B.A. DEFENCE STUDIES

Year	Subject Title	Sem.	Sub Code
2018 -19 Onwards	CORE XV: INTERNATIONAL LAW	VI	18BDS63C

Objective:

The laws that govern war and peace are outlined to the learners in this course.It is bound to create an awareness amongst them about the legality or otherwise of events that happens in the global arena.

Credit: 5

UNIT IINTRODUCTION

1. Definition, basis of International Law
2. Nature, Source and Codification.
3. Relationship between International Law and Local Law

UNIT II INTERNATIONAL LAW& DISPUTES

1. Settlement of International Disputes
2. War, its legal Character and Effects
3. Enemy Character Termination of War and Postiliminium.

UNIT-II

TOPIC-1

About International Law and Dispute Settlement

International dispute settlement plays a fundamental role in maintaining the fabric of the international legal order, reflecting the desire of States, and increasingly non-State actors, to resolve their differences through international dispute procedures and other legal mechanisms. This edited collection focuses upon the growth and complexity of such legal methods, which includes judicial settlement (courts and tribunals), arbitration and other legal (or what might be termed 'extra-legal') means (international organisations, committees, inspection panels, and ombudsmen). In this

important collection, such mechanisms are compared and evaluated side-by-side to provide, in one volume, a detailed and analytical account of the current framework. Ranging from key conceptual issues of proliferation of legal mechanisms and the associated risks of fragmentation through to innovations in dispute settlement mechanisms in many topical areas of international law, including international trade law, collective security law and regional law, this collection, written by leading international lawyers, provides a major study in the ongoing trends and emerging problems in this crucial area of international law.

This edited collection is published to mark the retirement of Professor John Merrills, Emeritus Professor of International Law, University of Sheffield, who has written widely on international law and human rights law, but is probably best known for his work on the settlement of international disputes, evidenced by the enduring appeal of his leading text International Dispute Settlement, now in its fourth edition.

Settlement of disputes in International Law

This article is concerned with the various ways through which disputes are resolved in the international framework. There are binding as well as non-binding procedures available within the international order for the peaceful resolution of disputes and conflicts. Basically the techniques of conflict management fall into two categories- diplomatic procedures and adjudication. This article also talks about the landmark case of Kulbhushan Jadav, the peaceful settlement of the Farakka Barrage gunfire issue, the role of International court of Justice and the Naulilaa case. These cases along with other examples have been added for a better understanding of the topic.

Legal and Political Disputes

In order to understand the process of settlement of disputes in the International substructure, there is a prima facie need to understand the meaning of 'disputes.' The dispute has a wide range of interpretation and hence it becomes to give a precise definition of the same. In a rudimentary stage, it means a disagreement between two persons, on either a point of law or fact. The prerequisite of having a dispute is that the parties involved must show opposing views.

There are two grounds on which a disagreement can arise between two parties; political or legal. The distinction between the two is purely subjective. It is primarily the attitude of the states that decide whether a dispute is a legal or a political one. Owing to the involvement of the states, it becomes difficult to distinguish the two. For a dispute to be regarded as a legal one, States must desire to settle it on the basis of law, or else it becomes a political dispute.

However, the distinction between the two becomes extremely important because the procedure for settlement of disputes as laid down in International Law deals only with the legal disputes. In Nicaragua v. Honduras, a case concerning Border and Transborder Armed Action, the court clearly stated that it is only concerned with the legal aspects of disputes. If a case so arises involving both political and legal aspects, the court cannot concern itself merely with the political aspect. In an advisory opinion given in the Legality of the Threat or Use of Nuclear Weapons that the presence of a political aspect along with the legal aspect does not deprive the case of its a legal question. However, when a question arises whether the disputes of the State are legal or not, then such a

question is solved in accordance with Article 36, para 6 of the Statue, that says the matter shall be settled by the decision of the court. Therefore in International Law 'dispute' must be taken in a restricted sense as it does not concern all forms of disputes but only legal disputes. In International Law, there have been two methods devised for settling legal disputes- amicable or pacific means of settlement, and coercive or compulsive means of settlement.

