

International Maritime Law and Treaties

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What is a Treaty

- Agreements between 2 or more states or between other subjects of international law by which they create a relationship between themselves.
- “A treaty is a written agreement by which two or more states or international organisations create or intend to create relationship operating within the sphere of international law”. McNair.
- According to Schwarzenberger, “Treaties are agreements between subjects of international law creating a binding obligation in international law.”
- Article 2(1)(a) “an international agreement concluded between States in 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.”
- According to Article 38 of the Statute of The International Court of Justice, treaty is considered as the primary and most important source of international law.

Treaties Cont..

- Firstly, treaties should be in writing. Although classical International Law did not prescribe that treaties should always be in writing, it is rare to find an oral agreement between the States
- The Vienna Convention on the Law of Treaties of 1969 lays down that treaties should be concluded in written form only.
- Oral agreements are neither precise nor permanent, and therefore at present, it has become essential that treaties should be concluded in writing.
- Secondly, parties to a treaty may be either States, or a State and international organization, or international organizations.
- Thirdly, the purpose of a treaty is to create a relationship between the parties. The relationship may be legal relations or political or moral relations.
- It implies that treaties or provisions of treaties may impose no binding obligations, or to be intended not to create legal relation between the parties.

TREATY AND ITS VARIOUS NAMES

- **Agreements**: "Agreements" are usually less formal and deal with a narrower range of subject-matter.
- **Conventions**: It is generally used for formal multilateral treaties with a broad number of parties. Open for participation by the international community as a whole, or by a large number of states.
- **Charters**: The term "charter" is used for particularly formal and solemn instruments, such as the constituent treaty of an international organization.
- **Protocols**: The term "protocol" is used for agreements less formal than those entitled "treaty" or "convention".
- **Declarations**: Declarations are not always legally binding. Usually reflect the aspirations of countries. 1992 Rio Declaration.

Formation of Treaties

- Treaties are frequently described as contracts between nations. As instruments of international law, they establish obligations with which international law requires the parties to comply at national level as well as international level.
- Formation or Conclusion of a treaty begins with the - Appointment of Representative, Negotiation, Adoption of text, Consents of the states, Ratification, Accession or Adhesion, Entry into force, Registration and publication and Application and enforcement
- Sometimes a state can make a “reservation in respect of a particular treaty, if this reservation is valid the treaty provision for which the reservation is made will not apply to that state.

IMO

- What Does IMO Do? The IMO slogan sums up its objectives: “Safe, secure and efficient shipping on clean oceans.”
- When IMO first began operations its chief concern was to develop international treaties and other legislation concerning safety and marine pollution prevention.
- By the late 1970s, however, this work had been largely completed, though a number of important instruments were adopted in more recent years.
- IMO is now concentrating on keeping legislation up to date and ensuring that it is ratified by as many countries as possible. This has been so successful that many Conventions now apply to more than 98% of world merchant shipping tonnage. Currently the emphasis is on trying to ensure that these conventions and other treaties are properly implemented by the countries that have accepted them.

The 5 important instruments of IMO are

- Conventions, Protocols, Amendments, Recommendations, codes, and guidelines, Resolutions
- **Conventions:** A convention is a written agreement with several parts. Conventions form a major part of maritime affairs governed by the IMO. Some of the major conventions by IMO are Safety of Life at Sea (SOLAS) 1974 convention and International convention for prevention of pollution from Ships (MARPOL).
- It is to note that conventions generally have several sub-parts, which would describe in details various aspects of the subject defined by that particular convention. For e.g. MARPOL convention has six parts which are known as annexes. Each of this annexe deals with different aspect of marine pollution.
- It is also possible that details given within a convention are put under an associated code, which provides further technical details of that aspect; for e.g. the Life saving appliances (LSA) code gives details for minimum requirements for safety equipment used on board ships.
- Each member state must accept the details mentioned in conventions put forth by the IMO and agree to international supervision required under such conventions.

5 important instruments of IMO Cont..

