MODERN INTERNATIONAL LAW

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Dedicated to
Third World Countries

PREFACE

At the outset, I must admit that days of writing textbooks are gone. Today is an age of specialisation where the tendency is to know more and more of less and less. Nevertheless, I have undertaken the task of writing this little monograph essentially to serve the sole purpose of reflecting Afro-Asian views on various aspects of international law.

During my quarter century of experience in teaching international law, I have found myself at pains to agree with whatever Western authors have written. Whenever I have tried to present the views differing from printed views of the Western world, these have looked strange to students who have been almost brainwashed by the enormity of Western writings. Unfortunately, there has so far been no concerted effort to project views of the developing nations on various aspects of international law. These States do not subscribe to all that has been given to them by the Western countries. They have their own misgivings and reservations to what is being passed on to them as international law in the formation of which they had no hand or say. This prompted me to embark upon the stupendous task of writing a book on international law which reflects the aspirations of the Afro-Asian States. No aspect of Western international law can be binding on them unless they consent to it, expressly or impliedly.

Developing nations have not rejected Western international law in its entirety. They have accepted such norms to which there can be no serious objection. They have rejected norms which are inconsistent with their new status as equal, sovereign independent States. My effort in this book has been to re-write international law in the light of the above considerations. However, I must hasten to say that the views are not officially sponsored by any Government. I have written the book as I interpret it as a Professor from a developing country. While most of the topics covered are

common here as well as in Western books, some new trends have also been discussed.

In between the completion of this work and its publication, there have been some important developments in the world community which could not be incorporated in the text of the book. There has been the bloody *coup d'etat* in April, 1978 in Afghanistan when Daud was replaced by Taraki. The Law of Sea Conference was held in April-May, and again in Aug-Sept, 1978 but without achieving any success. There has been the Trijunction Agreement signed in June, 1978 between India, Thailand and Indonesia demarcating the sea boundary near the Andamans from the median line.

There has been a special General Assembly Session in May-June, 1978 on Disarmament. The Conference urged upon nations to channelise funds, otherwise spent on armaments, for welfare activities. It declared that "enduring international peace and security cannot be built on accumulation of weaponry by military alliances nor be sustained by precarious balance of deterence on doctrines of strategic superiority." In its opinion, "nuclear weapons pose the greatest danger to mankind and civilisation." Therefore, it was considered essential to halt and reverse the nuclear arms race in all its aspects in order to avert the danger of war involving nuclear weapons. The Final Document signed on 1st July, 1978 established the Committee on Disarmament consisting of 32 to 35 members, Disarmament Commission consisting of all U.N. members and chalked out the Programme of Action.

The Soviet Union has ratified the Additional Protocol II of Tlatelolco Treaty of 1967 declaring Latin America as a Nuclear Free Zone. In 1975, the General Assembly had exhorted upon the Soviet Union to sign and ratify the Protocol. There has also been an agreement on Namibia in July, 1978, a long standing issue ever since the establishment of the United Nations.

The historic 'Camps David' Summit between President Carter of the U.S.A., President Sadat of Egypt and Prime Minister Begin of Israel, was concluded on 17th September, 1978 with the signing of two agreements. One relates to "A framework for Peace in the Middle East." The other is called "Framework for the Conclusion of a Peace Treaty between Egypt and Israel within Three Months." This summit could be the pace-setter for bringing peace to the strife-torn Middle East.

This is a maiden attempt at writing Modern International Law. Some aspects may have been left out. Others dealt with briefly. It is a one-man effort and I do not claim perfection. I hope to benefit from comments which may be offered from time to time. The lacuna would be removed in my next edition.

Finally, I must thank the University Grants Commission (India) for financing this project. I take this opportunity to thank various persons who typed my manuscripts, checked the typescripts and verified the footnotes. I thank Phil Cohen of the Oceana for associating its name with the book.

