PROJECT REPORT

ON

EVOLUTION OF INTERNATIONAL LAW

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DECLARATION

I hereby declare that the project work entitled “Evolution of International Law” submitted to the Hidayatullah National Law University, Raipur is the original work done by me under the guidance of Ms. Anukriti Mishra, Hidayatullah National Law University, Raipur and this project has not performed on the basis for the award of any Degree or diploma and similar project if any.

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I, Shashank Suresh, feel myself elated, as it gives me immense pleasure to come with the work on topic, “Evolution of International Law”. Words fail to express my deep sense of glee to my teacher, Ms. Anukriti Mishra, who enlightened me on my every difficulty in completion of task. I acknowledge the blessings and support which my mother and father gave in finishing of this task.

I would like to forward my hearty thanks to my University and Vice-Chancellor for providing all the necessary requirements which aided me to achieve my goal. I also thank Librarian HNLU, Raipur, for assisting me and allowing me to use the library of the University.

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Much Obliged,

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INTRODUCTION

Law is that element which binds the members of the community together in their adherence to recognised values and standards.

The foundations of international law (or the law of nations) as it is understood today lie firmly in the development of Western culture and political organization. The growth of European notions of sovereignty and the independent nation-state required an acceptable method whereby inter-state relations could be conducted in accordance with commonly accepted standards of behaviour, and international law filled the gap. But although the law of nations took root and flowered with the sophistication of Renaissance Europe, the seeds of this particular hybrid plant are of far older lineage.
RESEARCH METHODOLOGY

Research Methodology is systematic approach and methods of study concerning for obtaining new knowledge and generalization and the formulation of theories.

- **Nature And Scope Of Study**-

   Non empirical research work has been used in this project as the material in this project mainly consists of the work of people which is already done. The project is basically doctrinal in nature. Citations are also provided wherever they were necessary.

- **Sources Of Data**-

   This Project is made on the basis of secondary sources of information, which include:

   1) Books, and
   2) Information from the internet.
Early Origins

While the modern international system can be traced back some 400 years, certain of the basic concepts of International Law can be discerned in political relationships thousands of years ago. Around 2100 BC, a solemn treaty was signed between the rulers of Lagash and Umma, the city-states situated in the area known to historians as Mesopotamia. It was inscribed on a stone block and concerned the establishment of a defined boundary to be respected by both sides under pain of alienating a number of Sumerian gods. The next major instance known of an important, binding, international treaty is that concluded over 1,000 years later between Rameses II of Egypt and the king of Hittites for the establishment of eternal peace and brotherhood.

However, the predominant approach of ancient civilisations was geographically and culturally restricted; there was no conception of an international community of states co-existing within a defined framework. The scope for any International Law of states was extremely limited.

The era of classical Greece, from about the sixth century BC and onwards has been of overwhelming significance for European thought. The value of Greece in a study of international law lies in the philosophical, scientific, and political analyses. Numerous treaties linked the city-states together in a network of commercial and political associations. Rights were often granted to citizens of the states in each other’s territories and rules regarding the sanctity and protection of diplomatic envoys developed.

The Romans had a profound respect for organisation and the law. The early Roman law was called jus civile. It applied only to the Roman citizens. It was formalistic and hard and reflected the status of a small, unsophisticated society rooted in the soil.

It was totally unable to provide a relevant background for an expanding, developing nation. This need was served by the creation and progressive augmentation of the jus gentium. This

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1 D.J. Bederman, International Law in Antiquity, Cambridge, 2001
2 Nussbaum, Law of Nations, pp. 1-2
3 Ibid. pp. 2-3
provided simplified rules to govern the relations between foreigners and between foreigners and citizens. The instrument through which this particular system evolved was officially known as the **Praetor Peregrinus**, whose function it was to oversee all legal relationships, including bureaucratic and commercial matters, within the empire.

The progressive rules of the *jus gentium* gradually overrode the narrow *jus civile* until the latter system ceased to exist. Thus, the *jus gentium* became the common law of the Roman Empire and was deemed to be of universal application.

One of the most influential of Greek concepts taken up by the Romans was the idea of Natural Law.\(^5\) This was formulated by the Stoic philosophers of the third century BC and their theory was that it constituted a body of rules of universal relevance. Such rules were rational and logical, and because the ideas and precepts of the ‘law of nature’ were rooted in human intelligence, it followed that such rules could not be restricted to any nation or any group but were of worldwide relevance. This element of universality is basic to modern doctrines of international law.

