In its judgment on jurisdiction and admissibility in the case concerning border and transborder armed actions (*Nicaragua v. Honduras*), the international Court emphasised that the existence of jurisdiction was a question of law and depended upon the intention of the parties. In its deliberations, the Court will apply the rules of international law as laid down in Article 38 (treaties, customs, general principles of law). However, the Court may decide a case "*ex aequo et bono*", *i.e*., on the basis of justice and equity untrammeled by technical legal rules.

The 1982 Law of the Sea Convention, in force since 16th November 1994, contain an elaborate system of dispute settlement, in most cases it will lead to a binding third party decision in one form or another, with arbitration as the default procedure, if other mechanisms of dispute settlement fail. States retain their basic freedom to select the method of dispute settlement in a given case. They can choose other mechanisms than those provided for in Part XV of the convention.

The International Centre for Settlement of Investment Disputes (ICSID) was established by the convention on the settlement of investment disputes between states and nationals of other states, sponsored by the World Bank and entering into force in 1966. Its essential aim is to foster private foreign investment by providing a mechanism for settlement of investment disputes. The process of settlement is initiated by a request filed with the Secretary-General who registers the request unless he finds it to be manifestly outside the jurisdiction of the centre. The conciliation commission will clarify the issues and attempt to bring about an agreement, though its recommendations are not binding on the parties, and its work culminates in a report.

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THE CONCEPT OF STATE AND THE LIMITS BETWEEN INTERNATIONAL LAW AND MUNICIPAL LAW

By

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The term international law is used in contradiction to national Law national Law is set by the state and operates on the subjects of the state generally within the state's territorial limits international Law on the other hand does not emanate from the state; it exists even outside the state's territory and controls the state it self. International Law deals with states as legal and political entities it consists of the rules and principles which the whole society of states habitually expects its members to observe in their relations with one another. It seeks to deduce from these rules and principles the legal rights and obligations of states in any given situation. *Starke* defines International Law as "the body of law which is composed for the greater part of the principles and rules of conduct which states feel themselves bound to observe and therefore do commonly observe in their relations with each other .

According to *Oppenhein.* "The Law of Nations or international Law is the name for the body of customs and conventional rules which are considered legally binding on civilized states in their intercourse with each other." *Garner* in his introduction to Political Science defines a state as follows state as a concept of political science and constitutional Law is a community of persons more or less numerous permanently occupying a definite portion of territory independent of external control and possessing an organized Government to which the great body of inhabitants render habitual obedience"

According to this definition the essential elements of the state are four in number: population, territory, organization and unity. Such a state has capacity to enter into relations with other states. International Law imposes rights and duties upon the status. The states are thus the subjects of International Law. Classification of states is based upon the structural peculiarities of their Governmental organisation. A unitary state is one, the constituent units of which are not themselves States. A state is said to be unitary when it possesses a single sovereign organ exercising dominion over the entire territory comprised within the state. Judged by this test, Great Britain is a Unitary State. A confederation is constituted by a number of sovereign states forming a union by means of a treaty for purposes of mutual co-operation or defense. A Federal State has a more complicated political organization than a unitary state. It is a composite sate. It is a composite state and its constituent units are themselves states. The constituent units taken in isolation are capable of functioning as states for they also possess independent legislative machinery and ancillary agencies.

A federal state is a perpetual union of states in which sovereignty is distributed by the constitution between the constituent states and the federal Government set up by their union. In an imperial state the constituent states are strictly subordinate to the central and imperial Government, England with her colonies is an illustration of an imperial state. A state with full internal autonomy, but whose external affairs are regulated by a superior state is referred to as a Half-sovereign. A vassal state is a semi-sovereign state. The paramount power concedes internal autonomy and assumes international guardianship. Vassalage arises usually by conquest. A weak state may by surrender its external sovereignty to a stronger neighbour. Sikkim, before it became a part of the Indian Union in 1975 was a protectorate of India. A condominium comes into existence when two (or more) states jointly exercise jurisdiction over a particular territory without partitioning that territory.