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CONTENTS

INTRODUCTION

International Law is at the cross roads today. Until the mid-twentieth century, the world community comprised fifty odd States. The Hague Conference of 1899 was attended by 46 States out of which only five were from Asia—China, Japan, Korea, Persia (Iran) and Siam (Thailand). There was none from indigenous Africa. In the subsequent Hague Conference of 1907, there were only four of the above States from Asia, Korea having been dropped. The Geneva Conference of 1929 on Prisoners of War was attended by the same number of States; six Asian States attended the Conference—China, Egypt, India, Japan, Persia (Iran) and Siam (Thailand). India was then a colony but attended the same as a member of the League of Nations. The United Nations started in 1945 with 51 States; only eleven of them were Afro-Asian States, including India which was then a colony.

Today, of course the United Nations has a membership of 149 States. About one hundred States have become independent in the post-World War II period thus causing proliferation in the world community's membership. Africa alone accounts for about 50 States. Few are from the American continent and the rest are from the Asian and Middle East regions.

Until recently, international law remained dominated by Europe. It was mostly influenced by the Christian States of Europe. England and France had a dominating role in the formulation of this law. Even the United States of America played a secondary role initially. That is why President Monroe introduced in 1823 the doctrine of non-interference in American continent by European States in exchange for a similar promise of non-interference in European Affairs. The Christian States of Latin America had no say in the formulation of international law rules. That is why they tried to develop regional international law like diplomatic asylum, Calvo clause and Drago doctrine. Turkey, a European but non-Christian State, was considered as a sick State of Europe,

having no say in the formulation of international law. Thus it was European international law in the nineteenth century. It developed into Euro-American law in the twentieth century with active participation of the United States of America.

A hundred new States which have become members of the world community in the recent past have been confronted with the problem of acceptance of the Euro-American International Law. They are not ready to accept everything passed on to them as universal international law. They have to resort to the policy of pick and choose. They do not, however, propose to reject all rules of international law as inherited by them. They accept such rules which are not inconsistent with their new status as sovereign States. They reject other rules which compromise their sovereign status. Similarly, they reject everything which is the result of domination. They equally reject the rules which may better be labelled as national policies of some States than as international rules.

There is the problem of succession by new States. There is no univeral succession. International law being based on consent, new States only succeed to what they consent. They raise the basic issue: how far international law developed by a few Western nations is binding today on more than the hundred newly born States? Naturally, it cannot bind new States unless they consent to its continuance. They accept some of the pre-existing norms which do not prejudice their legitimate interests. They reject the other norms which were borne out of national interests or balance-of-power politics of yester-years. The Third World wants new norms based on equality, natural justice, morality and human values.

New States were immediately confronted with the problem of succession to treaties which were applicable to their territories earlier as colonies. Three trends were noticed in this connection. Some States declared to start with a clean slate. Others accepted the treaties on the basis of inheritance agreements. A third set of States tried to pick and choose from among the pre-existing treaties. However, it needs to be stressed here that in the latter two cases, it is not only the new State whose choice would determine the validity of a treaty; the other party to the treaty may disown it as well. This is not an uncommon practice among States.

There have been some new developments in the domain of international law. There has been a demand for a new economic world order; this has given rise to the Charter of Economic Rights

and Duties of States. Terrorism and peacetime espionage have been quite frequent and agonising. These have to be tackled on an international plane. There has been a stress on recognition of the role of an individual, right of self determination and human rights. President Carter's projection of human rights as a factor influencing his country's foreign policy has added a new dimension to human rights. Multinationals have assumed menacing roles. There has been a fear of environmental pollution which poses a great danger to the living conditions of the world community.

There is also a need for reorientation regarding the so-called right of intervention in some cases. Western nations have justified intervention in some cases in the past. Today, it remains a thing of the past. The United Nations resolutions and the Helsinki Agreement have unequivocally condemned the concept of intervention.

The rules of war have been greatly influenced by the Western nations, particularly England and the United States. It has been felt that some of the rules are not universally recognised. Yet others have been imposed by dint of gun-power and victory. So they need to be sorted out and reshaped.

