
 - Established diplomatic protocol
 - Condemned the slave state
 - Established the principle of free and unimpeded navigation on international rivers
- League of Nations 1920
- United Nations 1945

United Nations Main Bodies

- UN Charter, October 24, 1945
<http://www.un.org/aboutun/charter/index.html>
- 191 members
- Organization Chart: <http://www.un.org/aboutun/chart.html>
- **General Assembly**
 - Subsidiary Organs
 - Committee on Information
 - Human Rights Council
- **Security Council**
 - Peacebuilding Commission
 - Counter-terrorism Committee
 - Al-Qaida and Taliban Sanctions Committee
 - 1540 Committee
- **Economic and Social Council**
- **Trusteeship Council**
- **Secretariat**
- **International Court of Justice**

Binding Character of UN resolution

- GA resolutions: Not binding
- Security Council Resolutions: Binding

UN Security Council

- Five Permanent Members
- “A conviction has grown, among nations large and small, that an opportunity has been regained to achieve the great objectives of the Charter...” UN Secretary Boutros Boutros-Ghali, 1992
- “There has been a regrettable tendency for the Security Council not to be involved in the efforts to maintain international peace and security.” UN Secretary Kofi Annan, 1999
- “Will the United Nations serve the purpose of its founding, or will it be irrelevant?” George W. Bush, 2002
- In a 1994 speech at the liberal World Federalist Association, John Robert Bolton declared that **“There is no such thing as the United Nations.”** To underscore his point, Bolton said: **“If the UN secretary building in New York lost ten stories, it wouldn't make a bit of difference.”**
--Bolton, the U.S. Permanent Representative to the United Nations.

Human Rights Council

- U.S. refuse to run for the UN Human Rights Council
- Bolton: “I believe rather strongly that our leverage in terms of the performance of the new council is greater by the U.S. not running and sending the signal ‘this is not business as usual’ this year than if we were to run.”

International Court of Justice (ICJ)

- International Court of Justice
Peace Palace
2517 KJ The Hague
The Netherlands
- 15 Judges

ICJ Jurisdiction

The Parties

Only States may apply to and appear before the Court. The Member States of the United Nations (at present numbering 191) are so entitled.

Jurisdiction

The Court is competent to entertain a dispute only if the States concerned have **accepted its jurisdiction** in one or more of the following ways:

1. by the conclusion between them of a special agreement to submit the dispute to the Court;
2. by virtue of a jurisdictional clause, i.e., typically, when they are parties to a treaty containing a provision whereby, in the event of a disagreement over its interpretation or application, one of them may refer the dispute to the Court. Over three hundred treaties or conventions contain a clause to such effect;
3. through the reciprocal effect of declarations made by them under the Statute whereby each has accepted the jurisdiction of the Court as compulsory in the event of a dispute with another State having made a similar declaration.

The declarations of 67 States are at present in force, a number of them having been made subject to the exclusion of certain categories of dispute.

In cases of doubt as to whether the Court has jurisdiction, it is the Court itself which decides.

ICJ Procedure

The procedure of the ICJ followed by the Court in contentious cases is defined in the ICJ Statute:

<http://www.icj-cij.org/icjwww/ibasicdocuments.htm>

Official Languages: English and French

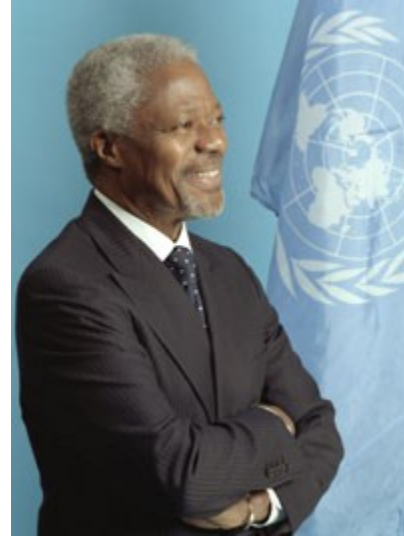
- After the oral proceedings the Court deliberates in camera and then delivers its judgment at a public sitting. T
- The judgment is final and without appeal. Should one of the States involved fail to comply with it, the other party may have recourse to the Security Council of the United Nations.
- The Court discharges its duties as a full court but, at the request of the parties, it may also establish a special chamber. within its jurisdiction.
- Since 1946 the Court has delivered 92 Judgments on disputes concerning inter alia land frontiers and maritime boundaries, territorial sovereignty, the non-use of force, non-interference in the internal affairs of States, diplomatic relations, hostage-taking, the right of asylum, nationality, guardianship, rights of passage and economic rights.

