

INTERNATIONAL LAW AND GLOBAL GOVERNANCE: A CRITICAL VIEW

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Introduction:

International Law is an emerging area of law. It is a body of rules governing the relations between the nation-states. International Law is also equated with terminology like World Order and World Law. The character of the international law has been ever changing. It can be called as a global law. Though the nations have not given any written consent, it has become necessary to abide by various principles propounded under international law to create and maintain a global order. In order to achieve this global order, there is need for governance at international level. Thus the concept of global governance came into emergence.

Global governance plays an important role in international law. It helps in administering law at international level in the absence of a world government. There are many areas in which international law exists like economy, trade, environment, intellectual property rights, aviation, health etc. Therefore we understand that there exists a strong interrelationship between international law and global governance. The purpose of global governance in the context of international law is to establish an order which the states can follow and act in a harmony.

Meaning of the International Law:

The expression International Law was coined for the first time by Jeremy Bentham in 1789 that is also known as father of international law. International law is also called as Law of Nations or Public International Law or Inter – State Law or Trans-national law. It is generally viewed that

International Law is a law which regulates the relations between or among the states.

According to Oppenheim, “Law of Nations or International Law is the name for the body of customary and treaty rules which are considered legally binding by civilised states in their intercourse with each other”.¹

According to J.L.Brierly, International Law may be defined as “the body of rules and the principles of actions, which are binding upon civilized states in their relation with the one another.”²

Thus, international law is constantly evolving body of norms that are commonly observed by the members of international community in their relation with one another. These norms confer rights and impose obligations upon state and to a lesser extent, upon international organizations and individuals. Moreover, International law has effects on, and effected by the international relations, political thought and communications, as well as by the awareness of women and men in every state that they are part of those addressed by the United Nations as being “ we the people of the United Nations”.

International law has emerged and grown to fulfil the essential needs of men organized in separate communities and national entities bound together by common bonds of geography and civilization. The political order of the world is divided into three kinds of nations/ states according to their political, social, economic & cultural backgrounds as to:

a) The western or the capitalist countries are known as First World Countries.

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¹ J.G.Starke, Modern International Law.

² J.G.Starke, Modern International Law.

- b) The Communist or Socialist countries of East Europe, Latin America & China are known as Second World Countries.
- c) The developing or under-developed countries of Asia & Africa are coined as Third World countries.

Meaning of Global Governance:

Global mean a phenomena which affects the world as a whole. Governance means a system of ruling the affairs. In a simple and broad-based definition of world governance, the term is used to designate all regulations intended for organization & centralization of human societies on a global scale.³

Adil Najam, a scholar on the subject, has defined the term 'global governance as "the management of global processes in the absence of global government".

Thus, global governance may be defined as "the complex of formal and informal institutions, mechanisms, relationships, and processes between and among states, markets, citizens and organizations, both inter- and non-governmental, through which collective interests on the global plane are articulated, Duties, obligations and privileges are established, and differences are mediated through educated professionals."

Reasons for the Emergence of Global Governance:

The reasons for the emergence of global governance are indeed manifold making it impossible to discuss them all at length in this course of contribution. However prominent among them are the processes that are commonly summarised by term globalisation.

³Forum for a new world Governance.

Global governance does take place in different fields like economy, telecommunications, information technology, intellectual property, health, environment crimes etc.

All these various processes of globalisation especially by way of reinforcing each other have one thing in common. They lead to an increasing loss by the states of their previously held and virtually unchallenged ability to control these processes even if they take place in their own territory. States acting individually are to a growing extent lacking necessary steering capacity to effectively channel the various processes of globalisation to the benefit of their citizens in the pursuance of the promotion of global public goods like human rights, environment as well as enforcement of core labour and social standards. This phenomena of denationalisation of clusters of economic, political and social caused by processes of globalisation and the resulting decline in the steering capacity of states to create and participate in formal as well as informal cooperative mechanism with not just other states and international organisations but also with influential non-state actors in order to provide an regulatory mechanism for political, economical, ecological, social processes, they are unable to control while acting on their own. Furthermore it forces states to tolerate self-regulatory mechanism in areas that are nearly outside their control.