- **Protocols:** Protocol is an important instrument used by the IMO to introduce changes to conventions, which are already adopted but not yet entered into force.
- For e.g. SOLAS convention 1973 was amended twice using protocols – by 1978 SOLAS protocol which entered into force in 1st May 1981 and by 1988 SOLAS protocol which entered into force on 3rd Feb 2000. Both the protocols are now known as SOLAS 74/78 and SOLAS 74/88.
- **Amendments:** As mentioned above, amendments are major changes that are brought into action using protocols. Amendments are the reforms that are needed in a convention and are backed by the protocols.
- For e.g. Because of several accidents at sea, there was an urgent need to change the MARPOL 1973 convention in 1970s. These changes or amendments were brought into action by the combined convention-protocol instrument called MARPOL 73/78 on 2nd October 1983.

5 important instruments of IMO Cont..

- Recommendations, codes, and guidelines: Recommendations are mainly guidelines which are not legally accepted. They are not formal documents like convention or protocol but are a list of recommended practices that are closely linked to conventions. For e.g. timber deck cargo code.
- Recommendations can also be guidelines which are waiting to be accepted by the IMO. However, it is to note that though recommendations are not legally binding, some governments might apply them in whole or in part. Codes and guidelines can be both mandatory and non mandatory. Codes such as ISM and IBC codes are mandatory and are a part of a parent convention or protocol.
- Resolutions: Resolutions are the finalized documents which are accepted by the IMO or any of the main body under IMO. They generally result from an agreement on a recommendation or amendment.
- Resolution passed by the assembly is denoted in a peculiar manner. For e.g. Resolution A. 586 (XIV)
- Where, A = assembly; 586 = serial number of resolution; and XIV = Made by the 14th session of the assembly
- E.g. 2: MEPC. 54 (32) Where, MEPC = Marine environment protection committee; 54 = serial number; 32 = 32nd session of the committee

IMO Conventions

- A written international treaty made between two or more states which is binding in International law.
- Conventions are chief instruments of IMO, being binding legal instruments, regulating some aspect of maritime affairs of major concern to IMO e.g. safety of life at sea (SOLAS) or marine pollution (MARPOL).
- They are identified by name and the year of adoption by the Assembly, Such as the International Convention on the Safety of Life at Sea, 1974. □
- May have detailed technical provisions attached in annexes, such as six annexes to the MARPOL convention, each dealing with a different aspect of marine pollution. How many IMO conventions are there?
- As of December, 2013, there are 30 conventions have been made between IMO member states

Most important IMO Conventions

- 1. International Convention for the Safety of Life at Sea (SOLAS), 1974, as amended.
- 2. International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto and by the Protocol of 1997(MARPOL).
- 3. International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) as amended, including the 1995 and 2010 Manila Amendments

Other conventions relating to maritime safety and security and ship/port interface

- 4. Convention on the International Regulations for Preventing Collisions at Sea (COLREG), 1972
- 5. Convention on Facilitation of International Maritime Traffic (FAL), 1965
- 6. International Convention on Load Lines (LL), 1966
- 7. International Convention on Maritime Search and Rescue (SAR), 1979
- 8. Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA), 1988, and Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms located on the Continental Shelf (and the 2005 Protocols)
- 9. International Convention for Safe Containers (CSC), 1972
- 10. Convention on the International Maritime Satellite Organization (IMSO C), 1976
- 11. The Torremolinos International Convention for the Safety of Fishing Vessels (SFV), 1977, superseded by the The 1993 Torremolinos Protocol;
- Cape Town Agreement of 2012 on the Implementation of the Provisions of the 1993 Protocol relating to the Torremolinos International Convention for the Safety of Fishing Vessels

Other conventions relating to prevention of marine pollution

- 14. International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties (INTERVENTION), 1969
- 15. Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (LC), 1972 (and the 1996 London Protocol)
- 16. International Convention on Oil Pollution Preparedness, Response and Co- operation (OPRC), 1990
- 17. Protocol on Preparedness, Response and Co-operation to pollution Incidents by Hazardous and Noxious Substances, 2000 (OPRC-HNS Protocol)
- 18. International Convention on the Control of Harmful Anti-fouling Systems on Ships (AFS), 2001
- 19. International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004
- 20. The Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, 2009

Conventions covering liability and compensation

- 21. International Convention on Civil Liability for Oil Pollution Damage (CLC), 1969
- 22. 1992 Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND 1992)
- 23. Convention relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material (NUCLEAR), 1971
- 24. Athens Convention relating to the Carriage of Passengers and their Luggage by Sea (PAL), 1974
- 25. Convention on Limitation of Liability for Maritime Claims (LLMC), 1976
- 26. International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS), 1996 (and its 2010 Protocol)
- 27. International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001
- 28. Nairobi International Convention on the Removal of Wrecks, 2007
- Other subjects
- 29. International Convention on Tonnage Measurement of Ships (TONNAGE), 1969
- 30. International Convention on Salvage (SALVAGE),

