PUBLIC INTERNATIONAL LAW (MU)

THE NATURE, ORIGIN AND DEVELOPMENT OF INTERNATIONAL LAW

Definition:

In the most simplified definition international law is defined as a system of law, whose main function is to regulate relations among nations and other international organizations. This was notion developed since the 16th century and it was more expounded later in 20th century in the lotus case (permanent Court of International justice (1927).

However, it is accepted today that the subject of international law does not only cover relation among states but extends to rights and duties pertaining to international organization, International companies and individuals.

The term international law is sometimes referred to alternative expressions as:

The common law of mankind

i. The law of nations
ii. Transnational law
iii. Global law

Philosophical perspective on International Law: Theories on international law

There are several theories and philosophies which have been developed in an attempt to explain international law especially as regards where it come from and why should a state comply with a rule of international law.

So far two prominent philosophical perspectives have been trying to explain the nature of international law. These are natural law and legal positivism.

Natural law: HugoGrotius,Samuel Purfendorf, et al

Advocate of natural law theory believe that there are principle of natural law that exist independently of people. The task for the people is to find them, hence to find the law. The best known of the natural law writers was Dutchman called Hugo Grotius 583-1645).

Hugo Grotius is often regarded also as one of the founders of modern international law. He wrote a book titled "De jure Belli ac pacis" which would be translated as "The law of war and peace of 1625.

In his perception natural law is the rule of right reason, which teaches us that the law of nature is founded on reason, and this would hold true even if there were no God. In other words it must conform to natural reason. But the most important thing in the natural law school of thought is that, law is existing independently of human mind and is derived from some higher authorities.

Applying this to international law, he asserted natural law as the ever present source for supplementing the voluntary law of nations and judging its adequacy. The will of states cannot be the exclusive or decisive source of the law of nations. There must be a higher source which at least supplements or judges the will of states.

On his part, Samuel Pufendorf (1632-1694) suggested firmly that, international law cannot arise from custom or from treaties. The only international law that could exist should be part of natural law.

Positivism Lasso Oppenhein et al

Positivism lies in the simple assertion that law is made by people or their authorities. Therefore, the people and their authorities make law, and not the law is derived from some higher authorities.

Therefore, in the international legal system states make law. International law is a law between states, and it concerns states only and exclusively.

Positivists argues that because states make law, the law derivers its authority from the will of states. This what makes international law obligatory. They further argue that, natural law philosophy has the overall problem of justifying international law as obligatory to state. In other words, they are saying natural law can only explain as to where international law is derived, but they cannot answer the question as to why should a state comply with a rule of international law.

This position of positivists was echoed in the decision of the permanent court of international justice in the Lotus case Which follows;

"international law governs relations between independent state. The rules of law binding upon state therefore emanate from their own free will, as expressed in Conventions or by usages generally accepted as expressing principles of the law.

However, neither law natural law nor positivism alone can fully explain international law. It should be combination of both.

The function of international law

Firstly, international law is expected to facilitate and support the daily business of international relations and politics. It does so by allocating decision making power to the international system or to the international platform.

Secondly, international law is supposed to prevent the pursuit of multiple national interest or private interests from becoming anarchy.

Thirdly, it allows for co-existence of multiple political units and their interaction.

Fourthly, it advances particular values; for example, the regulation of the use of force and the protection individual/human rights.

Is International Law Really Law?

One of the most debated issues by writers of international law is whether international law is really law. Those who dispute the legal nature of international law point to a number of pieces of evidence to support their case.

i) Lack of institutions

In the context of the state, there is the legislature, the judiciary and the executive. In the international system, one cannot find the legislature, the judiciary, or the executive in the real sence of the words. Therefore, international law lack the necessary institutions to execute it.

ii) The Command theory

The 19th century positivists (analytical positivism) understood law as the command of the sovereign. This school of thought was expounded more by john Austin (1790-1859). Since there is no such a thing as an international sovereign who can issue such a command, so there is no author behind international law. On that basis international law does not meet the Austin's understanding of law as a command of the sovereign, hence not law in the real sense.

iii) Effectiveness

There are jurists and writers who argue that, even if international law was regarded as law, it is so ineffective to rend it meaningless.

iv) Lack of Grundnorm

The concept of Grundnorm serves to explain the higher law which validates other laws in a municipal setting. It is also called a mother law, and many jurists consider the constitution of a country as a grundnorm for that particular country. International law does not have a grundnorm; hence it cannot be validated, making it an improper system of law.

