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Initial Stages of Failure: Redundancies of International Law

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In a rapidly globalizing world like ours, no state can exist in a vacuum. They must maintain a symbiotic relationship to accelerate growth and promote harmony. International Law acts as a binding force that governs the relationship between sovereign nations. But in recent times, we see in numerous instances, the failure of International Law to fulfill its objective of acting as a 'binding force'. In this paper, we will try to comprehend the various aspects of International Law which are depicting initial stages which might lead to the failure of International Law as we had imagined it centuries ago while understanding the redundancies in the agreements and organization found under International Law while focusing on the premier bodies like the United Nations Security Council as well as the judicial supremo, International Court of Justice. Furthermore, in this paper, we have tried to explain our understanding using certain instances that the global community has experienced. Building upon these, we have also included a few suggestions that might attempt to solve these redundancies

Keywords: *international law, United Nations, Security Council, international court of justice.*

INTRODUCTION

International Law started as a concept during the renaissance in Europe but over the centuries, it has developed into a fine area of legal and political study. This is because of the rapid globalization and rise in the necessity to act as a unified world. This has led to the birth of many organizations and bodies that have the inherent power to put political, economic, and

social pressures on countries. But this power comes with many restrictions which cause us to ponder whether it actually is power. As we have seen throughout history countries do not necessarily follow all the principles of this developing field. In fact, countries nitpick which principle to use and which not to weigh their own benefits. This undermines the so-called power that rests with international law. Unfortunately, owing to its many shortcomings, it can be ascertained that international law is at the doorstep leading to failure. In this paper, we hope to reflect upon the various redundancies making this a commonly overlooked and unnecessary code. We also highlight the various organizations and treaties that we feel are the cause of a major part of issues due to the basic given fact that these institutions are crucial in upholding the sanctum of international law. In doing so we also attempt to provide various suggestions to hopefully solve such redundancies.

JURISPRUDENTIAL HISTORY OF INTERNATIONAL LAW

International Law has constantly been identified as an area where legal scholars fail to understand and regard it with the status of it being 'law', especially those who believe in the Analytical School of Jurisprudence or Austinian Theories. To establish and understand the current problems with International Law it is important to understand the history of International Law in its Jurisprudential sense. 'Is International Law the vanishing point of Jurisprudence?'[1] These words were quoted by the famous British jurist Thomas Holland. By these words, he questioned whether International Law and Jurisprudence can ever be considered to be on the same plane. A vanishing point in mathematics stands a particular point where two parallel lines, on the same plain, intersect. Similarly, he believed that both jurisprudence and international law are on the opposite sides of the spectrum and hence can never be met. This was because Thomas Holland belonged to the Analytical School of Jurisprudence whose main contributor in this sector was John Austin.[2] John Austin, an English professor from the nineteenth century, proposed the theory of law on the basic principle of sovereign issuing commands to its public. If the command was not followed, it was to be pursued by a threat of consequence or punishment. This is also called command theory.

[1] Thomas Erskine Holland, *Elements of Jurisprudence* (13th edition Oxford Clarendon Press 1924)
[2] H.L.A. Hart, *The Concept of Law* (Oxford Press 1994)

However, this is not the case with International Law because there is no sovereign in the proper sense of the word, and there is no threat of retribution or sanction if something is not followed because states observe International Law out of a sense of moral decency. HLA Hart, while belonging to the same school of thought as Austin in the crude sense, considers International Law to be Law[3] due to the basic fact that it contains primary rules, which refrain countries or give countries allowance to do certain acts. But HLA Hart does concede on the fact that due to the absence of a proper system of redressal, international law and its process cannot be considered in its true sense a legal system due to its differences as compared to a municipal legal system. Many legal scholars who question the legality of International Law based on state sovereignty may be argued that if a state binds itself to certain rules, its sovereignty is theoretically constrained, and the state is no longer sovereign. However, this concept of a sovereign is quite rudimentary and could have detrimental effects in practice, as all governments formally limit their sovereignty in relation to this definition when they sign basic treaties. And, because many, if not all, of these treaties, are advantageous, this could lead to governments preferring to be non-sovereign rather than sovereign. Ergo, if we relate this definition with International Law, firstly it would hold that it is not applicable on sovereign states but on all 'actual' states, as according to the definition, no state is actually sovereign. Hence, this definition fails in either aspect given above.