UNIT-II

TOPIC-2

LEGAL CHARACTER AND EFFECTS OF WAR

aw of war is that part of International law that manages the commencement, conduct, and end of the war itself. Its point is to restrict the endured agony caused to warriors and to the people who might be portrayed as the casualties of war that is, the non-combatant regular folks and those who aren't, at this point, ready to partake in warfare. In this way, the injured, the wiped out, the wrecked and detainees of war likewise require assurance or some sort of protection from the law. The law of war has likewise been taken to incorporate constraints set upon states on their utilization of outfitted power of the armed force. No arrangement of law can forestall a state or even a person from utilizing power in self-preservation, though it has a few impediments. Foundations of the global law of war are in varied form of Law by Treaty, Law by Custom and commencing hostilities.

Geneva Conventions

The term 'War', left with little essentialness after the United Nations Charter of 1945, in article 2(4), stated that 'the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations'. Moreover, all the Geneva Conventions are applicable to armed conflicts, regardless of whether they are formally called wars. In the Falkland Islands struggle in 1982, for instance, the United Nations Security Council, in Resolution 502, censured the Argentine intrusion of the islands as a break of the peace, despite the fact that neither Argentina nor the United Kingdom had proclaimed war. The rules of war or international humanitarian law, as it is known officially, have a lot of global standards that set out what can and can't be possible during an armed conflict. The principle reason for international humanitarian law (IHL) is to keep up some mortality in outfitted armed conflicts, to sparing lives and decreasing misery. To do that, IHL manages how wars are battled, adjusting two angles: debilitating the foe and limiting torment. The standards of war are universal. The Geneva Conventions (which are the core component of IHL) have been confirmed by every one of the 196 states. Not many global arrangements have this degree of sponsorship.

Hague Conventions

There were officially two Hague conventions; first in the year 1899 and then in 1907. The Hague Conventions were among the first principal statements for the laws of war and atrocities in the structure of secular international law. The 1899 Hague Convention laid down the following points: Pacific Settlement of International Disputes Incorporated the formation of the Permanent Court of Arbitration. Laws and Customs of War on Land – Contains the laws to be utilized in all war ashore between signatories. It itemizes the treatment of detainees of war and incorporates the arrangements of the Geneva Convention of 1864. Adaptation to Maritime Warfare of Principles of

Geneva Convention of 1864 Accommodates the assurance protection of hospitals ships and involves them to treat the injured and wrecked mariners of every single contentious party. The Second Hague Conference, in 1907, instigated a few significant progressions from the 1899 Convention. The Second Peace Conference was held from 15th June to 18th October 1907. It was called at the recommendation of U.S. President Theodore Roosevelt in 1904, but it was conceded due to the yet another war between Russia and Japan.

Effects of War

It is plausible to assess monetary expenses of the war, cost of the military, and similar warfare activities that follow. Be that as it may, it is more challenging to appraise the psychological expenses of war – the agony of death, enduring the suffering throughout and after the war, dreaded fear and incapacity. War can leave fighters and regular people damaged for the rest of their lives. Recently, post-traumatic stress syndrome is all the more recognised and acknowledged; however putting an expense on how war adversely influences those included, is difficult to do.

Children stuck in between such horrifying conditions, with the influence by war, are frequently recognised as being brutalised and the consequence is their harmed and distorted psychologies and morality and reduced humankind. The United Nations Children's Fund has expressed that 'time does not heal trauma' for a huge number of such kids, who are regularly depicted as the lost generation. The medical literature is loaded with comparably clearing explanations that need legitimacy and are pathologizing and stigmatising. In addition, individuals being studied have not given assent for their emotional well-being to be externalized in public and portrayed as undesirable, which brings up moral issues yet again. Addressing the standard way of thinking that interstate warfare is on the downhill; while war has become less deadly, it has not really become less extreme. This brings up issues about basic understandings of wide patterns in strife recurrence and seriousness just as inquiries regarding best practices for estimating struggle severity.