Thus in the absence of world government, whether such institutions would be feasible or desirable is an open question. The process of globalisation requires states to contribute to tolerate and to actively participate in emergence of what is called global governance.

Impact of Global Governance on the Structure of International Legal Order:

The emergence of the regulatory scheme of global governance does not merely result in a continuation of progressive development of international law that is already visible in previous decades. Rather under the impact of global governance international law undergoes profound changes and is thereby transformed into something new – something remotely relational legal order. A number of terms have already been suggested to describe this new regime of international law which can be termed as global law or new world law. Leaving aside the issue of how to label this neutrally phased new international law, a selection of three basic concepts in international law are to be briefly highlighted in the following that require a reconceptualised understanding under the impact of global governance.

Global Governance as Administration:

A central insight of the global administrative law approach – indeed, the argumentative platform for the entire project – is that much of global governance can be understood and analysed as administrative action: rule-making that is not strictly legislative in nature, administrative adjudication that is not strictly judicial, and other forms of regulatory and administrative decision and management.

Admittedly, the task of identifying administrative action at the global level is not without its conceptual difficulties. In the domestic setting, administrative action is often defined by the organizational identity of the actor or in the negative, as public acts that are neither legislative nor judicial in character. The idea of separation of powers at the global level is, however, at best only loosely applicable

. For instance, the determination of individuals' refugee status or the development of applicable standards for such proceedings by the UN High Commissioner for Refugees can be distinguished from functions of legislative nature in the form of inter-state negotiations over amendments to the 1951 Convention Relating to the Status of Refugees or its 1967 Protocol; and the work of the Inspection Panel established by the World Bank to ensure that it complies with its own internal policies can be distinguished from those adjudicative functions carried out, for example, by the International Court of Justice.

Global Governance and International Trade:

International Trade has been playing as significant role in international relations ever since nation states come to recognize each other. However, it made phenomenal progress during the last few decades and acquired universal range in terms of its applications.

International Law has come to impinge on core aspects of national life-economic, social, and cultural. This is inter alia reflected in a number of recent decisions of the Supreme Court of India in which it has been compelled to refer to developments in international law. The fact that successive governments have been vigorously pursuing policies of liberalization, calling for greater integration into the world economy, is only going to increase the intervention of international law in the national life. It is, therefore, imperative that the law graduate has sound understanding of the subject.

International trade law rests on the starting assumption that promoting economic specialization and exchange enhances the economic welfare of individuals. It is individual-based and views national boundaries as an impediment to the promotion of that specialization and exchange that enhances economic welfare.

International Trade Law is generally viewed that economic activity of buying and selling where the transaction crosses a border or cross-border transaction. Hence, it may be simply defined as cross-border sale of goods. However, cross border exchanges are, of course, not limited to the sale of commodities or of manufactured goods, but it also includes services, or in other instances the transaction may involve the movement of capital from one state to another through loans or investment. Such international transactions are just but examples of the kinds of cross-border exchanges take place everyday among states. Therefore, International Trade Law is concerned with the movement of goods, services, capital, and in some circumstances labour across national borders.

As a result of international trade, consumers around the world enjoy a broader selection of products than they would if they only had access to domestically made products. Also, in response to the ever-growing flow of goods, services and capital, a whole host of U.S. government agencies and international institutions has been established to help manage these rapidly-developing trends.

Free trade is a market condition in which trade in goods and services between or within countries flow unhindered by government imposed restrictions. Hence, it propagates a policy of no restrictions on the movement of goods between countries. Restrictions to trade include taxes and tariffs, and other non- tariff barriers, such as legislation and quotas.

Even in the international trade, various restrictions were laid down in the form of import substitutions and export promotions, tariffs, quotas etc. A combination of tariffs, quotas, and subsidies can serve economic, and sometimes political, objectives, but they can also impose significant costs. Tariffs or quantitative restrictions protect domestic industries and workers

from foreign competition by raising the prices of imported goods. In this respect, some argue that import restrictions should be viewed as a tax on domestic consumers. According to some experts, the costs of protecting the jobs of workers in vulnerable industries, which are ultimately borne by taxpayers or consumers, far exceed the potential cost of retraining and finding new jobs for those workers.