One legal scholar in complete support of International Law has been Professor Oppenheim.[4] In his theory of law, laws are defined as nothing but a body of rules for conduct, within a particular community which is enforced only if there is a common consensus of the said community. Drawing parallels, it could be understood that the community defined above relates to the international community of various countries combined and that resolutions are only put into force after they are passed with a majority of the entire 'community'. The special aspect of this theory is that it doesn't require a 'sovereign' or a legislative authority. Hence, Professor Oppenheim believed that International Law is the body of customary and

[3] *Ibid*

[4] Lassa Francis Oppenheim , *International Law: A Treatise, Vol. 2* (6th edition, Longmans, Green and Co 1905)

conventional rules or laws that are considered to be legally binding by the sovereign states in their discussions with each other.[5]

ANALYSIS

The Jurisprudence of International Law has been discussed throughout history and just like other areas of research in Jurisprudence, International Law also has its contrasting theories. But never before have had these theories refused to recognize an entire body of study as 'law'. These theories, while could hold true in their respective and help identify issues, also help in undermining the competency of International Law. To counter these theories, Lawyers from throughout the world who practice their art in this field, have developed their own understanding of International Law, to better implement it throughout the global community. Hence, the practical aspect of the law is a bit more similar to the theory given by H.L.A. Hart as compared to the one from John Austin which completely disregards International Law and does not even give it the stature of being a Law. International Law, while has its problems, as we will discuss them further in the paper, it is extremely important to try to maintain and provide it with the standing in the global sphere it necessitates to try and counteract the valid points given by the theories against International Law.

PERSUASIVE NATURE OF INTERNATIONAL LAW

International organizations are one of the foremost promoters of international law. It is a grave concern when they themselves are riddled with flaws. Indisputably, the worst one stems from its very composition. An international organization exists only due to the willingness of its member nations who come together for a common goal. As a result, this institution is at its mercy. They take part in it, yet their individual aspirations obstruct the very aim of this organization. United Nations is perhaps the most important International Organization. It (UN) is a global organization that was established in 1945. Its aim and activities are empowered through its Charter's articles and concepts,[6] which are carried out through its

[5] *Ibid*

[6] 'Peace, Dignity and Equality on a Healthy Planet' (*United Nations*) <https://www.un.org/en/??/desa/??/roa87_study_tun.pdf> accessed 25 February 2022

numerous organizations and specialized agencies. Its goals include maintaining the security and peace of the international community as, safeguarding human rights, providing humanitarian relief, fostering sustainable development, and respecting international law are among its responsibilities. However, it has numerous shortcomings which hinder its functionality. It lacks the effective capacity to carry out decisions and standards approved, except United Nations Security Council (UNSC) mandates. As a result, all of the agreements created are based on voluntary compliance with the established aims and goals. This implies that ratification does not entail a commitment that will be scrutinized and sanctioned if the policy does not comply with and meet the commitments. The member nations refuse to hand up authority to the UN for the simple reason that they want to maintain their agenda-setting autonomy, even if it means breaking international accords or norms in place. It lacks the military might to carry out any orders. Any UNSC action relies on military strength from member nations, particularly the most powerful governments in the world, mainly the members of the Security Council that are permanent in nature. Those countries will, understandably, act only in their immediate national interests. As a result, the UN will only take serious military action if it is in the interests of the Security Council's five permanent members, notably Russia, the United States, the United Kingdom, France, and China.[7] Resolutions of the United Nations are only legally binding if they are accepted by the UN Security Council's permanent members. Because each permanent member of the UN Security Council possesses a veto, a resolution must be unanimously approved before it becomes legally obligatory. This has created an unprecedented situation in the world, in which any country that is not a permanent member of the United Nations Security Council necessarily requires a 'protector' of sorts to protect it from other world powers that may wish to harm it. It's a racketeering structure in which members are forced to pay for a favour from global rulers.