The Dual Character of international law

International law provides both an operating system and a normative system for international relations. This discourse is meant to a partly answer the queries raised in the preceding part above.

i) International law as an operating System

As an operating system, international law sets the general procedures and establishes institution for the regulation of conduct of international relations. In so doing it does the following:

>It provides a framework for establishing rules and norms

>outliners the parameters for interruption

>Provides procedures and forms for dispute resolution among those taking part in the interaction. In this aspect, international law is facilitative.

ii) International law as a Normative system

As a normative system, international law takes a legislative character by mandating particular values and directing specific state behavior.

In this aspect international law is directive as it creates norms. The normative system of international law defines the acceptable standards for behavior in the international system.

The History of Public International Law: Origin and Development

Public international law cannot be properly understood without some understanding of its history. The accepted view among scholars is that, the subject of public international law proper began to emerge in Western Europe in the 16th century and that this emergence is associated with the evolution of the modern nation state.

The period up to 1500

The consensus among scholiast is that a recognize corpus of international law is no more than 500 years old.

However, even before that, some international practices were already taking place. For example, states were already involved in the concluding of treaties, and sending of ambassadors, even from the time of ancient Egypt. Records of Greek city found evidence pertaining to the conduct of relation among state and on the declaration of war on other states.

The 16th Century

In this period, the most notable development in Western Europe which had an impact on international law was the general reflection about the source of the secular power. This came about out of the trend of that time, to break away from religion-controlled states, to secularism.

One of the prominent proponents of this persecution was NICCOLO MACHIAVELLI (1469-1527).Machiavelli perceive that, the spiritual unity of Europe under the Pope, and the political unity provided by the Holy Roman Empire had been fractured. The state he argued had become a self-standing entity.

Thus ,Machieavelli started pondering on two important thing namely;

How should the prince (ruler)retain power within the state and

How he might conduct himself vis-à-vis fellows rulers. In summary, what Machiavelli simply said is that the fracturing of Christendom and the Roman Empire created a gap or vacuum which gave birth to international law. If the two were still present with their embodying force, they would have defined how the ruler should behave and how should states relate to each other within the realm of Christendom and Roman Empire.

However, following this development of that time jurists of that epoch become pre-occupied more with the first element, namely the power within the estate. This preoccupation focused on the question of sovereignty.

Thus the period saw the emergence of political philosophers like Team Bodin, Thomas Hobbes and John Austin, developing a theory of sovereignty. However, all the theories were influenced by natural law thinking.

The 17th Century

The most significant figure in this epoch was HUGO GROTIUS (1583-1645). He wrote two significant books:1) Mare Liberum (1609)-which argued for the freedom of the seas; and 2)De jure Belli ac Pacis (1625) on the law of war and peace.

While remaining in the natural law tradition, Hugo sought to found the law of nations upon a secular form of natural law. Grotius argued that, human beings were both competitive but at having a desire for harmony.

Based on the above assertion, Grotius argued that, a secular form of natural law would demonstrate how states could live together without conflict. But, this secular natural law should not be the product of divine revelation, but a product of sober reflection on the human condition.

Therefore, by the use of reason it would be possible to determine the ruler that should operate to govern relations between rulers.

After Grotius, the law of nation would be founded on a mixture of secular natural law and positivism.

Grotius ideas that later gained acceptance include:

International relations are subject to the rule of law and this exists independent of theology.

A secular natural law has a role as a source of international law.

The social nature of man is the basis of the nature

The basic unit of international relations in the state.

There is need to differentiate between just and unjust wars. One of the tasks of the law of nations is to promote peace.

Other writers on international law

i. Samuel Pufendorf (1632-1694) wrote on natural law and issues of war.
ii. Richard Zouche (1590-1661) rejected natural law and concentrated on issues of sovereignty.

Thomas Hobbes ; focused on the location of sovereign power within the state. Sovereignty power is not derived from natural law, but from social contract. Only the Sovereignty could declare war or peace or make law.

John Locke-Government was legitimate if formed on consent. On the law of nations, it should be formed upon the actual and expressed conduct of states, rather than on principles to be deduced with the aid of divine revelation. Thus, the law of nations must be about independent state, regulating relations among those states and examining the actual conduct of those states.