The classic rules of Roman law were collated in the **Corpus Juris Civilis**, a compilation of legal material by a series of Byzantine philosophers completed in AD 534.\(^6\)

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\(^6\) M. De Taube, ‘L’Apport de Byzance au Developpement du Droit International Occidental’.
GROWTH OF ISLAM

Islam’s approach to international relations and law was predicated upon a state of hostility towards the non-Moslem world and the concept of unity, Dar al- Islam, as between Moslem countries. Humane rules of warfare were developed and the ‘peoples of the book’ (Jews and Christians) were treated better than non-believers, although in an inferior position to Moslems. Once the period of conquest was over and power was consolidated, norms governing conduct with non-Moslem states began to develop. The law dealing with diplomats was founded upon notions of hospitality and safety (aman), while rules governing international agreements grew out of the concept of respecting promises made.7

THE MIDDLE AGES AND THE RENAISSANCE

The Middle Ages were characterised by the authority of the organised Church and the comprehensive structure of power that it commanded. All Europe was of one religion, and the ecclesiastical law applied to all, notwithstanding tribal or regional affiliations. For much of the period, there were struggles between the religious authorities and the rulers of the Holy Roman Empire.

Of particular importance during this era were the authority of the Holy Roman Empire and the supranational character of canon law. Nevertheless, commercial and maritime law developed apace. English law established the Law Merchant, a code of rules covering foreign traders, and this was declared to be of universal application.

Throughout Europe, mercantile courts were set up to settle disputes between tradesmen at the various fairs, and while it is not possible to state that a Continental Law Merchant came into being, a network of common regulations and practices weaved its way across the commercial fabric of Europe and constituted an embryonic international trade law.

The early theorists of international law were deeply involved with the ideas of Natural Law and used them as the basis of their philosophies. Included within that complex of Natural Law principles from which they constructed their theories was the significant merging of Christian and Natural Law ideas that occurred in the philosophy of St Thomas Aquinas. He maintained that Natural Law formed part of the law of God, and was the participation by rational creatures in the Eternal Law. It complemented that part of the Eternal Law which had been divinely revealed. Reason, declared Aquinas, was the essence of man and thus must be involved in the ordering of life according to the divine will. Natural Law was the fount of moral behaviour as well as of social and political institutions, and it led to a theory of conditional acceptance of authority with unjust laws being unacceptable. Aquinas’ views of the late thirteenth century can be regarded as basic to an understanding of present Catholic attitudes, but should not be confused with the later interpretation of Natural Law which stressed the concepts of natural rights.

11 Ibid., pp. 63–129
MODERN INTERNATIONAL LAW

The essence of the new approach to international law can be traced back to the Spanish philosophers of that country’s Golden Age. The leading figure of this school was Francisco Vitoria, Professor of Theology at the University of Salamanca (1480–1546). He demonstrated a remarkably progressive attitude for his time towards the Spanish conquest of the South American Indians and, contrary to the views prevalent until then, maintained that the Indian peoples should be regarded as nations with their own legitimate interests. War against them could only be justified on the grounds of a just cause. International law was founded on the universal law of nature and this meant that non-Europeans must be included within its ambit.

It is, however, Hugo Grotius, a Dutch scholar, who towers over this period and has been celebrated as the father of international law. He was born in 1583 and was the supreme Renaissance man. A scholar of tremendous learning, he mastered history, theology, mathematics and the law. His primary work was the De Jure Belli ac Pacis, written during 1623 and 1624. It is an extensive work and includes rather more devotion to the exposition of private law notions than would seem appropriate today.

One of his most enduring opinions consists in his proclamation of the freedom of the seas. The Dutch scholar opposed the ‘closed seas’ concept of the Portuguese that was later elucidated by the English writer John Selden and emphasised instead the principle that the nations could not appropriate to themselves the high seas. They belonged to all. It must, of course, be mentioned, parenthetically, that this theory happened to accord rather nicely with prevailing Dutch ideas as to free trade and the needs of an expanding commercial empire.

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12 Preiser’s view that ‘there was hardly a single important problem of international law until the middle of the 17th century which was not principally a problem of Spain and the allied Habsburg countries’: Bernhardt, Encyclopedia, vol. VII, p. 150.
14 Mare Clausum Sive de Dominio Maris, 1635.
EVOLUTION OF INTERNATIONAL LAW

POSITIVISM AND NATURALISM

Following Grotius, but by no means divorced from the thought of previous scholars, a split can be detected and two different schools identified.