Another plaguing issue is that the UN's budget is insecure. Its funding comes from member nations. As a result, the members that provide the majority of the finances and real estate tend to wield more power inside the UN and have the ability to blackmail it. The United States

[7] *Ibid*

contributes the most to the UN budget. Very often the rich and powerful countries have sway over other nations in these international institutions. Let us see this example of the World Health Organization. WHO's responsibilities include limiting the spread of infectious diseases, helping public health programmes, defining nutrition and hygiene standards, and creating a comparative health data centre. The United States has rebuked the World Health Organization (WHO) for its conduct during the pandemic of Covid-19, and the US has since terminated its financial commitment to WHO.

Furthermore, the US government has pressured WHO to take a stance that favour the interests of US pharmaceutical industries rather than acting as a worldwide champion for public health policy. In another instance, the US canceled a $285 million payment to the UN under the Trump administration owing to differences with its Israeli-Palestinian policy.[8] States routinely violate rules of international law, particularly during times of conflict, and the claimant of rights takes the law into his own hands. Even though the United Nations Charter has limited the scope of self-help, international law is far from perfect. There is no system in place to hold these governments accountable.

SUGGESTIONS

As we have discussed above that due to the nature of the origin of International Organizations and alike institutions, the declarations and decisions made in accordance with International Law are merely persuasive in nature. The UN, although has been successful in some areas, it doesn't have the power to take instant decisions due to its military and budgetary constraints. It has also been seen to be ineffective in preventive conflicts because of its non-binding and persuasive nature. The one organization that can take direct action finds itself muddled with undemocratic politics and the mightier nations having their say on crucial decisions, while their weaker counterparts remain voiceless. To counter this status quo there need to be structural changes within International Law such as an independent budget for the UN, if funding is given it must be equitable and non-reciprocatory. There needs to be more respect

[8] 'The U.S. Government and the World Health Organization' (*KFF,* 25 January 2021) <https://www.kff.org/coronavirus-covid-19/fact-sheet/the-u-s-government-and-the-world-health-organization/> accessed 25 February 2022

accorded to International Laws and declarations while also not threatening the sovereignty of nations. The UNSC also must go through a process of democratic redefinition as will be thoroughly explained below. Unless these, and other requisite amends are not made at the earliest, International Laws will slide further in the wormhole of failure.

LEGALITY OF UNITED NATIONS SECURITY COUNCIL DECISIONS

As established before in this paper, United Nations' premier body the Security Council, and their resolutions have the legal power to be considered binding. Other assemblies of the UN like the General Assembly possess the mandate to make recommendations. UN Charter specifies that member nations of the UN are bound to follow the decisions of the UN Security Council (UNSC)in reference to the existing charter, mentioned in Article 25.[9] This concept was also solidified and clarified by the International Court of Justice in its Advisory Opinion with regards to Namibia,[10] stating that the resolutions passed by the Security Council are enforced by their very own nature. But this understanding has been countered by legal scholars with the simple confusion regarding the fact that whether all resolutions of the UNSC are binding or whether only those that derive their ambit of power from Chapter VII of the UN Charter.[11] But there is no textual evidence for the fact that UNSC resolutions which aren't derived through Chapter-VII are not enforceable. Article 25 of the Charter of the United Nations provides a wide umbrella enforcing UNSC Mandates and Decisions and this is what the ICJ had opined. But in reality, and practice, not all UNSC resolutions are considered binding. It was formulated that instead of forming a uniform rule regarding chapters, it is important to understand and note the language of the resolution. If the resolution uses phrases in the recommendary sense, as in using the words for example like 'to decide', then the resolution shall not be binding. Another aspect of this debate is that the entire reasoning of separating the two Chapters VI and VII was to distinguish between non-binding and binding measures of the

[9] 'United Nations Charter (Full Text)' (*United Nations*) <https://www.un.org/en/about-us/un-charter/full-text> accessed 26 February 2022