The 18th Century

Development in the nations in the 18th Century took place against the background of enlightment. This was the period of rise of freedom of thinking. The period saw further development of both positivism and natural law,as well as theories of natural rights. At this time already the law of nations was viewed as a horizontal system regulating the relations sovereigns and distinct from the vertical system present in domestic law.

The expression horizontal here denotes that it is law operating on a level field, because all countries are considered having equality in terms of sovereignty. Further the expression vertical denotes the municipal system because all laws are assumed to come from above down to the subjects. During these period jurists were mostly preoccupied with the following issues: the circumstances in which force was justified, the position of the rulers in relation to the conduct of diplomacy and the law of the sea because of the growth of mercantilism (sea trade)

The 19th Century

In the 19th century a number of development in international law took place. The first thing was the increasing realization that international relations were something that required to be managed.

Secondly: it was realized that although the primary player in international law were states some level of attention needed to be paid to the interest of the individual. This was manifested in the campaign against slave trade.

The 20th Century The first and second world war

During the 20th century start the world saw the occurrence of the first world war (1914-1918).This war prompted a reconsiderations of the methods employed in international relations because the occurrence of the war was in itself a sign of failure of international diplomacy.

International law and the modern world

After formation of the united Nation in 1945 more events unfolded which had impact on international law some of them are;

i) Decolonialization

The event of decolonoalization brought with it notions of self determination. Thus in the 1950 and 1960 international law was operating in a greatly changed environment.

Decolonialization led to the increase in the number of states, hence augumenting the membership of the united Nations General Assembly.

ii) Growth of the Human Rights Regime

The safeguard for human rights became one of the prominent post-war agenda.Thiswasa clear revival of interest in natural law.Thus the Universal Declaration of Human Rights was adopted in 1948.

Many states followed suit by starting conferring basic guarantees in human rights or by providing that rules of international should be incorporated into municipal law. Since 1948 international human rights law has grown tremendously.

The current Foundations of International law

Currently, international law as it stands today is said to be founded on the following four pillars

The charter of United Nations (1945)

Statute of the international Court of Justice (1945)

Vienna Convention on Diplomatic relations (1961)

Vienna Convention on the law of Treaties (1969)

Source of International Law

It is generally agreed that Article 38 (1) of the statute of the international court of justice lists what are now considered as sources of international.

By source the general agreement is that,

Convention treaties

Custom

The general principles of law

Subjects of International Law

States as a subject of international law

The rise of positivism in the 18th Century placed the state as the basic political unit at the centre of international diplomacy. It was them asserted that only states are subject of international law. However, while remaining true even today that states are the key players in international relations this view later modified to include other entities.

Qualification of Statehood.

Today it is accepted that the legal criteria for statehood are those set out in Article 1.

STATE AND INTERNATIONAL LAW

Territory

Is a tangible attributing of statehood and within that particular geographical area which it occupies a state enjoys and exercise sovereignty.

Territory Sovereignty

Means as the right to exercise therein, to the exclusion of any other state the function of a state. Involve right to display the activities of a state.

A state's territorial sovereignty extends over the designated;

- land mass
- Sub-soil
- The water enclosed therein
- The land under the water
- The territorial sea
- The airspace over the land mass and territorial sea

Right and duties with respect to territory have therefore had a central place in the development of international law. And the principle of respect for territorial integrity of state has been one of the most fundamental principles of international law.

Basic Concept

Terra nullius (sometimes res nullius consist of territory which is capable of being acquired by a single state but which is not yet under territorial sovereignty.

The expression terra nullius was a legal term of art employed in connection with occupation as one of the accepted legal method of acquiring sovereignty over territory.

"Occupation" being legally an original means of peaceably acquiring sovereignty over territory otherwise than by cession or succession, it was a cardinal condition of valid occupation that the territory should be terra nullius.

Terra nullius a territory belonging to no one

New State and title to territory

The problem of how a state actually acquires its own territory in international law is a difficulty one and one that ultimately be explained in legal political terms.

There are basically two methods by which a new entity may gain its independence a new state.

i. By constitutional means

That is by agreement with the former controlling administration in an orderly devolution of power.

ii. Non-Constitutional means

The use of force against the will of the previous sovereign

Under international law for a state to be recognised must have four criteria of statehood one of it must have a defined territory.