ICJ Decisions

- <http://www.icj-cij.org/icjwww/idecisions.htm>
- Avena Case Avena and other Mexican Nationals (Mexico v. United States of America)

UN Secretary General

- Kofi Annan
- Ban Ki-moon



The Nature of International law

- The most convincing argument **in favour** of existence of international law as law is that **States recognise and observe international law** with the consequence that there is substantial order in international relations and that international law is practised on daily basis by international lawyers, intergovernmental organisations and other non-state actors and applied by domestic and international courts.

International law and municipal law

- Public international law leaves each country to decide on relationship between international law and municipal law.
- In this respect, there are two theories: dualist and monist.

International law and municipal law

- Dualism

The dualist doctrine considers international law and municipal law as **two independent and separate systems**. It is based on the view that international law is the law applicable between the sovereign States and the municipal law applies within the State to regulate the activities of its citizens.

In order to be applied by national courts it is necessary for the treaty to **be incorporated into a State's legal system**. The incorporation of international law by municipal law constitutes the most important feature of the dualist doctrine.

International law and municipal law

- **Monism**

Monism considers both international and municipal law to be part of the same legal order and emphasises the supremacy of international law even within the municipal sphere.

According to Kelsen international law is supreme because it is a higher law than municipal law. Under this theory the unity between international law and municipal law means that international treaties automatically become law within a contracting State. They are directly applicable. There is no need for incorporation of an international treaty as it becomes an integral part of the national law of a State once the procedure for its ratification is completed.

International law and municipal law

- The general rule is that in the even of conflict between international and municipal law, the international prevails.

The Draft Declaration on Rights and Duties of States (1949) in its Article 13 states that:

Every State has the duty to carry out in good faith its obligations arising from treaties and other sources of international law, and it may not invoke provisions in its constitutions or its laws as an excuse not to perform this duty.

International law and municipal law

- In respect of international treaties, **Article 27 Vienna** Convention on the law of Treaties (VCLT) states: **A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.**
- **A State cannot rely upon the provisions or deficiencies of its municipal law to avoid its obligations under international law.**

The application of international laws in Ethiopian courts:

- Article 9(4) of the FDRE constitution provides that all international agreements which are ratified by Ethiopian government shall be considered as integral part of the law of the land. Article 13(2) of the same constitution states that The fundamental rights and freedoms enumerated in this Chapter shall be interpreted in a manner consistent with the Universal Declaration of Human Rights, international human rights covenants and conventions ratified by Ethiopia.

Cont.....

- Treaties may be incorporated in to Ethiopia through process. Yet, it is arguable whether the implementing process or method that Ethiopia follows is dualism or monism. But it seems that Ethiopia is more monist. This is because, article 9(4) of the constitution says that upon ratification of a treaty, it becomes part and parcel of the law of the land.

Cont....

- As we see from the very wording of this provision, the act of ratification is sufficient for the purpose of making the treaty in question applicable. Thus Ethiopia follows the monist approach. On the other hand, dualism school of thought is mainly associated with traditional international law.

Cont...

- Third method of implementation of international laws in Ethiopian courts is aid in construing domestic law. This is enshrined under article 13(2) of the FDRE constitution. In interpreting the provisions of our domestic laws, we can make reference to international laws. Regarding the implementation of international laws in Ethiopian courts, there is an interesting case between house of peoples' representatives vs doctor Negaso Gidada.