[10] Advisory Opinion ICJ, *Legal Consequences for States of the Contitiued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution* (ICJ No. 276, 1971) <https://www.icj-cij.org/public/files/case-related/53/053-19710621-ADV-01-00-EN.pdf> accessed 26 February 2022

[11] *Ibid*

Security Council. This has also been indicated in the procedure to pass the resolutions. To pass a resolution under Chapter VI, the concerned parties are obligated to refrain from voting whereas no similar obligation exists during the voting process for resolutions under Chapter VII.[12] An illustration to show the non-binding nature of resolutions of the UNSC would be the resolutions passed in respect to Kashmir in 1957. The first resolution passed in this regard was on 30th March of 1957, which called for a referendum to be conducted in Kashmir but India had rejected this demand based on the non-binding nature of the UNSC resolution as it was made under Chapter VI. Again, during the discussion of another resolution, which urged demilitarisation of Kashmir, India had raised the opinion that this resolution would not be binding, and this concept was accepted by the UNSC had the goal of the resolution was to recommend demilitarisation and a plebiscite.[13] This concept was merely introduced in the international space to please the aggressors, especially if they were allies of the permanent members or permanent members themselves. The UNSC has faced numerous problems due to the internal politics of the council. The council hasn't been able to conclude the majority of the threats to international peace and security as whenever it tries to take action, one of the permanent members veto the resolution which degraded the image of the power of the UNSC. To solve this issue, in practice, UNSC believed that resolutions under Chapter-VII are the only one's binding. Hence, passing numerous resolutions which had no impact on global problems due to their non-binding nature. The council has been reduced to a platform for making rhetorical statements and giving a sense of hope and empowerment to people that if there erupts a real and credible threat to international peace and security, then UNSC would step in and solve the problems. But as seen throughout history this has not been the case.

While writing this paper, a war has erupted between Ukraine and Russia, due to an invasion into the sovereign land of Ukraine by Russia. Even currently, the UNSC hasn't been able to do anything to prevent or stop this war. It has currently been reduced to a platform where delegations are making rhetoric and requesting or even going as far as begging Russia to stop

[12] 'Voting System' (*United Nations Security Council*) <https://www.un.org/securitycouncil/content/voting-system> accessed 26 February 2022

[13] Rosalyn Higgins, 'The Advisory Opinion on Namibia: Which UN Resolutions Are Binding under Article 25 of the Charter?' (1972) 21 (2) The International and Comparative Law Quarterly

the war. Organizations like NATO and the EU have had to set up to impose sanctions to act as a deterrent, but even they know that sanctions wouldn't be even enough to stop this Invasion. It has been known throughout the history of the various conflict that the aggressors usually veto the resolution or get an ally to veto it. Similarly here if UNSC tries to take any action against the aggressors Russia, in this case, if it tries to pass a resolution that might try to stop the invasion, then that resolution would be vetoed, which it was.[14]

SUGGESTIONS

The United Nations has time and again seen many forms of criticism. But it is now the need to the hour to try to push this body of international law into an evolutionary process. Member states need to work together, leaving behind political goals and aspirations. What is needed are reforms in the United Nations. Focusing on the problems highlighted above of the Security Council, there needs to be subsidization of the power of the veto. What I suggest is that instead of making the power of just one veto so great, there needs to be an introduction of the democratic principle of following the opinion of the majority by making it a voting system that for the veto power to be applied, the majority of the permanent members must be for it. So, for example, If out of 5 permanent members, only 1 member wants to veto a resolution, the veto wouldn't apply due to it being 4-1 for the resolution. But to implement it better so that it doesn't stay a NATO vs The Russian, Chinese Bloc, there needs to be better inclusion and introduction of new members in the list of permanent members with overlapping ideologies to balance the use of the veto. The permanent members listed have not been that since many changes throughout the years, except the creation of P5+1 for certain matters. But now it's high time to actually bring meaningful change in this regard.