The state can acquire title to territory only after that state attaining independence to be a sovereignty state.

It is undisputable that when one state acquire sovereign or new state established exist upon peace of territory.

The acquisition of additional territory under international law

Five modes of acquisition of land or territory

- Occupation of terra nullius
- Prescription
- Cession
- Accretion
- Conquest

Accretion

It is possible for states to gain or lose territory as a result of physical change. Such changes are referred to as accretion and evulsions. Accretion involves the gradual increase in territory though the operation nature. For example the creation of island in a river delta .Avulsion refers to sudden or violent changes such as volcano eruption.

Cession

This involves the peaceful transfer of territory from one sovereignty to another and has often taken place within peaceful treaty. Previously it was easy to acquire additional land through this means. But today it is very difficult since the principle of "nemo dat quod non habet" applies in international law just as municipal law. It is not possible for a state to cede what it does not possess. This process now occurred under an agreement.

Prescription

Is a mode of establishing title to territory which is not terra nullius and which has been obtained either unlawful or in circumstance wherein the legality of the acquisition cannot be demonstrated. Prescription differs from occupation since it relates to territory which has previously been under the sovereignty of state.

Rights of Sovereign state over territory

It is a general rule of international law that state have exclusive sovereignty over their territory. However, there are number of exceptions in which one state can have right over the territory of another territory though leases and servitude.

Servitudes

This occurs where territory belonging to one state is made to serve the interest of territory belongs to another state. For example when a state take water of another state for irrigation purposes

Servitudes are normally created by treaty, although very occasionally they have been created as a result of long usage. For example right of passage case in 1960.

ICJ recognised that Portugal had a right of passage across Indian Territory between its Daman and Goa and that such a right for peaceful purposes existed on the basis of a local customary law between India and Portugal.

Loss of territory

The five modes of acquiring sovereignty over territory corresponds five modes of losing it namely cession, operation of nature, prescription.

JURISDICTION OVER AIRSPACE

A state has exclusive jurisdiction over the airspace immediately above its territory. Therefore unless otherwise agreed, a state may prohibit all aircraft movement over its territory and may take any action necessary to preserve its sovereignty.

An invasion of airspace cannot differ with and invasion of land territory.

The basic principles were formulated at the Chicago Conference on International Civil Aviation 1944 and are to be found in the 1944 Chicago Convention on International Civil Aviation. This came into force in 1947 and as at 1 January 2007 there were 190 parties.

Article 1 of this Convention reflects the general standard of customary law by affirming that each state has complete and exclusive sovereignty over the airspace above its territory.

RECOGNITION

What is meant by state recognition in international law?

State as the main subjects of international law

In all legal systems, the subject of law is an entity which has enforceable rights and main clause for the entities to function or in other words to allege and enforce a claim.

International law…….has something to do with state, Fifty year ago it was generally admitted that state are the only legal persons of the international law, but today conception is rather different the participants can be regarded as state, international organization, regional organisation and individual.

International law; states that an entity which meets the international legal criteria of statehood is able to be state. Article I of Montevideo convention.

THE CHARACTERISTIC OF STATE

- State has plenary competence to perform act in the international sphere
- State is exclusively competent with respect to their internal affairs
- State is not subject to international process without their consent

RECOGNITION OF STATE

Recognition means formal acceptance.

THEORIES OF RECOGNITION

There are generally two theories as to the nature of recognition

1. The constitutive theory

In this theory maintain that it is the act of recognition of other states. It asserts that state and government do not legally exist until recognised by international community.Creteria of new state depend on the acceptance of present states. The new state will have the rights and duties at the time of being recognised.

Disadvantage of this approach or Theory

Unrecognized state may not be subject to the obligation imposed by international law and may accordingly be free from such restraint as for instate prohibition on aggression.

2. Declaratory theory

State will be informed free from the consents of the other states, just after her meet the international requirements. This approach is laid down in the first sentence of Article 3 of Montevideo convention

"The political existence of the state is independent of recognition by the other states"

DEFACTO AND DE JURE RECOGNITION

Recognition itself takes many forms. It may be either De facto or Dejure.A state may be recognised defacto or dejure

Recognition de facto. Implies that there is some doubt as to the long-term viability of the government in question.De facto recognition involves a hesitant assessment of the situation an altitude of see and wait. This method gives the recognition state the opportunity of acting in accordance with the political fact and its interest.