Cont...

- When his term office of presidency has lapsed, doctor Negaso wanted to participate in political election by representing a certain district in oromia. However, there was a proclamation which prohibits him from participating in election process. But when the court interprets that proclamation, it found that it is inconsistent with ICCPR and UDHR provisions which allow him political participation.

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Cont.....

- The court invoked ICCPR to contend the impossibility of issuance of a proclamation which deprives an individual from taking part in public affairs like standing in election. Therefore, the proclamation which prohibited NEGASO from running for election was said to be incompatible with the law.

Enforcement of International Law

Methods of enforcement of international law differ from those available under municipal law because international law does not have all the attributes of municipal law i.e. there is no legislature, judiciary or executive.

A State obeys international law because:

- a) It wants to maintain its good reputation;
- b) It fears retaliatory measures or measures based on reciprocity that may be taken by a victim State;

Enforcement of International Law

- c) The UN Security Council (UNSC) may take various of measures, including the use of force under Chapter VII of the UN Charter to force a State to comply with international law;
- d) It is bound under many international treaties to accept the compulsory jurisdiction and the judgements of a body established by a treaty to deal with disputes arising out of it;
- e) It fears public opinion both home and abroad.

Enforcement of International Law

- Measures may be taken against a State:
 - a) non-forcible measures: diplomatic sanctions, economic and other sanctions not involving the use of force;
 - b) forcible measures: the UNSC under Article 42 of the UN Charter may authorise the use of force against a State.
- Measures may be taken against a person: may be brought before the International Criminal Court (ICC) or other international criminal courts; the UNSC may impose sanctions against a person or an identified group of persons; a State may impose sanctions such as confiscation of assets, fines and imprisonment on a person.

Sanctions in International law

- In legal jargon the term 'sanctions' is equally used to designate restrictive measures that an individual State or international organization chooses to take against another State or organisation.
- In this broad acceptation the word 'sanctions' designates all types of consequences triggered by the violation of an international legal rule. These consequences range from a series of soft, and social reactions, such as pressures from public opinion, and name-and-shame politics, to a variety of organized effects attached to the non-respect of a legal rule.

Sanctions in International law

- Chapter VII envisages two categories of enforcement measures: Art. 41 covers measures ‘not involving the use of armed force’, while Art. 42 authorizes the Security Council to use the coercive military force ‘to maintain or restore international peace and security’.
- The two mechanisms: whereas the economic sanctions of Art. 41 are intended to coexist with similar unilateral measures taken by States (or other international organizations), the measures of Art. 42 come within the exclusive competence of the Security Council. They are a substitute for the unilateral use of force.

Economic Sanctions

Article 41 then provides that: 'The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. **They may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations**'.

Economic Sanctions

- Sanctions take a variety of forms, including travel bans, asset freezes, arms embargoes, capital restraints, foreign aid reductions, and trade restrictions.

Jus cogens

- There is **no formal hierarchy within IL as a whole**, there are some hierarchical elements. One of them is jus cogens, a legal category that can be found in the Vienna Convention on the Law of Treaties (VCLT).
- *Jus cogens* (from Latin: compelling law; from English: peremptory norm) refers to certain fundamental, overriding principles of international law.

Jus cogens

- Article 53 Vienna Convention on the law of treaties, defines a peremptory norm as a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.
- A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law.
- Jus cogens overrides conflicting norms, creates normative hierarchy.

Jus cogens

- Prohibition of aggression, slavery, genocide, racial discrimination, crimes against humanity, torture, the right to self-determination, basic rules of international humanitarian law, prohibition of piracy.

Article 103 of the UN Charter

- In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.

Fundamental principles governing International Relations

- Principles are intended to serve as a **basic guidelines for the life of the whole international community.**
- They may be regarded as the **constitutional principles** of international community.
- The sovereign equality of States; non-intervention in the internal or external affairs of other States; prohibition of the threat or use of force; respect for human rights.