JUDICIAL AUTHORITY WITHIN INTERNATIONAL LAW

Conflicts are natural between individuals, groups of individuals hence they are bound to occur between nations of different ideologies, different policies, and distinct histories. International

[14] 'Security Council Fails to Adopt Draft Resolution on Ending Ukraine Crisis, as Russian Federation Wields Veto Meetings Coverage and Press Releases" (*United Nations,* 25 February 2022) <https://www.un.org/press/en/2022/sc14808.doc.htm> accessed 26 February 2022

Courts and Tribunals are vested with the authority to adjudicate these disputes. To what extent this authority exists and the respect that countries show to the subsequent judicial pronouncements will be further discussed below. The International Court of Justice (ICJ) is the premier institution having possession of judicial authority when it comes to International Law. However, only member states belonging to the UN that have become parties and has ratified the Court's statute or have submitted to its jurisdiction under specific circumstances may be member party to disputed proceedings, according to its designation as an ICJ. A state may accept the court's jurisdiction in any of the following ways: By entering into a special agreement to refer the issue to the Court[15] - This special agreement is when parties assent to an agreement only to give the authority to the international court to adjudicate upon the dispute; By a jurisdictional clause[16] - stipulating in the treaty through a provision, that if and when the parties to a treaty fall into a dispute of a specific type of disagreement over the meaning or application of the treaty, one of the parties may approach the Court to settle the dispute; By the reciprocal effect of declarations made by them under the Statute whereby each has accepted the juristic authority of the other.[17]

The judicial system's available enforcement methods are ineffective. The assumption in municipal law is that the law will be followed. If a person commits a crime, he will be punished according to the law. This may not be the situation under international law. If one country wants to bring another to the International Court of Justice, the latter must first recognize the Court's jurisdiction. Before a matter is resolved by the Court, the disputants' desire must be satisfied. Furthermore, even when conduct is deemed unlawful, no enforcement steps are done in a lot of cases. For example, following the unlawful invasions of Grenada and Iraq, no action was taken against the United States, and NATO's conduct against Serbia was not criticized. Furthermore, the Court cannot enforce its judgments. If a party to a lawsuit fails to meet its duties, the case will be dismissed.[18] Non-Compliance with the

[15] 'Basis of the Court's Jurisdiction' (*International Court of Justice*) <https://www.icj-cij.org/en/basis-of-jurisdiction> accessed 27 February 2022
[16] *Ibid*
[17] *Ibid*
[18] Edward Gordon et al., 'International Law and The United States Action in Grenada: A Report' (1984) 18 (2) The International Lawyer, 331-380

judgment of the court and further not recognizing the jurisdiction is increasingly becoming a common trend. The cause for this is the provision of Article 36(2) of the International Court of Justice which says that a state might quit cooperating with the ICJ at any moment.[19]This runs in the face of article 26(1) of the 'Vienna Convention Law of Treaties' which reads the treaty in force is binding upon the parties to it and must be performed by them in good faith.[20]

To understand this let us take the example of the US - Nicaraguan dispute. The United States has been and continues to be an active participant in matters before the Court, appearing before it more than any other state. On the other hand, it has never been prepared to bow to the plenary authority of the international courts and has historically responded unfavorably to the Court's rulings that are hostile to the interests of the United States. The US had been aiding guerrillas in Nicaragua, which was ruled by the Sandinista government, and was supported by the Soviet Union. In a covert operation, the CIA mined Nicaraguan ports and harbors; when Nicaragua learned of it, it filed a complaint with the International Court of Justice, alleging that the US had broken multiple treaties as well general principles of international law.[21] The US maintained that the ICJ lacked jurisdiction since the treaties did not provide the court jurisdiction and compulsory jurisdiction did not apply. When the International Court of Justice ruled against the United States, it refused to obey the decision and withdrew its assent to compulsory jurisdiction. Due to the structure of the legislation, which prevents the court from adopting binding rulings and marks the absence of enforcement mechanisms of its judgments, the ICJ failed to provide justice to the Nicaraguan people.[22] Another illustration would be with respect to the South China Sea dispute. South China Sea dispute was an issue that was resolved through arbitration, brought by the Philippines against China. This was done using the principles mentioned in Annex VII of the United Nations Convention on the Law of the Sea (UNCLOS). This was possible due to the fact that UNCLOS was ratified by the