Conclusion

Setting aside the genuine human cost, war has additionally resulted in a lot of monetary expenses – loss of structured buildings, the framework of various infrastructures, a decrease in the working populace, vulnerability, ascend in the debts and interruption to average economic movement. Perceiving that not all negotiated settlements are made equivalent, many researchers have additionally started to analyse how variety in power-sharing arrangement provisions impacts democratization. The discussion stays on this theme too, be that as it may. While some contend that power-sharing encourages democratization by producing exorbitant signs that make the security essential for democratization, others contend that they subvert democratization by boosting ideological groups to look for help just from their own wartime bodies electorate and sabotaging public trust in legislative establishments.

Thoughts of mending, reparation, and justice to address the social and moral outcome of war shift among societies and over time. Social memory is the space of commemorative services, truth commissions, and so on that assumes a job. However so, too remain quite about the past, as so many, in fact, all the war case shows. This quietness doesn't imply that the battles are overlooked it shows hesitance and conservation of energy for the dire errand of modifying. With 90% of ongoing

wars being civil wars, dealings between citizens about their sentiments of question or retribution and about issues of duty, culpability and compensation should normally be realistic.

THE TERMINATION OF WAR.

THE termination of war must, at the outset, be distinguished from the termination of hostilities or actual warfare. As has been said, wax: is "not the mere employment of force, but the existence of the legal condition of things in which rights are or may be prosecuted by force. Thus, if two nations declare war one against the other, war exists, though no force whatever may as yet have

been employed."1 Similarly, it follows that, although actual hostilities have ceased, the status of war may continue until terminated in some regular way recognized by international law as sufficient for that purpose. Actual hostilities are frequently terminated as the result of the signing of an armistice or a capitulation which may take the form of a protocol or preliminary agreement which regulates the relations between the belligerents until the definitive treaty of peace is signed and ratified.There is no question that the President has full power to bring about the suspension of hostilities on his sole authority. Thus, during the Spanish-American War, actual hostilities were suspended by the protocol of August 12, 1898, (which was not submitted to theSenate) and by Presidential proclamation of the same date.2 But,as the Supreme Court pointed out: "A state of war did not in law cease until the ratification in April, 1899, of the treaty of peace. ' A truce or suspension of arms,' says Kent, 'does not terminate the war, but it is one of the commercia belli which suspends its operations . At the expiration of the truce, hostilities may recommence without any fresh declaration of war'."3 With reference to this point, the attorney-general of the United States took the same view, declaring that "notwithstanding the signing of the protocol and the suspension of hostilities, a state of war between this country and Spain still exists. Peace has not been declared and cannot be declared except in pursuance of the negotiations between the peace commissioners authorized by the protocol."4 Moreover, a recognition of the continuation of the war in spite of the suspension of hostilities and the signing of the protocol was expressed in the definitive treaty of peace which, in the preamble, mentioned the desire of the two parties "to end the war now e~isting between the two countries." The principle thus upheld by the Supreme Court, by the Attorney General and by the treaty-making authority would seem to be too well established to be questioned. Nevertheless, in view of the lengthy delay which has followed the signing of the armistices with Germany and Austria-Hungary in November, 1918, due to the failure of the President and Senate to agree upon the terms of a definitive treaty, some question has been raised as to whether our status since the suspension of hostilities is one of war or of peace. Diplomatic relations with 'the Central Powers remain severed, but commercial relations with Germany have been to some extent resumed.e President Wilson, in transmitting to Congress on November II,1918, the terms of the armistice, made the statement that "the war thus comes to an end, for having accepted these terms of the armistice it will be impossible for the German command to renew it."The President could scarcely have intended by this statement to indicate his belief that the war h~d been legally terminated, but merely that for practical purposes actual warfare was at an end. The above statement of the President, however, was construed by a lower·Federal court as equivalent to an official proclamation by the President of the end of the war. The question before the court involved the construction of a provision of an act of Congress of 1917 which made criminal certain conduct if

