INTERNATIONAL ORGANISATIONS, INTERNATIONAL LAW AND NEGOTIATION

Intro

At the outset I would like to thank Professor Eghosa E Osaghae, Director General, Nigerian Institute of International Affairs for giving me the opportunity to address this distinguished audience. This lecture is a part of the program being done by the NIIA and the Peace Building Development Consult (PBDC) hosting the Foreign Policy School.

What is an International Organisation?

The complexities of the world and the variety of issues that each country faces, may not necessarily be something that the national laws and abilities would be able to effectively comprehend or address. National borders are not respected by transcending problems like terrorism, climate change, drug trafficking, pandemics and so on. No state can work in isolation. Rules are required to be framed for sovereigns to interact and to resolve differences amongst themselves. There are also issues that need regulation for civilized and stable interactions, which need to be worked out and agreed to by the countries. Global commons which are applicable for all countries are to be deliberated and common ground found. These requirements for international interactions led to the birth of International Organizations.

An international Organisation, is a collection of countries that come together for a particular purpose defining the mandate of the organization and investing in it a legality that is agreed to by the participating countries. It is also known as an intergovernmental Organisation or an international institution. It can be established by a treaty, or under by international law. The best examples are the United Nations, Organisation for Security and Co-operation in Europe (OSCE), ECOWAS, Bank for International Settlements (BIS), Council of Europe (COE), International Labour Organisation (ILO) and International Criminal Police Organisation (INTERPOL), the World Health Organisation etc. In addition to the member states, it may also include other entities, such as other international organisations, firms, and non-governmental organisations. Additionally, entities (including states) may hold observer status. Intergovernmental organisations are an important aspect of public international law.

Here we need to make distinctions between legally framed International Organizations, Groups like G20, G7, Quad etc and non-governmental organisations NGOs like the World Organisation of the Scout Movement, International Committee of the Red Cross and Médecins Sans Frontières, as well as lobby groups that represent the interests of multinational corporations. International organisations must also be distinguished from blocs established through treaties such as the North American Free Trade Agreement, or the General Agreement on Tariffs and Trade before the establishment of the World Trade Organisation.

International organisations differ in function, membership, and membership criteria. They have various goals and scopes, often outlined in the treaty or charter. Some IOs developed to fulfil a need for a neutral forum for debate or negotiation to resolve disputes. Others developed to carry out mutual interests with unified aims to preserve peace through conflict resolution and better international relations, promote international cooperation on matters such as environmental protection, to promote

human rights, to promote social development (education, health care), to render humanitarian aid, and to economic development. Some are more general in scope (the United Nations) while others may have subject-specific missions (such as INTERPOL or the International Telecommunication Union and other standards organisations).

The first and oldest international organisation, established employing a treaty, and creating a permanent secretariat, with a global membership, was the International Telecommunication Union, founded in 1865. The first general international Organisation, addressing a variety of issues, was the League of Nations, founded on 10 January 1920 with a principal mission of maintaining world peace after World War I. The United Nations followed this model after World War II, and the charter was signed on 26 June 1945, in San Francisco, at the conclusion of the United Nations Conference on International Organisation, and came into force on 24 October 1945.

Common types of IOs: International Organisations can broadly be classified as:

Worldwide or global organisations These are generally open to nations worldwide, as long as certain criteria are met. This category includes the United Nations (UN) and its specialized agencies, the World Health Organisation, the International Telecommunication Union (ITU), the World Bank, and the International Monetary Fund (IMF). It also includes globally operating intergovernmental organisations that are not an agency of the UN, including for example, the Hague Conference on Private International Law, a globally operating intergovernmental Organisation based in The Hague and The International Criminal Court that adjudicates crimes defined under the Rome Statute.

Cultural, linguistic, ethnic, religious, or historical organisations These are open to members based on some cultural, linguistic, ethnic, religious, or historical link. Examples include the Commonwealth of Nations, Arab League, Organisation Internationale de la Francophonie, Community of Portuguese Language Countries, International Organisation of Turkic Culture, Organisation of Islamic Cooperation, and Commonwealth of Independent States (CIS).

Economic organisations These are based on macro-economic policy goals with some being dedicated to free trade and reduction of trade barriers, e.g. World Trade Organisation, International Monetary Fund. Others are focused on international development. International cartels, such as OPEC, also exist. The Organisation for Economic Co-operation and Development (OECD) was founded as an economic-policy-focused organisation. An example of a recently formed economic IO is the Bank of the South.

Educational organisations These organisations are centred around tertiary-level study. EUCLID University was chartered as a university and umbrella Organisation dedicated to sustainable development in signatory countries; United Nations University researches pressing global problems that are the concern of the United Nations, its peoples and Member States.

Health and Population Organisations These organisations are based on common perceived health and population goals. These are formed to address those challenges collectively, for example the intergovernmental partnership for population and development Partners in Population and Development.