[19] Statute of the International Court of Justice, 1945, art. 36
[20] Vienna Convention on the Law of Treaties, 1969
[21] ICJ Report, *Militarv and Puramilitary Activities in und aguinst Nicaragua (Nicaragua v United States of America) Merits* (1986) <https://www.icj-cij.org/public/files/case-related/70/070-19860627-JUD-01-00-EN.pdf> accessed 27 February 2022
[22] 'Withdrawal from International Agreements: Legal Framework, the Paris Agreement, and the Iran Nuclear Agreement' (*Congressional Research Service,* 4 May 2018)
<https://crsreports.congress.gov/product/pdf/R/R44761> accessed 27 February 2022

Philippines in 1984 and by the PRC in 1996. The dispute was concerning certain issues in the South China Sea, which includes the problem with the nine-dash line of 1947. A tribunal under the provisions decided to appoint the Permanent Court of Arbitration (PCA) as the registrar for the proceedings.[23] China announced in 2013 that it would not take part in the arbitration. It reinforced its stance a year later, claiming, among other things, that jurisdiction of the tribunal was not applicable in the case. On the majority of the Philippines' claims, the arbitral panel decided in favor of the Philippines in 2016. It underlined the fact that it wouldn't adjudicate on points of sovereignty or delimit any maritime boundary, China's ancient maritime rights claims within the "nine-dash line" have no legal standing until they are granted under UNCLOS. The verdict was not accepted by China. Even though a few countries made an appeal to both countries to abide by this ruling. In this instance, there was and exists no mechanism to actually enforce this ruling. As a result, the whole proceedings become irrelevant if the parties not only challenge the competency of an international court but refuse to accept the court's judgment.[24] Another aspect that erodes the legitimacy of the international court is that countries don't join crucial treaties and even if they join them, they often do not ratify them which makes entering into the treaty itself pointless. This can be witnessed in the case of the International Criminal Court. The Rome Statute, which is the treaty that initiated the International Criminal Court (ICC) was ratified in 1998 during a diplomatic meeting in Italy's capital city of Rome and went into effect in 2002. The Rome statute defines four main types of international crimes which are Genocide, crimes against humanity, war crimes, and aggression. It may seem to us that these are certain basic norms that any peace-loving country should adhere to. Surprisingly, only 139 countries signed the statute were also 31 still haven't ratified it therefore they are not a party to the same. This signifies the concept of international law having the absence of an adjudication body that has control or power to provide enforceable judgments.

[23] Stefan A. G. Talmon, 'The South China Sea Arbitration and the Finality of 'Final' Awards' (2016) 8 Journal of International Dispute Settlement
[24] *Ibid*

SUGGESTIONS

Although judicial bodies exist at an international level, they don't have the power to enforce their rulings even if they fall under the 'compulsory' jurisdiction of the court. Because of the absence of sanctions and judgments being non-binding, laws are flouted without any fear of being reprimanded and judgments are disobeyed perpetually. As we have seen in the light of the illustrations of the Nicaragua case and well as the South China Sea dispute, the respective countries have used a provision given under the International Court of Justice which allows them to stop engaging with the ICJ. This leeway has been misused by them and other countries often when they receive an unfavorable judgment; they either refuse to accept the judgment or question the jurisdiction itself. Given these circumstances, the concept of International Courts serves little meaning. To bring back the legitimacy of International Courts, countries need to, for the sake of justice and fairness put their personal ambitions on the backburner and start respecting the judgments of the courts. Article 36(2) of the ICJ is faulty, it must be replaced with a more stringent framework for executing the rulings. Like the UNSC, the power given to the ICJ must have force and sanctions should complement it. Unless there is no way to enforce the rulings of the court, the International Legal System and hence the backbone of International Law will suffer.

ISSUES WITH THE MISUSE OF THE LAW ON TREATIES

One of the major sources of International Law is the bilateral as well as multilateral treaties signed between countries. But again, the same pattern can be seen here that countries choose to follow these treaties and not follow them of their own volition and there is no 'punishment' for not abiding or ratifying treaties.