The International Convention for the Safety of Life at Sea (SOLAS)

- The **International Convention for the Safety of Life at Sea (SOLAS)** in its successive forms is regarded as the most important treaty dealing with maritime safety.
- The first version of **SOLAS** was adopted as early as in **1914** in response to the famous Titanic disaster in 1912. The second and third versions of the treaty were introduced in 1929 and 1948 respectively.
- The **International Maritime Organization (IMO)** adopted a new version of SOLAS in 1960 with the intention to keep the convention up to date by periodic amendments. But the amendment procedures appeared to be slow taking several years.
- As a result, IMO introduced a new version of **SOLAS in 1974** to include the tacit acceptance procedure - which provides that an amendment shall enter into force on a specified date unless, before that date, objections to the amendment are received from an agreed number of Parties. The new procedure has led to numerous amendments in SOLAS since 1974. The Convention in force today is often referred to as **SOLAS, 1974**, as amended.

The Need and Objectives of SOLAS

- To establish a uniform set of regulations which specify the design, construction, survey and management of ships so that they can be globally implemented to improve the safety of life at sea.
- By which class societies can refer to when setting and maintaining standards.
- The main objectives of the SOLAS Convention are: - The main objective of the SOLAS Convention is to specify minimum standards for the construction, equipment and operation of ships, compatible with their safety.
- Technical provisions: The current SOLAS Convention includes Articles setting out general obligations, amendment procedure and so on, followed by an Annex divided into 12 Chapters.

The International Convention for the Prevention of Pollution from Ships (MARPOL)

- The International Convention for the Prevention of Pollution from Ships (MARPOL) is the most important international regulation for preventing pollution of the marine environment by oil from ships due to accidental or operational reasons.
- MARPOL was adopted by IMO in 1973, which incorporated much of OILPOL 1954 and its amendments into Annex I. Annex I of MARPOL contains most important regulations for preventing pollution by oil from ships.
- But before its implementation, a series of tanker accidents occurred in 1976-77, leading to the formulation of the 1978 MARPOL Protocol that fully absorbed the 1973 Convention.
- The combined version, referred to as (MARPOL 73/78), was finally implemented in October 1983. Since then, MARPOL has been updated through the years.

MARPOL

- Over the last few decades, surplus human activities have severely affected the marine life on the Earth's oceans.
- Ocean pollution, also known as marine pollution, is the spreading of harmful substances such as oil, plastic, industrial and agricultural waste and chemical particles into the ocean
- Over one million seabirds are killed by ocean pollution each year.
- One hundred thousand sea mammals are killed in the ocean by pollution each year.
- In 1975, the National Academy of Sciences estimated that ocean-based sources, such as cargo ships and cruise liners had dumped 14 billion pounds of garbage into the ocean.
- The MARPOL Convention is the main International Convention covering prevention of pollution of the marine environment by ships from operational or accidental causes.
- It is a combination of two treaties adopted in 1973 and 1978 respectively and updated by amendments through the years.

ANNEX I: Regulations for the Prevention of Pollution by Oil

- To completely eliminate the intentional pollution of the marine environment by oil and other harmful substances; and
- To minimize the accidental discharge of such substances.
- Entered into force on 2 October 1983
- Revised Annex I entered into force 1 January 2007
- Covers prevention of pollution by oil from operational measures as well as from accidental discharges;
- The 1992 amendments to Annex I made it mandatory for new oil tankers to have double hulls and brought in a phase- in schedule for existing tankers to fit double hulls, which was subsequently revised in 2001 and 2003.

Specialized Areas according to MARPOL

- Mediterranean
- Baltic
- Black Sea
- Red Sea
- Gulfs area
- Gulf of Aden
- Oman Area of the Arabian Sea
- NW European waters
- Southern South Africa water
- Any discharge into the sea of oil or oily mixtures into the Antarctic Area (south of latitude 60°S) is prohibited.