Fundamental principles governing International Relations

- Peaceful settlement of disputes. The UN Charter in Article 2(3) obliges member States to settle their international disputes peacefully. They must try the various means and procedures laid down there: negotiation, mediation, conciliation, resort to arbitral or judicial mechanism. While trying to settle the dispute peacefully, States are obliged to refrain any action which may aggravate the situation so as to endanger the maintenance of international peace and security.

Culpability of individuals under international law

- **The treaty-based and customary law applicable in both international and internal conflicts also governs the conduct of individuals** - **INDIVIDUAL CRIMINAL RESPONSIBILITY**
- **Geneva conventions make frequent reference to the acts of individuals** (the obligation to ensure respect for the provisions of humanitarian law requires the state not only to ensure that its agents respect the provisions, but all the people under its jurisdiction).
- **Crimes that can justifiably be prosecuted and punished by international community:**
 - a) **GENOCIDE**
 - b) **WAR CRIMES**
 - c) **CRIMES AGAINST HUMANITY** = unlawful acts committed as part of a widespread or systematic attack against a civilian population (murder, extermination, enslavement, deportation, arbitrary detention, torture, rape, persecution on political, racial and religious grounds, rape and enforced prostitution and other inhumane acts).

key dates in the development of international law

- **1648.** The conclusion of the **treaty of Westphalia**, which ended religious wars in Europe, is often referred to as the **constitutional treaty of Europe**.
- It recognised the principle of sovereignty, territorial integrity, the equality of States, and recognised that a ruler has the right to impose his chosen religion on his subjects although some protection was guaranteed for religious minorities.

key dates in the development of international law

- **1815.** **The Congress of Vienna** which ended the Napoleonic wars established a new political balance of powers intended to ensure stability, peace and the status quo in Europe.
- It was based on sovereignty, balance of powers, legitimacy, and equality between nations.
- It codified the law on diplomatic agents and missions, created the institution of permanent neutrality (e.g. in respect of Switzerland) and created the Concert of Europe, as means of enforcing its decisions.

key dates in the development of international law

- **1919.** **The League of Nations** and the permanent Court of International justice (PCIJ) were established under the auspices of the 1919 Peace Conference.
- The League of Nations was the first universal intergovernmental organisation open to any State.
- Its main objectives were to maintain peace and security, protect minorities and supervise the mandate system.
- The PCIJ was the first permanent world court ever created by the international community open to all states with jurisdiction over all international disputes.

key dates in the development of international law

- **1945.** The creation of **the United Nations** (UN).
- The purposes of the UN are: to maintain international peace and security; to develop friendly relations among nations; to achieve international co-operation in solving common international problems of an economic, social, cultural or humanitarian nature; to be a centre for harmonising the actions of nations in the attainment of these common ends.

key dates in the development of international law

- **1989-1991.** The period from the fall of the Berlin Wall (7 November 1989) to the official dissolution of the Soviet Union (31 December 1991) is considered as the **end of the Cold War.**

Scope of International Law

- Shifts have been recorded from diplomatic relations and war among states, to a universal system of cooperation in numerous fields between quite different entities.
- The increasing global economic and political interdependence and the inability to address problems within a national framework have provided opportunity for the widening scope of international law.
- In particular, in the fields of communications, international trade, economics and finance, environment and development, or the massive problem of refugee flows.

Scope...

- The concept of 'sovereignty' of states, is being diminishing in view of the globalization of the economy and increasing interdependence of states.
- International law now covers vast and complex areas of transnational concern, including traditional topics, such
 - State Succession,
 - State Responsibility,
 - Peace and Security,
 - The Laws of War,
 - The Law of Treaties,
 - The Law of the Sea,

Scope...

- The Law of International Watercourses,
- The Conduct of Diplomatic Relations,
- International Organizations,
- International Economy and Development Law,
- Nuclear energy,
- Air law and Outer Space Activities,
- The Use of the Resources of the Deep Sea,
- International environmental Law,
- Communications, and
- International Human Rights Law.

Scope...