Regional organisations These organisations are open to members from a particular continent or other specific region of the world. This category includes the Economic Community of West African States (ECOWAS), European Union (EU), African Union (AU), Association of Southeast Asian Nations (ASEAN), South Asian Association for Regional Cooperation (SAARC) etc.

Benefits and Challenges

The world of International Organisations is rich and varied, engaging in normative activities that differ in scope, reach and status.

Major Benefits

- Provides large-scale cooperation as against cumbersome bilateral agreements. They underpin collective action in different ways, including through developing and managing common rules through a wide variety of international instruments.

- They offer platforms for continuous dialogue on and anticipation of new issues; help establish a common language; facilitate the comparability of approaches and practices; develop international legal and policy instruments; and offer resolution mechanisms in case of disputes.

- Help address, cross-border issues. Multi-dimensional, transnational policy issues include tackling climate change and other environmental problems, managing health threats such as pandemics, fighting tax evasion and avoidance, strengthening financial market and economic stability, underpinning fair trade, and addressing the impacts of new technologies that erase distances and borders, among others.

- Consistency in rules among countries also helps reduce costs and improve the conditions for cross-border transactions. Even when domestic solutions are more appropriate, concerted action can help gather essential information and share practices.

Challenges

- One of the biggest challenges that these organisations face is adapting to the changing world and growing technologies. Most of the older organisations like the United Nations, World bank and IMF have been founded on hierarchies and global realities that do not represent the realities of the present day and age. These organisations do not always meet the aspirations of all the countries of the world.

- Global Common versus country’s interests. Another major challenge is overcoming individual interests and priorities in the decision-making process. Most of the International Organisations face this challenge when nations are unable to overcome individual interests for the overall common good.

- The aforesaid is further exacerbated when the membership of organization increases bringing in a variety of viewpoints and interests that makes it difficult to reach a consensus on issues involving conflicting interests.

- Multiplicity of instruments. International Organisations bring out broad range of normative instruments. These rules form the critical pillars of an effective global governance system. However, the multiplicity of instruments may be difficult to navigate for users, including the policy makers and legislators that may have to implement them in their own jurisdictions.

- Willingness to implement. Many international organisations lack the power to have a meaningful impact in the international political and economic system. Most IOs rely on member States will to cooperate and contribute resources to their course. Being members need not necessarily lead to full execution of the mandates at all times.

- Funding. International organisations are funded through contributions from member states, and this sometimes leads to the donor state trying to influence the decision-making process of these organisations for their benefit.

Example of UN Security Council

Each of these benefits and challenges are visible in the functioning of the United Nations and particularly its Security Council. Nearly eight decades after its creation, the Security Council retains the same five permanent members (P5)—China, France, Russia, the United Kingdom, and the United States. Since 1945, however, major players like India, Nigeria Japan, Brazil, Germany and many others have emerged, but this has not resulted in the expansion of the Security Council to reflect the changed realities. Even as the UN's overall membership has nearly quadrupled (from fifty-one to 197 member states), the council's composition has expanded only once, in 1965, when the addition of four elected seats grew the council from eleven to fifteen members.

In December 1992, the General Assembly created an open-ended working group to review equitable representation on the council. More than three decades later, the body continues to meet, with no tangible results. In October 2008, the UN formally authorized intergovernmental negotiations on the "question of equitable representation and increase in the membership of the Security Council." After fifteen years, the diplomatic impasse persists in part because there has been no consensus on the process. There is an urgent requirement to have increased representation from developing nations in both the permanent and non-permanent membership categories of the UNSC.

International Law

International law, also known as public international law and the law of nations, is the set of guidelines, norms, and standards usually forming the default behaviour between states. It establishes normative guidelines and a common conceptual framework for states across a broad range of domains, including war and diplomacy, economic relations, and human rights. International law differs from state-based

domestic legal systems in being primarily, though not exclusively, applicable to states, rather than to individuals, and operates largely through consent.

The modern concept of international law traces its to the Ancient Romans. The sources of international law are listed in Article 38(1) of the Statute of the International Court of Justice. These categories, in the order of priority are, international treaties, customary international law, general legal principles and judicial decisions and the teachings of prominent legal scholars as "a subsidiary means for the determination of rules of law". General principles of law have been defined in the Statute as "general principles of law recognised by civilized nations" but there is no academic consensus about what is included within this scope. They are considered to be derived from both national and international legal systems. The relationship of general principles to treaties or custom has generally been considered to be "filling the gaps" although there is still no conclusion about their exact relationship in the absence of a hierarchy.

Although international law may also be reflected in international comity, the practices adopted by states to maintain good relations and mutual recognition, such traditions are not legally binding. However, when States choose to not abide by international law, and even to breach a treaty, they can be met with disapproval by others and in some cases coercive action ranging from diplomatic and economic sanctions to war.

The relationship and interaction between a national legal system and international law is complex and variable. National law may become international law when treaties permit national jurisdiction to supranational tribunals such as the European Court of Human Rights or the International Criminal Court. Treaties such as the Geneva Conventions require national law to conform to treaty provisions. National laws or constitutions may also provide for the implementation or integration of international legal obligations into domestic law.