On the one hand there was the ‘naturalist’ school, exemplified by Samuel Pufendorf (1632–94), who attempted to identify international law completely with the law of nature; and on the other hand there were the exponents of ‘positivism’, who distinguished between international law and Natural Law and emphasised practical problems and current state practices. Pufendorf regarded Natural Law as a moralistic system, and misunderstood the direction of modern international law by denying the validity of the rules about custom. He also refused to acknowledge treaties as in any way relevant to a discussion of the basis of international law. Other ‘naturalists’ echoed those sentiments in minimising or ignoring the actual practices of states in favour of a theoretical construction of absolute values that seemed slowly to drift away from the complexities of political reality. Positivism developed as the modern nation-state system emerged, after the Peace of Westphalia in 1648, from the religious wars. It coincided, too, with theories of sovereignty such as those propounded by Bodin and Hobbes, which underlined the supreme power of the sovereign and led to notions of the sovereignty of states. Elements of both positivism and naturalism appear in the works of Vattel (1714–67), a Swiss lawyer. His Droit des Gens was based on Natural Law principles yet was practically oriented. He introduced the doctrine of the equality of states into international law, declaring that a small republic was no less a sovereign than the most powerful kingdom, just as a dwarf was as much a man as a giant. By distinguishing between laws of conscience and laws of action and stating that only the latter were of practical concern, he minimised the importance of Natural Law. Ironically, at the same time that positivist thought appeared to demolish the philosophical basis of the law of nature and relegate that theory to history, it re-emerged in a modern guise replete with significance for the future. Natural Law gave way to the concept of natural rights.

15 Law of Nature and of Nations, 1672
17 Leviathan, 1651.
and whether such a theory was interpreted pessimistically to demand an absolute sovereign as Hobbes declared, or optimistically to mean a conditional acceptance of authority as Locke maintained, it could not fail to be a revolutionary doctrine. The rights of man constitute the heart of the American\textsuperscript{20} and French Revolutions and the essence of modern democratic society.

THE NINETEENTH CENTURY

The eighteenth century was a ferment of intellectual ideas and rationalist philosophies that contributed to the evolution of the doctrine of international law. The nineteenth century by contrast was a practical, expansionist and positivist era. The Congress of Vienna, which marked the conclusion of the Napoleonic wars, enshrined the new international order which was to be based upon the European balance of power. International law became Eurocentric, the preserve of the civilised, Christian states, into which overseas and foreign nations could enter only with the consent of and on the conditions laid down by the Western powers. Paradoxically, whilst international law became geographically internationalised through the expansion of the European empires, it became less universal in conception and more, theoretically as well as practically, a reflection of European values.21 This theme, the relationship between universalism and particularism, appears time and again in international law. This century also saw the coming to independence of Latin America and the forging of a distinctive approach to certain elements of international law by the states of that region, especially with regard to, for example, diplomatic asylum and the treatment of foreign enterprises and nationals.22

The International Committee of the Red Cross, founded in 1863, helped promote the series of Geneva Conventions beginning in 1864 dealing with the ‘humanisation’ of conflict, and the Hague Conferences of 1899 and 1907 established the Permanent Court of Arbitration and dealt with the treatment of prisoners and the control of warfare. Numerous other conferences, conventions and congresses emphasised the expansion of the rules of international law and the close network of international relations. In addition, the academic study of international law within higher education developed with the appointment of professors of the subject and the appearance of specialist textbooks emphasising the practice of states.

The First World War marked the close of a dynamic and optimistic century. European empires ruled the world and European ideologies reigned supreme, but the 1914–18 Great War undermined the foundations of European civilisation. Self-confidence faded, if slowly, the edifice weakened and the universally accepted assumptions of progress were increasingly doubted. Self-questioning was the order of the day and law as well as art reflected this. The most important legacy of the 1919 Peace Treaty from the point of view of international relations was the creation of the League of Nations. The old anarchic system had failed and it was felt that new institutions to preserve and secure peace were necessary. The League consisted of an Assembly and an executive Council, but was crippled from the start by the absence of the United States and the Soviet Union for most of its life and remained a basically European organisation.

The Permanent Court of International Justice was set up in 1921 at The Hague and was succeeded in 1946 by the International Court of Justice. The International Labour Organisation was established soon after the end of the First World War and still exists today, and many other international institutions were inaugurated or increased their work during this period.

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23 Nussbaum, Law of Nations, pp. 251–90.
Conclusion

International Law has evolved from the Roman civilization wherein a basic guideline governing the relationships between different states was evolved. It evolved with the principles of positivism and naturalism. Hugo Groitus came to be known as the father of international law. With the onset of League of Nations, a principle of acceptance between nations came to be established. With the dissolution of League of Nations and the development of United Nations, the laws governing the relationship between different states became stronger and the proper concept of an International Law evolved.
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