De jure recognition means that the entity fully satisfied the applicable legal creteria.It rely on the legal status of the government.

PREMATURE RECOGNITION

Since recognition is a political decision of states sometimes the recognition occurs before the criteria of statehood have been fulfilled by new state. E.g. Recognition of Bosnia-Herzegovina and Croatia were the well-known examples of premature recognition.

IMPLIED RECOGNITION

Recognition itself need not be express. It is about the intention and may be express or implied. To understand how the country state recognize another state by implication it is necessary to look certain circumstance .A message of congratulation to a new state upon attaining sovereignty will imply recognition of that state, as will the formal establishment of diplomatic relations. As an example United Kingdom recognised the Formal Yugoslav Republic of Macedonia by supporting its membership in the UN.

CONDITIONAL RECOGNITION

Conditional recognition means that to recognised an entity as a state only when it fulfills some conditions.E.g Great Britain, France, Italy, Germany marked recognition of Bulgaria, Serbia, Romania and Montenegro with the condition that these countries would not impose any religious disabilities on any of their subjects.

However, breach of the particular condition does not invalidate the recognition, but it may give rise to breach of international law. The status of any conditions will depend upon agreements specifically made by the particular parties.

COLLECTIVE RECOGNITION

This recognition depends on international decision, whether international organisation or not. The idea of act collectively happened during the establishment of League of Nations and UN. The most could be said is that membership of the united Nation constitutes powerful evidence of statehood.

WITHDRAWAL OF RECOGNITION

Sometimes it is possible to withdraw a granted recognition specifically it is easier for the de facto recognition which includes an ambiguity for the future of the entity, if the government of the entity loses the effective control on its territory.

On the other hand de jure recognition is more difficult to withdraw because it is stronger than de facto. De jure re recognition may be the case only if the state conquered by another state.

LEGAL CONSEQUENCES OF RECONITION

Although recognition concerning with the matter of political issue, but it have legal effect under international affairs of state as well international.

Recognition of Insurgency and Belligerency

Insurgency means a war of citizens against the state for the purposes of obtaining power in whole or in part.

Belligerency

Given the required conditions of belligerency as laid down by international law, the contesting parties are legally entitled to be treated as if they are engage in war waged by two sovereign states. Civil war which creates the occasion for recognition of belligerency is not act or situations prohibited under international law.

The following are reasons that justify Recognition of Belligerency

The conflict must exist within the state

- The insurgents must occupy and administer a substantial portion of national territory
- The must conduct hostilities in accordance with the rule of war through organized armed forces under responsible authority
- The other state must accept that act of recognition.

INDIVIDUAL AND PUBLIC INTERNATIONAL LAW

There is a relationship btn state and individual at international level.

The Nuremberg tribunal pointed out that "International imposes duties and liabilities upon individuals as well upon states".

What is Domicile?

The Concept is not uniform throughout the world. To civil lawyer, domicile means Habitual Residence but at common law domicile means person's permanent home.

Types of Domicile

There are two kinds of domicile

1. Domicile of origin

2. Domicile of choice

Domicile of Origin.

Communicate by the operation of the law to each person at birth .i.e. the domicile of his mother or father.

Domicile of choice.

This is exercised by a person at the age of majority.

General Rules Regarding Domicile

i. No body without Domicile

Read Mark .V. Mark (2005) UICHL

That is why the law assign domicile of origin to every person at birth. The legitimate child the domicile of the father, And for illegitimate child the domicile of the mother,

And to the founding child to the place where he is found

ii. A person cannot have two domiciles

The private international law insist that an individual should not posses more than one domicile at one time. The purpose of this rule is to establish a definite legal system by which certain of his rights and obligation may be governed.

The fact that domicile signifies connection with a single system of territorial law does not necessarily connote a system that prescribed identical rules for all classes of person.

Prove of domicile

The propo situs will be regarded to prove at the balance of probability.

The domicile of a person is to be determining according to the English and not the foreign concept of domicile.

Read case. Laurence V. Laurence (1985)

How to acquire Domicile of choice

- Unlike domicile of origin to establish domicile of choice two elements must be considered

Residence

Intention

- It must be proved that the person in question established his residence in a certain country with an intention of remaining there permanent.
- Residence and intention are separate but inter related concepts.
- Residence in a country for the purpose of the law of domicile means that a person has been physically present in that country as an inhabitant of it.