Due to the fact as established above that international law in its generic nature is suggestive for its implementation. There is no force or command given by an entity of sovereign nature. Hence, there is no compulsion to join these international agreements or treaties. The only disadvantage that could be understood in isolation from the current globalized world. For example, one of the most famous treaties which are considered to be universally adopted

throughout the world is the Non- Proliferation Treaty (NPT). It currently boasts 191 member states[25]making it one of the most subscribed treaties in the world presently. This is because this treaty is considered to be an extremely important necessity to achieve safety from the constant threat of nuclear weapons and arms races. But countries like India, Pakistan, and Israel are not member states of this treaty and have been rumored to be producing nuclear weapons, which is a threat to the stability of world peace. But due to the points mentioned above, there isn't any way for the global community to force them to comply, showing a big problem in the situation when a country chooses not to sign or ratify a treaty. But another aspect is when a country violates the principles of a treaty, even then there isn't exactly a punishment or penalty imposed upon the country doing the wrongful act. Building upon the previous example of the Non-Proliferation Treaty, the Democratic People's Republic of Korea (DPRK), was caught misappropriating nuclear fissile material to develop nuclear weapons, [26]something which is barred by the NPT. But still, there wasn't any meaningful action taken against North Korea when they were caught. In a similar case, the USA was caught in violation of the Treaty of Amity, when it put sanctions again against Iran in 2018. This violation was caught by the International Court of Justice, during a case hearing between Iran and USA. But still, no action was or has been taken to retribute or compensate Iran for the problems and financial hardships it faced or is currently facing due to this violation.

One facet under this topic is the concept of withdrawing from treaties. Whenever a nation feels fit, it has the option to withdraw from a treaty without any consequences. When a nation does this, the other members of the treaty are usually left scrambling to maintain the continuity of the said treaty. An illustration of this would when in 2018, the United States withdrew from the Joint Comprehensive Plan of Action (JCPOA),[27]leaving the other parties to scramble to maintain the status quo. The spirit of the treaty was to provide financial ease to Iran by removing sanctions, but by the USA leaving the treaty and applying the same sanctions, the

[25] Treaty on the Non-Proliferation of Nuclear Weapons, 1970
[26] David Fischer, 'The DPRK's Violation of Its NPT Safeguards Agreement with the IAEA' (*International Atomic Energy Agency*, 12 December 1985) <https://www.iaea.org/sites/default/files/dprk.pdf> accessed 27 February 2022
[27] Withdrawal from International Agreements: Legal Framework, the Paris Agreement, and the Iran Nuclear Agreement (n 23)

treaty vowed to removed, defeated the entire purpose of the treaty for Iran as well as the other parties like the United Kingdom or France.

The withdrawal mechanism of treaties also provides for a new method for nations to utilize the benefits of the treaty while not holding their end of the bargain. And when caught, these states just decide to withdraw from the treaty altogether. This method allows states to negate the accountability of violating the treaty while also utilizing the benefit. An illustration of this would be in the case of North Korea and NPT. North Korea was caught utilizing the benefits of the treaty by purchasing high-grade nuclear fissile material at cheaper costs. It used this dual-use technology to develop nuclear weapons, something which violated the basic structure of the Treaty. When North Korea was caught doing this act, it started the process of withdrawal from the treaty. But again, there was no method to stop this withdrawal or even make North Korea accountable for its actions. [28]Currently, North Korea has been openly been developing weapons, something which is considered to undermine the entire security of the region in Asia. The NPT was created only to prevent such an act but has failed due to the structure in which treaties are formulated today.

SUGGESTIONS

The concept of Treaties can be considered to contract in the international sphere as we can draw parallels to Contract Law. In contracts, one party or more parties enter into an agreement with one or more parties after negotiations. Similarly in treaties, one or more nations enters into a treaty after negotiations with the other parties. To understand and maybe solve the problems faced, maybe we can draw more parallels to Contract Law. In contracts, when one party decides or plans to revoke its acceptance or offer, there is a time frame when they are allowed to do it. If they plan to withdraw from a contract, they are obliged to pay the other party what they were liable for or what they would have been liable for. But this isn't followed in International Law.