- This development has resulted in increasing specialization in both academia and legal professions in practice.

It is no longer possible for a 'generalist' to cope with the volume and complexity of the various branches of international law. Increasingly, the professional international lawyer, whether practitioner or scholar, is a specialist in a particular branch of the law and each branch develops its own complicated and often arcane doctrine.

THE STATE SYSTEM

- State is the basic unit of the international legal system
- It has a personality at international law
- It is the collection of an indivisible whole.
 - difference between the State and that State's government?
 - The State is an idea that has a great deal of meaning to its citizens and incredible endurance over the long term despite whatever internal divisions and tensions it may suffer.
 - The **stability** of the State System rests on the stability of States, and for this reason international law places a great deal of emphasis on a State's continued legal existence and relative permanence of its borders.
 - The government of a State may **change**, through normal constitutional processes or otherwise, and the State itself will continue to exist.

- Unlike the national legal system, the international legal system is **incredibly decentralized and loosely bound** together,
 - Thus, some scholars conclude that the international legal system is not a “legal” system at all but rather a changing network of moral bonds between largely autonomous State actors
- States operate under international law,
 - like the actions of individuals in the national arena States acts in the international arena
 - There is no international government or legislature that makes laws applicable to all States.
 - Rather, States have to consent to the laws individually, either by entering into treaties with other States or by creating customs through their behavior.

- The state system refers to the fact that as individual acts under national law- states acts at international law
- The state system came into being with the birth of the so-called “**nation-state**” in Europe in the 16th and 17th centuries
- *Even the modern* international law is based almost entirely on the State system
- It is derived in the first instance from the principle of State *sovereignty* that establishes the State as the relevant unit that is to be ordered by international laws.
- Positivist argues that it should not be called a ‘law’ as by definition, law requires some centralized enforcing power.
- It has no centralized enforcing power.
- Rather, there is a loose amalgamation of individual sovereign States who may or may not follow their own rules.

- The traditional state system, w/c thinks it is only the state who is an international actor, is being eroded b/s of more recent changes from globalization and improved use of technologies
- The modern international system is still a “State System,” composed of States, but many new actors now play a role in international relations.
 - Principal among these new actors are **international organizations** like the **United Nations and the World Trade Organization**.
 - They can enter into treaty, assume rights and duties, sue or be sued at international level
 - Interestingly, in some international tribunals even **individuals** may assert rights against States.
 - A set of **human rights laws** has emerged that imposes obligations on States in respect of their citizens.

State Sovereignty

Definition of Sovereignty and History

- A State's sovereignty is its independence.
- The word “sovereign” implies some ultimate authority, a master with no master above him, a free and autonomous entity.
- It has two core elements:-
 - **Internal sovereignty**- State has exclusive control over its territory and its internal affairs.
 - **External sovereignty**- States are autonomous entities and, in principle, cannot be bound to an obligation without their consent

- The concept of State sovereignty has many implications for **interstate relations**
 - that the **State must speak with one voice** at the international level
 - in reality, a State has many voices, dissenting political parties, and even groups within its territory that oppose the central government.
 - Other States, out of respect for State sovereignty, **are not supposed to engage** in dealings with these **sub-state groups at all**.
 - other States **should not concern themselves** with **certain internal matters** of a sovereign State like the type of government a State adopts – whether monarchical, tyrannical, democratic, socialist, or otherwise – or the State's religion or the way a State treats its citizens
 - other States **should not concern themselves** with **anything that the State does within its territory** that does not affect other States.

- The principle of State sovereignty is based on international customary law but it is often confirmed in international treaties
 - E.g. UN Charter states in Article 2, Section 7
 - “Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state...”
- Another expression of State sovereignty is found in the *Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States* (a **UN General Assembly resolution** adopted in 1970, not a treaty):
 - [n]o state or group of states has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other state.
Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the state or against its political, economic and cultural elements, are in violation of international law.