Nature of residence – An intention to reside permanently by the propositus

Nature of residence

To constitute domicile a residence must be voluntary as a matter of free choice.

The following represent situations where domicile is regarded as not voluntarily.

- Prison
- Refugee

NATIONALITY

Nationality is a relationship between a person and their state of origin, culture, association, affiliation and loyalty. Nationality represents a person's political status, by virtue of which he owes all allegiance to some particular country.

Nationality affords the state jurisdiction over the person and affords the person the protection of the state. Generally nationality is established at birth by a child's place of birth. Nationality may be acquired later in life through naturalization, corporation.

The double nationality may occur in many ways:-

A person born in a foreign country to foreign parents would be the nationality of that country on the principal of jus soli and of the country of the parent on the principle of jus sanguinis.

The incidence of double nationality may arise also by marriage.

IMPACTS

Double nationality sometimes leads to undesirable consequences that is a person may not get the diplomatic protection from any of them or both the states.

STATELESSNESS

A person becomes stateless when he does not possess the nationality of any state. This may be the result of lack of uniformity in the national law of different states, changes of sovereignty over territory and through denationalization by the state of nationality, In such case a person may loose his original nationality.

THE LAW OF TREATIES

A treaty is basically an agreement between parties on the international sphere.

Dfn from Vienna Convention on the law of treaties in 1969 come into force in 1980.

Article 2 (a)

Treaty means an international agreement concluded between states in a 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.

2 (b) ratification acceptance approval or accession means in each in each case the international act so named whereby a state establishes on the international plane its consent to be bound by a treaty.

(d)Reservation means a unilateral statement, however phrase made by a state, when signing ratifying accepting whereby its purports to exclude or to modify the legal effect of certain provisions of the treaty in their application of that state.

The treaty concerning the relationship between states

The fundamental principle of law of treaty

It is undoubtedly the proposition that treaties are binding upon the parties to them and must be performed in good faith. This rule is termed "Pacta sunt servanda"

In Article 26 on Vienna Convention on the law of treaties on 1969

Every treaty in force is binding upon the parties to it and must be performed by them in good faith.

THE MAKING OF TREATIES

Treaties may be made or concluded by the parties in any manner they wish. There is no prescribed form or procedure, and how a treaty is formulated and by whom it is actually signed will depend upon the intention and agreement of the state concerned.

Most of treaties normally concluded between heads of states.

Consent

Once the treaty has been drafted and agreed by authorized representatives a number of stage are then necessary before it become a binding legal obligation upon the parties.

FORMATION OF TREATIES

There is no specific form or procedure has been prescribed in international law for the conclusion of a treaty. The parties negotiating a treaty are free to agree upon a language or languages in which the treaty is to be expressed. Though a precise procedure or standard does not exist, following steps are generally adopted in concluding a treaty;

- Accrediting of person by contracting states
- Negotiation
- Adoption of the text
- Consent of the states
- Entry into force

Accrediting of persons by contracting state

Normally, the treaty making capacity of state is exercised by them in person and is done through representatives. If they appoint a representative for the purpose of negotiating adopting or for expressing the consent of a state to be bound by a treaty, he is provided with formal instrument called full power. Article 2 (II) (c) of the Vienna convention define full power.

Negotiation

The stage of negotiation is the most crucial stage in the formation of a treaty where the participating states put forth proposal for discussion. After detailed discussion the proposals are harmonized and the parties arrive at a tentative agreement.

Adoption of text

After negotiation, the form consent is settled by drawing up a text setting out its provision; the normal rule is that consent of all the participating states is required for adopting the text of the treaty.

Article 9 provides that adoption in international conferences takes place by the vote of two-third (2/3) of the states present and voting.

Consent of the state

The treaties may bind states only when they have given their consent, some of the ways in which a state may express its consent to be bound by a treaty are by means of;

- Signature
- Exchange of instrument
- Ratification

Consent by signature

State may regard itself as having given its consent to the text of the treaty by signature. The signature appears from the full power of its representative or expressed during the negotiation. The heads of states normally put their signatures.

Consent by exchange of instruments

Article 13 provides that the consent of states to be bound by treaty constituted by instrument exchange between them may be expressed by that exchange when instrument declare that, their exchange shall have that effect. If state agreed the exchange of instrument should have the effect.