[28] *Ibid,* 13

'*Nullus Commodum Capere Potest De Injuria SuaPropria*', a maxim which means and solidifies the principle that a party may not derive advantage from its own unlawful acts[29], but as seen from the above illustrations and facts, this is exactly what nations are doing while disobeying treaties and withdrawing from them after utilizing benefits of the treaties and giving other parties unbearable losses. Hence, nations are deriving advantages from their own unlawful acts. If we try to implement these concepts in International Law by amending the foremost convention on treaties, The Vienna Convention, and adding articles in respect to the above-given suggestions, we might be able to see a positive shift in the enforceability of treaties.

CONCLUSION

International Law is considered the savior of the world after the Second World War, especially during the origin of the United Nations. But over time, it has slowly lost its stature from what it was considered to be during its glory days. Signs of this were apparent way before the existence of the United Nations as we can understand from the theories of the analytical school of Jurisprudence which highlight one of its major redundancies which is the fact that there isn't technically a sovereign, issuing commands backed by the threat of sanctions. While many legal scholars have tried to theorize a legal theory inclusive of International Law but all of them concede to its effectiveness highlighted by the analytical school. Another redundancy that is present from the initial stages in the creation of this concept we understand as International Law has been its suggestive nature. This is due to the fact that International Laws do not have the threat of punishment or retribution attached to them. Comparing these laws to ordinary municipal laws we find that the legitimacy of all municipal laws is derived from the fact that there is a guarantee that the laws will be compulsorily enforced, thereby ensuring a system of order and institutionalized justice, something which is missing in international law. The aspect discussed above of international law not being compulsorily imposed, developers of the norms of International Law attempted to solve this by introducing an executive body in the United Nations with the power to impose punishments or sanctions and to collectively

[29] 'Principle I.1.5 - No Advantage in Case of Own Unlawful Acts' (*Trans Lex,* 1 March 2016) <http://translex.uni-koeln.de/904000/_/no-advantage-in-case-of-own-unlawful-acts/> accessed 27 February 2022

take action against violators of the norms. This body is known as the Security Council. The problem with this vision was again the absence of providing any real authority to this body as understood from above. Wherever it tried to provide real authority, it made it vulnerable to the misuse of undemocratic veto power. As seen above, there is no cohesiveness in International Law as a whole, this leads to disputes and disagreements. To solve these, usually, in a legal system, there exist adjudication bodies with authority to make enforceable decisions to resolve such conflicts. International Court of Justice as well as the International Criminal Court while on paper were planned to become such bodies but haven't been able to fill the shoes. This is because countries have the option to simply renounce decisions made by these courts of their own volition. This opens up a void of non-compliance and reinforces the request to adhere to the standard norms of International Law. Another detail missing from this 'legal system' is that there is no compulsion and it is dependent on the fact on the willingness of countries to be bound by it. When a country decides to be bound by a norm, the concept of Treaties comes into play. But over the years the major problems that we have experienced is that fact some countries chose to not be a part of the treaty, something which they are allowed to do so, even when that treaty is of global importance and considered a necessity to maintain international peace and security. Another aspect that raises issues is the fact is the absence of sanctions or punishment if a nation decides not to abide by its promises made under the treaty. This is the recurring problem being discussed in this paper, but something which is the root cause or a pillar of the structure of problems. Finally, nations have started ratifying treaties to derive benefits, and when they derive the required amount, they withdraw and start going against of the spirit of the treaty, something we have seen numerous times. What the Law of Treaties needs is a bit inclusive with respect to principles of Private Contract Law too.

From the above, we come to the conclusion that there are many structural problems in International Law that are leading it towards the steps of failure as a concept. But it is crucial that we do not let this happen and we try to maintain the sanctity of what it was envisioned to be. To achieve this, in this paper, we have tried to suggest improvements to respective redundancies, to better the hold of International Law over sovereign states. These suggestions, we hope would stray International Law further away from the gateways of failure.