- State sovereignty and the modern nation-state really came into being in **1648** with the Treaty of **Westphalia** that ended the 30 Years War between Catholics and Protestants in Europe
 - this religious disputes in the same State came to involve Catholic and Protestant rulers.
 - As a result, nations were destabilized.
- The Treaty of Westphalia resolved religious tensions by giving **each State the power to determine religious affairs within its own territory**
- it can be said that the end of the 30 Years War saw the birth of the modern *secular* state
- the Treaty recognized independent territorial States and gave State governments exclusive authority to deal with their internal affairs

- the second aspect of sovereignty was related to the **freedom of States in their relations** with other States that emerged as a result of the
 - theory of **legal positivism**
 - Not out of the **treaty of Westphalia**
- If States are truly independent of one another, then their relations must be based on their **free consent.**
- A treaty is **binding** on a State only so long as that State agrees to be bound by it
- Even International customs apply only so long as States continue to act in the customary way.
- A positivist argued that:
 - A sovereign state is a free state and a free state does not abide by the will of other states

Erosion of State Sovereignty

- State sovereignty is a background concept in international law.
- It is an international custom, established through the behavior of States, but it is a custom so fundamental that it is not necessary to prove it when arguing before an international court.
- But, currently it is argued that States are no longer free and sovereign;
 - that sovereignty has been eroded by international laws and international bodies;
- that such laws and such bodies tend to restrain the activities of States from the outside
 - Globalization is changing the view of state sovereignty

- Similarly, states no longer view the **treatment of citizens of one state** as only the exclusive concern of that state.
- **International human rights law** is based on the idea that the entire global community is responsible for the rights of every individual.
 - **International treaties**, therefore, bind states to give their own citizens rights that are agreed on at a global level.
 - In some cases, **other countries can even monitor and enforce human rights treaties** against a state for the treatment of the offending state's own citizens
- Currently there are strong opposition from different countries, e.g. USA, against the erosion of the concept of sovereignty.
 - Against actions of the ICC
 - WTO requirement to become a member

- # E.g. The case of Nile river
- Let us say that Egypt is trying to prevent Ethiopia from building a hydroelectric dam on the Nile river.
 - As representative for Ethiopia, you might say the following: "This portion of the Nile is in Ethiopian territory. According to the principle of State sovereignty, the Ethiopian government has exclusive control over its own territory. Therefore it is our sovereign discretion whether to build the dam or not."
 - On the other hand, Egypt may assert various treaty rights to the water that flows from Ethiopia into Egypt and furthermore may remind Ethiopia of its obligation under international custom to use its water resources in such a way as to not bring harm to downstream neighbors.
 - How do we resolve such a conflict between State sovereignty and other

Theories of State Behavior

- lawyers argue that States will perform treaties and continue to follow international customs out of a sense of legal obligation on the part of the officials in those States' governments
- The “laws” are more flexible, more subject to power relations, and therefore more elusive and harder to grasp
- International laws must incorporate previously established claims that are defended by strongly interested States, whether fair or not (one thinks immediately of Egypt's claims to Nile waters)
- These are the necessary sacrifices for consensus among States

- Many theorists argue that lawful behavior by States is **merely a coincidence that arises out of a mixture of other motives** on the part of States
- **The concerns of a State official** –
 - to satisfy the citizens of the State,
 - to satisfy other officials,
 - to work against enemy States and help friends,
 - to leave some lasting imprint on world affairs/history
- Even **theories based on self-interest**, however, admit that it may be in a State's self-interest at least to give the impression of following international laws most of the time.
- Officials tend to prefer predictability in State relations that only a legal system can provide

- The **main problem** with any theory of State behavior is that it is **difficult to define what the controlling interests** of the State are.
 - For example, a theory based on the State's self-interest merely begs the question,
 - *What* is the State's self-interest?
 - How do we connect the individual interests of State officials with the interests of the State?
 - Are we talking about long-term interests or short-term interests?
- Contemporary theories of State behavior can be divided broadly into two
 - (1) **interest-based theories** including realism, institutionalism, and liberal theory; and
 - (2) **norm-based theories** including constructivism and legal process theories.