Finally, trade restrictions are a major impediment to development efforts. Developing countries are unable to sell their products abroad because of high tariffs and quotas. Additionally, their domestic markets are flooded by cheaper, subsidized products from abroad.

In response to the known problems associated with trade restrictions, the World Bank offers three suggestions that the G20 countries could adopt. These leading countries could:

1. “Commit to greater transparency by agreeing to provide quarterly reports on new trade restrictions, and industrial and agricultural subsidies to the WTO;
2. Advocate greater aid for trade for low income countries;
3. Seize the opportunity to support the global trade in time when it desperately needs to be supported.⁴

Global Governance and Intellectual property Rights:

Intellectual property is an intellectual work, produced by intellect of human brain. For example, literary work produced by the authors, musical work produced by the musicians, inventions, invented by inventors, coining of trademarks used in the course of business or trade, designs of industrial products, are intellectual properties as they are created by human intellect.

⁴World Bank 2009

The person who creates intellectual piece of work owns it like any other tangible property like land or movable goods. “Intellectual property is owned by the owner to the exclusion of others.

The exclusive rights which a person enjoys with respect to his intellectual property are his “intellectual property rights” i.e. IPR. The law that protects such intellectual property rights is known as intellectual property law. According to agreement on Trade Related Intellectual property Rights (TRIPS). Agreement between the members of the world trade organisation (WTO) intellectual property law includes law relating to:⁵

Copyright and related rights, Trademarks, trade names and service marks, Geographical indications, Industrial designs, Patents etc.

Intellectual Property Rights (IPRs) have become ubiquitous in the economic debate: the front pages of newspapers continually report major controversies among corporations, governments and advocacy groups. National parliaments, the European Union (EU) and the North Atlantic Free Trade Association (NAFTA) are repeatedly addressing the issue. A brand new Pirate party, whose main political goal is to get free access to software and copyrighted products, has even managed to elect its own deputies at the European Parliament. Above all, IPRs have become one of the core businesses of the World Trade Organisation (WTO). In a word, IPRs have emerged as the key issue of global innovation policy.

⁵International Centre for Trade and Sustainable Development (ICTSD) and UNCTAD UN Conference on trade and development (UNCTAD), Resource book on TRIPS and Development: An authoritative and practice guide to the TRIPS Agreement, 2004, www.iprsonline.org/unctadictsd/ResourceBookIndex.htm, visited on 28 September 2009.

The significance of intellectual property right in the international trade had been realised as early as in the 19th century. As in 1883 an international convention on the protection of industrial property was convened in Paris with the efforts of inventors and industrialists.

The Paris convention aims at protecting intellectual property relating to industrial property. Article 1 of the Paris convention provides as follows: “The countries to which this convention applies constitute a union for the protection of industrial property⁹.” The protection of industrial property has its object patents, utility models, industrial designs, trademarks, service marks, trade names, indication of source or origin and the repression of unfair competition.

Next came the Berne Convention. The Berne Convention applies to a broad range of works of authorship, including “every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression”. It had been periodically modernized in response to new technologies including cinematography, video technology, satellite broadcasting, cable television and computer programming.

Universal copyright convention 1952 was signed at Geneva on 6th September 1952¹⁹. The UCC, 1952 that came into force in 1952 was revised at Paris in 1971 and is administered by UNERSCO which is a specialised agency of United Nations. The object of UCC, 1952 was revised in 1971 is to ensure to all countries copyright protection of literary, scientific and artistic works. As, the preamble of the UCC, revised in 1971 reads, the contracting states moved by the desire to ensure in all countries copyright protection of literary, scientific and artistic work.