Consent by Ratification

Article of Vienna convention

Ratification is mainly required for the state to re-examine the over-all effect of the treaties on their national interests. Basically Ratification is done by competent authorities of state. Previously ratification was done, the function of sovereign, but today ratification is a constitutional issue. The rules of state ratification vary from country to country.

However the ratification depends on internal law and international law.

Entry into Force

Article 24

Generally the treaty become, come into effect the day agreed by negotiating contracting states. In absence of any agreement the treaty come into force after their consent.

THE APPLICATION OF TREATIES

After the treaty enters into force, there are number of questions with regard to the application of treaty. But generally the treaty cannot operate retrospective or retrospective it depends of the consent of the state.

Third Party

This is the state which is not the party of international agreement or treaty. A third party cannot have obligation to international agreement. Generally, international agreement binds only the parties to them. The major reason for non-binding of third party comes from the rule of sovereignty and independent of states.

The international treaty cannot bind third parties, however there are exception to this general rule when the treaty entered for the purpose of international customary law bind all parties even third parties.

Article 2(6) of United Nation Chapter

It is started that the organisation shall ensure that state which are not member of the United Nation act in accordance with these principles so far as may be necessary for the maintenance of international peace and security.

The amendment and Modification of international Treaties

Amendment refers to the formal alteration of treaty provisions affecting all the parties to the particular agreement.

While

Modification relate to variations of certain treaty terms as between particular parties only.

The treaty may be amended by agreement between the parties

The alterations must be affected with the same formalities specifically look at original formation of treaty.

Many multilateral treaties lay down specific conditions as regards to amendment, for example Article 108 of the United National Charter.

Article 40 of the Vienna Convention specifies the procedure to be adopted in amending multilateral treaties.

Every state which has the right to be a party to the treaty possesses also the right to become a party to the amendment.

Amendment will not bind any party to the original agreement.

Treaty Interpretation

According rules and techniques has been forward to aid judicial bodies in resolving such problems;

In International law three basic approaches to treaty interpretation

The Interpretation must based on the actual text of the agreement and emphasizes

The analysis of the word used.

The intention of the parties adopting the agreement as the solution to ambiguous provisions

In the third stage normally looked in a wider perspective than the two emphasizes the purposes of treaty

Article 31 to 33 of Vienna convention comprise ins some measure aspects of all three doctrine.

Article 31 fundamental rules of interpretation can be reflecting customary international law.

Article 31 (1) Interpretation must in a good faith.

NB: The process of interpretation is a judicial function for the purpose of attaining precise meaning of a provision.

Invalidity, termination and suspension of the operation of treaties

Article 42 states that the validity and continuance in force of treaty may only be questioned on the basis of the provision in Vienna convention.

Article 44 provides that;

“A state may only withdraw from or suspend the operation of a treaty in respect of the treaty as a whole and not particular part of it, unless the treaty otherwise stipulates or the parties otherwise agree”

Jus Cogens

The principle of international customary rule, (compelling law).

STATE RESPONSIBILITY

State responsibility is a fundamental principle of international law; it comes from state sovereignty and equality of state. A breach of an international obligation gives rise to requirements for reparation.

NB: International law did not distinguish between contractual and tortuous responsibility, so that any violation be a state of any obligation of whatever origin gives rise to state responsibility as a result led to reparation.

Any international wrongful act of state may consist in one or more actions or omissions or a combination of both.

THE NATURE OF STATE RESPONSIBILITY

The essential characteristic of responsibility hinge upon certain basic factors;

- The existence of an international legal obligation in force between two particular states.
- There must be an act or omission which violates international obligations
- The loss or damage which resulted from the unlawful act or omission.

In the case of Chorzow Factory Case the permanent court of international Justice said that;

It is a principle of the international law, and even a greater conception of law that any breach of an engagement involves an obligation to make reparation.

The basic principle of state responsibility in international law provides that any state that violates its international obligation must hold accountable for its acts.

The state that breach international duties are responsible to immediately stop their illegal actions and make reparations to the injured

Article 1 of the international law Commission on state Responsibility entails international wrongful act

The question of fault

The principle of objective responsibility maintains that the liability of state is strict. Once an unlawful act has taken place, which has caused injury and which has been committed by an agent of the state that state will be responsible in international law to the state suffering the damage irrespective of good or bad faith.