The United Nations has grown to be a universal organisation. Its purposes and principles have been elaborated. Various organs of the United Nations have been dealt with to assess their working. The functioning of the International Court of Justice has been examined in more detail and indeed critically.

ANNEXURE

Growth of United Nations Membership, 1945-1977

Year	*Member States*	*Original Members*
1945	51	Argentina, Australia, Belgium, Bolivia, Brazil, Byelorussia, Canada, Chile, China, Colombia, Costa Rica, Cuba, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, France, Greece, Guatemala, Haiti, Honduras, India, Iran, Iraq, Lebanon, Liberia, Luxembourg, Mexico, Netherlands, New Zealand, Nicaragua, Norway, Panama, Paraguay, Peru, Philippines, Poland, Saudi Arabia, South Africa, Syria, Turkey, Ukraine,

		Union of Soviet Socialist Republics, United Kingdom, United States of America, Uruguay, Venezuela, Yugoslavia
		New Members
1946	55	Afghanistan, Iceland, Sweden, Thailand
1947	57	Pakistan, Yemen
1948	58	Burma
1949	59	Israel
1950	60	Indonesia
1955	76	Albania, Austria, Bulgaria, Cambodia, Finland, Hungary, Ireland, Italy, Jordan, Laos, Libya, Nepal, Portugal, Romania, Spain, Sri Lanka,
1956	80	Japan, Morocco, Sudan, Tunisia
1957	82	Ghana, Malaysia
1958	100	Benin, Central African Republic, Chad, Congo, Cyprus, Gabon, Ivory Coast, Madagascar, Mali, Niger, Senegal, Somalia, Togo, United Republic of Cameroon, Upper Volta, Zaire
1961	104	Mauritania, Mongolia, Sierra Leone, United Republic of Tanzania
1962	110	Algeria, Burundi, Jamaica, Rwanda, Trinidad, Tobago, Uganda
1963	112	Kenya, Kuwait
1964	115	Malawi, Malta, Zambia
1965	118	Gambia, Maldives, Singapore
1966	122	Barbados, Botswana, Guyana, Lesotho
1967	123	Democratic Yemen
1968	126	Equatorial Guinea, Mauritius, Swaziland
1970	127	Fiji
1971	132	Bahrain, Bhutan, Oman, Qatar, United Arab Emirates
1973	135	Bahamas, Federal Republic of Germany, German Democratic Republic
1974	138	Bangla Desh, Granada, Guinea-Pissau
1975	144	Cape Verde, Comoros, Mozambique, Papua New Guinea, Sao Tome and Principe, Surinam
1976	147	Angola, Samoa, Seychelles
1977	149	Djibouti, Vietnam

SECTION I

GENERAL PRINCIPLES

CHAPTER 1

DEFINITION AND CONCEPT OF INTERNATIONAL LAW

Definition

International law may be defined as a body of such rules which nation-states consider as legally binding upon them in their relations *inter se*. Such rules may either comprise international treaties or international custom which has acquired the force of law in the world community.

Generally speaking, international law means such law which is operative in the international community. Therefore, it may not be correct to classify international law into particular, general and universal as is done by Oppenheim [1]. According to Oppenheim, particular international law is operative among a few States, general international law among many States and universal international law among all States. International law is applicable to all the States and, therefore, is necessarily universal. There may be some rules of international law arising out of a given treaty which has been ratified by most of the States but not by all the States. Nevertheless, such a treaty borders on universality since the number of non-ratifiers may be negligible. In any case, if a treaty does not have ratification by most of the States, it hardly attains the status of international law. It may only be treated as a treaty applicable to some States.

Belief has also been created that Grotius is the father of modern international law. While one does appreciate his contribution in the field of international law in the form of his famous book, *De Jure Belli ac Pacis* in 1625, it is difficult to agree with the title given to him if it were to connote that he is the first jurist to have written a book on international law. This wrong impression is possibly based on two assumptions. One that international law was initially operative only among Western-cum-Christian nations which were supposed to be the only civilised nations then, and