ANNEX II: Regulations for the Control of Pollution by Noxious Liquid Substances in Bulk

- Entered into force 2 October 1983
- Revised Annex II enters into force 1 January 2007
- Details the discharge criteria and measures for the control of pollution by noxious liquid substances carried in bulk.
- Some 250 substances were evaluated and included in the list appended to the Convention.
- The discharge of their residues is allowed only to reception facilities until certain concentrations and conditions (which vary with the category of substances) are complied with.
- In any case, no discharge of residues containing noxious substances is permitted within 12 miles of the nearest land.

ANNEX III: Prevention of Pollution by Harmful Substances Carried by Sea in Packaged Form

- Entered into force 1 July 1992
- Contains general requirements for the issuing of detailed standards on packing, marking, labeling, documentation, stowage, quantity limitations, exceptions and notifications.
- For the purpose of this Annex, “harmful substances” are those substances which are identified as marine pollutants in the International Maritime Dangerous Goods Code (IMDG Code) or which meet the criteria in the Appendix of Annex III.

ANNEX IV: Prevention of Pollution by Sewage from Ships

- Entered into force 27 September 2003
- Revised Annex IV entered into force on 1 January 2013
- Contains requirements to control pollution of the sea by sewage; the discharge of sewage into the sea is prohibited, except when the ship has in operation an approved sewage treatment plant or when the ship is discharging comminuted and disinfected sewage using an approved system at a distance of more than three nautical miles from the nearest land.
- Sewage which is not comminuted or disinfected has to be discharged at a distance of more than 12 nautical miles from the nearest land.
- The amendments introduce the Baltic Sea as a special area under Annex IV and add new discharge requirements for passenger ships while in a special area.

ANNEX V: Prevention of Pollution by Garbage from Ships

- Entered into force 31 December 1988
- Deals with different types of garbage and specifies the distances from land and the manner in which they may be disposed of.
- The most important feature of the Annex is the complete ban imposed on the disposal into the sea of all forms of plastics.
- In July 2011, IMO adopted extensive amendments to Annex V which entered into force on 1 January 2013. The revised Annex V prohibits the discharge of all garbage into the sea, except as provided otherwise, under specific circumstances

ANNEX VI: Prevention of Air Pollution from Ships

- Entered into force 19 May 2005
- Sets limits on sulphur oxide and nitrogen oxide emissions from ship exhausts and prohibits deliberate emissions of ozone depleting substances; designated emission control areas set more stringent standards for SO_x, NO_x and particulate matter.
- In 2011, after extensive work and debate, IMO adopted ground breaking mandatory technical and operational energy efficiency measures which will significantly reduce the amount of greenhouse gas emissions from ships; these measures were included in Annex VI and entered into force on 1 January 2013.

The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW)

- The purpose of this procedure is to establish the engine room watch keeping guidelines.
- These guidelines are established within the Standard for Training, Certification and Watch-keeping (STCW).
- Responsibility of the Chief Engineer to assign the engine room watch keeping assignments and establish the watch keeping standards.
- The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) was adopted by IMO in July 1978.
- As the name suggests, the Convention has been created to set training and certification standard for masters, officers, and watch personnel on seagoing merchant ships.
- The Convention came into effect in 1984 after the ratification by pre-requisite number of countries.
- At the behest of US Coast Guard, IMO had to make a major amendment to STCW Convention in 1995.

Revision of STCW

- The main aims of the revision were:
 1. to transfer all detailed technical requirements to an associated Code
 2. to clarify the skills and competence required
 3. to require Administrations to maintain direct control over and endorse the qualifications of those masters, officers and radio personnel they authorize to serve on their ships
 4. to make Parties to the Convention accountable to each other, through IMO, for their proper implementation of the Convention and the quality of their training and certification activities
 5. to have the amendments enter into force for all Parties to the Convention with the least possible delay.

Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation

- The Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA) or SUA Act is a multilateral treaty by which states agree to prohibit and punish behavior which may threaten the safety of maritime navigation.
- The Convention is based upon the 1971 Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation and the Convention for the Suppression of Unlawful Seizure of Aircraft and criminalizes similar behavior in the context of maritime navigation.

Cont...

- The Convention criminalizes the following behavior:
- Seizing control of a ship by force or threat of force;
- committing an act of violence against a person on ship if it is likely to endanger the safety of the ship;
- destroying or damaging a ship or its cargo in such a way that endangers the safe navigation of the ship;
- placing or causing to be placed on a ship a device or substance which is likely to destroy or cause damage to the ship or its cargo;
- destroying or damaging a ship's navigation facilities or interfering with their operation if it is likely to endanger the safety of the ship;
- communicating information which is known to be false, thereby endangering the safety of the navigation of a ship;
- injuring or killing anyone while committing abovementioned crimes;
- attempting any of the abovementioned crimes;
- being an accomplice to any of the abovementioned crimes; and
- compelling another through threats to commit any of the abovementioned crimes.