World Intellectual Property Organization (WIPO) is an intergovernmental organization, which is one of the specialized agencies of the United Nations,

is responsible for the promotion of the protection of intellectual property throughout the world. WIPO's main activities consists of the establishment of International norms and standards in the field of intellectual property; the administration of treaties which embody such norms and standards as well as treaties that facilitate the filing of applications for the protection of inventions, trademarks and industrial designs; and providing industrial property information.⁶

Global Governance and Environment:

Environment literally means surrounding and everything that affect an organism during its lifetime is collectively known as its environment. In other words "Environment is sum total of water, air and land interrelationships among themselves and also with the human being, other living organisms and property". It includes all the physical and biological surrounding and their interactions.

The effect of international trade on the environment has been one of the most contentious elements in the world-wide debate about globalization. Opponents of globalization fear that uncontrolled economic growth, fuelled by free trade, harms the environment by causing more pollution and exhaustion of natural resources. Furthermore, they suspect that environmental protection laws are weakened under the guise of promoting free trade by corporations and governments unconcerned about the negative environmental effects of commerce.

In the early 1970s, however, when the environmental movement was gaining strength internationally, the members of the GATT were invited to submit comments for consideration at the UN (United Nations) Convention on the

⁶Otten A. , "Implementation of TRIPs agreement and prospects for its further development", (1998)Journal of International Economic Law 1 (4) December: p 523-36.

Human Environment, held in Stockholm, Sweden in 1972. The secretariat of the GATT prepared a study on the impact on international trade of various measures proposed to deal with pollution, but the study did not address the larger issue of the balance between economic development and environmental protection.

The GATT also set up the Group on Environmental Measures and International Trade (EMIT) to provide advice to GATT members on trade policy and pollution issues. EMIT, however, was never called upon for advice until 1991, when governments began preparing for the UN Conference on Environment and Development, to be held in Rio de Janeiro, Brazil, in 1992.

The movement for sustainable development is one way past these divisions that has become increasingly important both in international policy-making circles and on the ground. In 1987, the World Commission on Environment and Development summarized many ideas that had been coalescing among environmentalists into the idea of sustainable development, which the commission defined as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”¹ This definition supported a comprehensive approach to development in all its aspects-social as well as economic-in ways that did not harm the environment or deplete natural resources so that they would still be available in the future.

The first major endorsement of sustainable development came at the 1992 Rio Conference mentioned earlier, which set forth the Rio Declaration on Environment and Development and Agenda 21. The declaration outlined the goals of sustainable development.

Agenda 21 turned the declaration’s principles into a comprehensive list of programs that the international community committed itself to implementing

to achieve economic development and environmental protection in tandem and without conflict. Included in the agenda were items as diverse as ending poverty, promoting human health, fighting corruption, protecting the oceans, forests, and biological diversity, and creating environmentally friendly agricultural practices. All of these were to be accomplished in the framework of local, national, and international governmental and non-governmental initiatives that respected women's rights, workers rights, and the rights of indigenous peoples.

The idea of sustainable development has not, however, ended controversies over the relationship between economic growth and environmental protection. In fact, in many ways the World Conference on Sustainable Development in August 2002, intended to review progress since the Rio Summit, demonstrated the continuing divisions in the international community.

In the almost 40 years since the 1972 Stockholm Conference, dozens of international conferences, national laws, local initiatives, government programs and non-governmental campaigns have not resolved the fundamental tensions that underlie the relationship between globalization and the environment. Instead, all these efforts have challenged countries to manage those tensions in ways that are politically feasible within their domestic political context and their financial resources. The results of this process for the environment and for human development are still unfolding.

Conclusion:

International law is not a proper law. But still it has gained a lot of obedience from the world countries. As discussed above, different countries have

become part of United Nations Organisation. They have signed various treaties. The International Court of Justice was also established. Whenever there is a confusion as to any aspect of international law like international trade, intellectual property rights, environment etc., the parties can go ICJ or for arbitration of disputes whichever arose from thereon.

To conclude we can say that global governance being a mechanism for enforcement of international law, is playing a prominent role. Global governance is need of the hour. We have to abide by global laws and decisions of global forums. This would help us in maintaining peace and order.