The modern term "international law" was originally coined by Jeremy Bentham in his 1789 book Introduction to the Principles of Morals and Legislation to replace the older law of nations, a direct translation of the late medieval concepts of ‘Jus Gentium’ which is Latin for ‘Law of Nations'. The definition of international law has been long debated with some referring specifically to relationships between states, which has been criticised for its narrow scope, and others as "a law between sovereign and equal states based on the common consent of these states". The later definition has largely been adopted by international legal scholars.

There is a distinction between public and private international law; the latter is concerned with whether national courts can claim jurisdiction over cases with a foreign element and the application of foreign judgements in domestic law, whereas public international law covers rules with an international origin. Another term, transnational law, is sometimes used to refer to a body of both national and international rules that transcend the nation state, although some academics emphasise that it is distinct from either type of law. It is broadly defined as "all law which regulates actions or events that transcend national frontiers".

A more recent concept is supranational law, which was described in a 1969 paper as "a relatively new word in the vocabulary of politics". Systems of supranational law arise when nations explicitly cede their right to make decisions to this system's

judiciary and legislature, which then have the right to make laws that are directly effective in each member state. This has been described as "a level of international integration beyond mere inter-governmental, yet still short of a federal system". The most common example of a supranational system is the European Union.

Negotiation

For the purpose of this lecture, we will restrict ourselves to interactions between states, governed broadly by International Law. Negotiation is the process, primarily through dialogue, to resolve conflicts and differences or to establish norms of interactions for realization of a common interest, between two sovereigns. Having negotiated, States can come to an agreement that can be given legal weight through ratifications and adjusting their internal laws, which would then provide a platform for future interactions, as well as settlement of disputes arising out of the implementation of such agreements, through conciliation, mediation, inquiry, arbitration, reference to international or regional organisations, or judicial settlement, etc. without resorting to Force.

The other form of negotiation is at an International, plurilateral or multilateral organisation that endeavours to establish a global common. States voluntarily subject themselves to negotiations under these umbrellas since it benefits them and they would also be in a position to influence the outcome with a view to safeguarding their national interests. Typically, multilateral negotiations are long drawn out so as to reach the common ground that could be universally applicable – in a way, the least opposed understanding or agreement.

Decision to Negotiate

First, the States should agree to negotiate to arrive at a common ground. States should exhibit their will to resolve a conflict through peaceful means or to cooperate in areas that would serve their national interest. Even if negotiation does not produce agreement, it does afford the disputing parties the opportunity to lessen tensions and to learn more about each other's interests, positions, personalities, and problems.

Is there any International Law that governs negotiations. While negotiation is not spelt out, Article 2 of the UN Charter advocates that all Member States of the United Nations should, "…settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered." This forms the bedrock of the International Law that obligates the States to enter into negotiations when there is a dispute with another sovereign, so that international peace and security is maintained.

Further, the International Court of Justice (ICJ) has held that states are obligated to negotiate in certain situations like disputes involving situations where each possesses legal rights which can only be defined in relation to the legal rights of the other. Thus, once it is determined that customary or conventional international law creates rights for more than one state with respect to a particular matter, then, in case of a dispute involving that matter, the states concerned are obliged to enter into negotiations to resolve their differences.

However, there may be several obstacles for a successful conduct of negotiation. A major obstacle frequently preventing a state from engaging in international negotiations is the internal political situation of the state. The government may not be strong enough to undertake the resolution of an international dispute through negotiations or have the support needed to negotiate the particular position it favours. In order to enter into negotiations, a government must formulate a position that will command the necessary internal political support or undertake to develop the political support necessary for its position. There is continuous interaction between the domestic political situation with respect to support for the government's position toward negotiations and the government's actions at the international level.

The international negotiation process, viewed as a whole, is the principal vehicle for cooperation between states. Whether negotiation occurs within the context of established international structures, such as the U.N or is organised on an ad hoc basis to deal with particular problems, the interaction of states through negotiations concluding in binding international agreements represents the international community of states' regular way of conducting its business.

Not only has the subject matter of international negotiations and agreements expanded exponentially, but the way in which negotiations are structured and conducted has also changed greatly. The hallmarks of present-day negotiations are continuity and interrelatedness. Conference diplomacy and standing preparatory bodies, like the International Law Commission, are becoming increasingly important. Rather than each negotiation being a unique event to deal with a particular, discrete problem, modern day negotiations are characterized by their length, complexity, continuity, and inclusiveness. It is essential that the law of treaties evolve to reflect these changing realities.

The idea that states are under an obligation to negotiate, at least in those situations where the extent of their rights can only be defined by reference to the rights of other states, is both the pragmatic and logical consequence of the interdependence of states in the modem world and of the general recognition, by states, practitioners, and students of international relations of that interdependence. International Law and International Organisations provide the structures to facilitate negotiations.

Thank you.

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