Two States may by the accident of the rules of succession to their respective thrones become vested in one monarch who happens to be the heir to both the thrones. Such a Union is a personal union. From 1714 to 1837 the small state of Hanover in Germany and Great Britain were held by the same Crown. In a personal union the two states retain their separate international personality.

Real union: By a treaty two states may agree to have a common monarch. Austria and Hungary till the end of the First World War constituted a Real Union under a single monarch. By international agreement a neutralized state may be created. Belgium was a neutralised state before world war-1.The parties to the international agreement (Great Britain, France and Germany) guaranteed the independence of that state and imposed upon it the obligation to remain neutral in any war involving those powers. A neutral state is one which is not involved in a war between the belligerents concerned. Thus Spain was a neutral in the last world war.

Limits between International Law and Municipal Law

This distinction has a particular bearing on two matters :

(a) The breach of duty or non-performance by a state of some international rule of conduct which is alleged to give rise to responsibility;

(b) The authority or competence of the state agency through which the wrong has been committed.

The breach or omission must in ultimate analysis be breach of omission to conform to, some rule of international law. It is in general not open to any state to defend a claim by asserting that the particular state agency which actually committed the wrongful act exceeded the scope of its authority under municipal law. A preliminary inquiry as to the agency's authority under municipal law is necessary as a matter of course, but if, notwithstanding that the agency acted beyond

the scope of its authority, international law declares that the state is responsible; international law prevails over municipal law. A state may not invoke its municipal law as a reason for evading performance of an international obligation. According to the practice of Britain and India a rule of customary international Law requires specific adoption by legislation before any rights can be founded upon such law before a Municipal Court. The principle that international law is *ipso facto* part of the law of the land is not accepted. In England International Law without legislation by Parliament is not enforced by the Courts. In the U.S.A. the theory of automatic incorporation applies and rules of customary international law are applied as part of the municipal law without the need for specific legislative adoption. The legal position was stated as follows by *Gray*, J. in the paquete Habana and the Lola ((1899) 175U.S. 677). "*International law is part of our law and must be ascertained and administered by the Courts of justice of appropriate jurisdiction as often as questions of right depending on it duly presented themselves for determination*".

According to the practice of the United States International Law is part of the law of the land. As observed by *Marshall*, C.J in the Nereide ((1815) 9 Cranch 383) the Court is bound by the law of nations, which is a part of the law of the land. International law having its source in a treaty to which the united states is a party is regarded as a part of the law of the United States. In India the "incorporation" theory was affirmed by the Supreme Court in *Jolly Verghese v. Bank of Cochin*, AIR 1980 S.C. 470. India is still subscribing to the "incorporation" theory An international treaty signed by India does not *ipso facto* become enforceable law, the provisions have to be incorporated-in suitable legislation and then only they will become part of the Law of India.

State responsibility arises as a result of the application of international Law in the Domestic sphere.

STATE RESPONSIBILITY UNDER INTERNATIONAL LAW

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State responsibility assumes paramount importance in the contest of globalization and a world Government under international law. Frequently action taken by one state results in injury to, or outrage on, the dignity or prestige of another state. The rules of international law as to State responsibility concern the circumstances in which, and the principles where by, the injured state becomes entitled to redress for the damage suffered. State responsibility has been authoritatively stated to be confined to the responsibility of states for internationally wrongful acts. This is State responsibility in the strict sense, the source of such responsibility being an act or acts in breech of international law. But can liability be cast upon states in respect of acts not constituting a violation of any rule of international law, *eg.* private conduct, regardless of whether such conduct is or is not in contravention of domestic law.

The law of State responsibility is still in evolution, and may possibly advance to the stage where states and individuals are fixed also with responsibility for breaches of international law which are international crimes. The United Nations General Assembly since 1978 and the International Law Commission since 1982 have continuously been concerned with the subject of international criminal responsibility, to be formulated in a code of offences against the peace and security of mankind. The principle that the state is responsible for acts and omissions of organs of territorial Governmental entities, such as municipalities, provinces and regions, has long been