committed "during the present war." The court declined to order the penalty inflicted, on the ground that the war had in fact ended upon the announcementof the President. This, however, does not seem to have been a well-considered case.Even though the statement of the President had been intended as an official proclamation of the legal end of the war, it is somewhat doubtful whether the President could thus, by his sole act, upon the mere signing of an armistice with a foreign belligerent, bring the war to a legal termination. This, however, does not seem to have been a well-considered case. Even though the statement of the President had been intended as an official proclamation of the legal end of the war, it is somewhat doubtful whether the President could thus, by his sole act, upon the mere signing of an armistice with a foreign belligerent, bring the

war to a legal termination. · It is true that the Supreme Court seems to have held that the Civil War was ended in different states on different dates by Presidential proclamations.[8] In case Congress hadby act or joint resolution adopted a different date as the end of theCivil War from that mentioned in the President's proclamation, it is not clear that the court would not have followed the determination of Congress rather than of the President. Congress, however, in aptatute continuing a certainiate of pay to soldiers in the army did so "for three years after the close of the rebellion, as announced by the President" in his proclamation.[9] Congress thus adopted the date set by the President, and the Supreme Court, in other cases, seems to take the actions of both the President and Congress into consideration in determining the date of the conclusion of the Civil War.[10] Even though it should be held that the proclamation oi the President alone was sufficient to terminate the Civil War, nevertheless it is to be remembered that that war, though having in some of its aspects the characteristics of a war between independent states, was in other respects a mere domestic insurrection which was suppressed by the overthrow ·of the insurrectionary government. Hence the method to be pursued in determining the date of the conclusion of the Civil War might well be different from that to be followed in the case of a foreign war in which the foreign belligerent still has a government in existence at the termination of hostilities. At any rate, as indicated above, in the case of the armistices with the Central Powers, the President's announcement to Congress is not to be considered as an official proclamation of the legal termination of the war. Congress has given evidence by its acts that it did not regard the signing of the armistices of r9r8 and the announcement by the President as bringing the war to a legal termination. Thus, after the armistice of November II, Congress passed and on November 2r, 1918, the President approved the War-time Prohibition Act, which made illegal the sale of distilled spirits for beverage purposes "after June 30, 1919, until the conclusion of ¢.e present war and thereafter until the termination of demobilization, the date of which shall be determined and proclaimed by the President"[11] The validity of this act was attacked in the Supreme Court of the United States on the ground, among others, that demobilization had been effected, that the war had been concluded, .and that thereby the war emergency upon which the operation of the act had been predicated was removed. . The court, however, denied the contention and upheld the validity and continued operation of the act of Congress in spite of the cessation of hostilities. "In the absence," said the court, "of specific provisions to the contrary the-period of war has been held to extend·to the ratification of the Treaty of Peace or the proclamation of peace. Conclusion of the war' dearly did not meancessation of hostilities; because the act was approved ten days after hostilities had ceased upon the signing of the armistice. Nor may we assume that Congress intended by that phrase to designate the date when the Treaty of Peace should. be signed at Versailles or elsewhere by German and American representatives, since by the Constitution a treaty is only a proposal until approved by the Senate." The court also held that the President's

statement that "the war thus comes to an end" was meant in a popular sense and was not an official proclamation of the termination of the war.12 In addition to the War-time Prohibition Act, many other acts of Congress passed during the World War provided that they should remain in force until - the termination of the war or until a varying length of time thereafter. Thus, in the Trading with the Enemy Act of 1917, it is provided that "the words 'end of the war' as used herein shall be deemed to mean the date of proclamation of exchange of ratifications of the treaty of peace, unless the President shall, by proclamation, declare a prior date, in which case the date so proclaimed shall be deemed to be the 'end of the war' within the meaning of this act.