Hague-Visby Rules

- Hague-Visby Rules: Drafted at the 1924 International Convention at Brussels,
- Hague-Visby Rules are basically a set of rules governing the international carriage of goods by seagoing merchant ships.
- The official title of the Convention was "International Convention for the Unification of Certain Rules of Law relating to Bills of Lading".
- These rules were created as a result of growing dissatisfaction among shippers and their insurers due to arbitrary restrictions imposed by carriers to limit their liability in case of damage or loss of cargo.
- The Hague rules primarily aimed to solve this problem by establishing standard basic obligations and responsibilities of the carrier and shipper for goods covered under a bill of lading

Hamburg Rules:

- ***Hamburg Rules:*** Adopted in March 1978 at Hamburg,
- the **Hamburg Rules** are basically improved version of **Hague-Visby rules** governing the international shipment of goods.
- It was an attempt to create a level playing field for developing countries in the area of international shipments of goods.
- The developing countries believed that **Hague Rules** were colonial in nature, and were created for the sole benefit of colonial maritime nations.
- They demanded for a full re-examination of these **Rules** to address the existing imbalances between carrier and shipper interests.
- The Convention came into effect in November 1992 when pre-requisite number of countries (which was twenty) ratified the Convention. As of May 2011, a total of 34 nations had ratified the convention.
- However, none of developed nations including the USA, UK, and Russia have ratified the Convention yet

Domestic and Int. Marine Laws in India

- What is Law and What is IL
- At a very basic level, international law and domestic law differ in magnitude.
- Domestic law governs the behavior and actions of individuals, whereas IL governs the behavior and actions of bodies of government: states or countries.
- Domestic law, which can also be called national law or municipal law, come from legislature and customs, whereas international law consists of treaties and customs.
- The difference between IL and ML is how they are enforced. IL lacks a common executive
- Thus, the states operating under international law often have a weak sense of community
- Domestic law, on the other hand, consists of all three branches of government – executive, judicial, and legislative.
- these three branches are separate from each other and are based on a system of checks and balances. This limits the power of each branch so that no one becomes too powerful.
- Unlike IL, those who violate domestic law will receive a punishment deemed fit by a court executive, and this punishment will be enforced.

Why implementation of I.M.L.?

- Changing Notions of State Sovereignty
- Globalization and its Impact on Society
- Independent States to Interdependent states
- Law Makers to Law Takers
- Role of States as Regulator to Facilitator
- Status of IL is changing from a weak (unenforceable) to strong (enforceable) Law
- Implementation not by coercion or compulsion but by consensus or cooperation

How States Implement IL

Is IL and ML are same are different?

Difference of opinion among the scholars

1. Monist School
2. Dualist School
3. Transformation or Specific Adoption Theory
4. Delegation Theory
5. Harmonization Theory

Domestic Enforcement of I.L. in India

- India followed the Dualism and Transformation and adoption
- Constitutional provisions relating to I.L.
- Pre-constitution: British practice
- Constitutional provisions (a) General art. 51 (b) Executive Provisions art. 53, 73, & 77 and Legislative Provisions art. 245, 253, etc.

Indian Judiciary and IL

- The Indian Supreme Court has decided numerous cases in which it has invoked international law in support of a constitutional holding and then “legislated from the bench” to remedy the constitutional violation.
- For example, in *Basu v. State of West Bengal*,¹⁵⁶ a case involving deaths in police custody, the Court invoked the ICCPR in support of its constitutional holding.
- It also issued a set of “eleven requirements to be followed in all cases of arrest or detention,” and ordered those requirements to be disseminated to every police station throughout the country.
- The Indian Supreme Court has also adopted procedural innovations so that public interest litigation “can now be initiated not only by filing formal petitions in Court but also by writing letters and telegrams or through the Court taking notice of articles in newspapers.”
- The Court has “evolved the practice of appointing commissioners for the purpose of gathering facts and data in regard to a complaint of breach of a fundamental right made on behalf of the weaker sections of society.”

Thank You