Imputability

Imposing upon the state absolute liability wherever an official is involved encourages that state to exercise greater control over its various department and representatives.

State responsibility covers many fields.

It includes unlawful acts or omissions directly committed by state which is directly affect another state.

E.g-Breach of treaty

The violation of the territory of another

Damage to state property

In the case of *Corfu channel case (1949) ICJ*

Albania was held responsible for the consequences of mine- laying in its territorial water on the basis of knowledge possessed by that as to the presence of such mines even though there was no finding as to who had actually laid the mines.

The state may also incur responsibility with regard to the activity of its officials in injuring a national of another state.

The doctrine depends on the link that exists between person and persons who commit unlawful act or omission.

Since the state is responsible only for acts of its servants that are imputable or attribute to it, it necessary to exams the concept of imputability.

Imputability is the legal fiction which assimilates the actions or omission of state officials to the state itself and which renders the state liable for damage.

ULTRA VIRES ACTS/ULTRA VIRES ACT

An unlawful act may be imputed to the state even where it was beyond the legal capacity of the official involved.

In case of Mosse Case where it was noted that:

Even if it were admitted…officials had acted ….outside statutory limits of the competence of their service, it should not be deduced without further ado, that the claim is not well founded. It would still be necessary to consider a question of law. Namely, whether in the international order the state should be acknowledged responsible for actus performed by officials within the apparent limit of their functions in accordance with a line of conduct which was not entirely contrary to the instruments received.

Private individual are not regarded as a state officials so that the state cannot be liable.

State Control and Responsibility

Article 8 of the ILC Article provide that the conduct of a person or group of persons shall be considered as an of state under international law if the person or group of persons is in fact acting on the instruments of or under the direction or control of that state in carrying out the conduct.

You suppose to understand necessary direct control

The state can be responsible only if it directed or controlled the specific operations.

E.g, when a state distribute financed the armed forces of military group.

The Effect or impact or consequences of internationally wrongful acts

1. Cessation/complete stopping

The state responsibility for internationally wrongful act is under an obligation to cease that act. The state also must guarantee non-repetition of the acts.

2. Reparation /Redress

Reparation is a principle of law refers to the obligation of a wrongdoing party to redress the damage caused to the injured party.

Under international law reparation must wipe out all the consequences of the illegal act and re-establish the situation as if there is no act committed.

This is the right of injured party which imposed by international law.

Who claim reparation?

Forms of Reparation

Despite of the fact that, compensation is common However, forms of reparation as following;

- Restitution

It seeks to restore the victim to the situation as if the crime had not been committed.

- Compensation

It understood to include any quantifiable damages resulting from the crime or mental harm and emotional distress.

- Rehabilitation

It addresses legal and social services which guarantee non-repetition.

DEFENCES

There are many circumstances that preclude wrongfulness of the state there are;

- Consent

Where a state consents to an act by another state which would otherwise constitute an unlawful act, e.g where troops from one state are sent to another at the request of the other.

- Countermeasure in respect of an internationally wrongful act

A countermeasure must meet certain conditions. The following are the circumstances in which countermeasures can be regarded as lawful;

- It must be taken in response to a previous international wrongful act of another state
- The injured state must have called upon the state committing its wrongful act to discontinue its wrongful conduct or to make reparation.
- Force majeure

It has been accepted under international law since the conduct of state is involuntary or at least involves no element of free choice.

- Necessity

The act of emergence

- Compliance with peremptory norms

The criminal offence may not be committed only by individual persons but also legal person like state since national and international criminal law have elaborated the doctrine of complicity as the basis of criminal liability, including criminal liability for legal persons for their complicity in crimes. A state can be liable for any offence which can be punishable by fine.

The Definition of Crimes Given in Article 19, Paragraph 2 of the ILC Draft is Acceptable, Although Probably Too

‘Sophisticated’

According to Article 19, Para. 2 of the ILC Draft Articles on State Responsibility:

“An internationally wrongful act which results from the breach by a State of an obligation so essential for the protection of fundamental interests of the international community that its breach is recognised as a crime by that community as a whole constitutes an international crime.”

This definition clearly involves three elements:

- A crime is an internationally wrongful act; this is obvious and needs no further elaboration;
- Internationally wrongful act results from the breach of an international obligation which is essential for the protection of fundamental interests of the international community; and,
- It must be recognized as a crime by that community as a whole.