M.A POLITICAL SCIENCE SEMESTER : IV POL 403

Directorate of Distance & Online Education

University of Jammu
Jammu

Self Learning Material
M.A
POLITICAL SCIENCE

Semester : IV **Course No. : POL-403**

INTERNATIONAL ORGANIZATION AND INTERNATIONAL LAW

Dr. V.V. Nagendra Rao
Course Co-ordinator

Dr. Mamta Sharma
Teacher In-Charge

http:/www.distanceeducationju.in
Printed and published on behalf of the Directorate of Distance & online Education, University of Jammu by the Director, DD&OE, University of Jammu, Jammu.

INTERNATIONAL ORGANIZATION AND INTERNATIONAL LAW

COURSE CONTRIBUTORS

- **Dr. Suneel Kumar**
  Asstt. Prof. Deptt. of Strategic and Regional Stuides, University of Jammu, Jammu
- **A. Lalitha**
  Associate Prof. Centre for Organization Development Modhapur, Hyderabad
- **Dr. Vandana Sharma**
  Lecturer in Political Science, GDC Bhagwati Nagar, Jammu
- **Sakshi Sharma**
  Ph.D. Research Scholar, Deptt. of Political Science, University of Jammu, Jammu
- **Dr. Harjit Singh**
  Asstt. Prof. PG Deptt. of Political Science, University of Jammu, Jammu
- **Dr. Mamta Sharma**
  Lecturer in Political Science, DD&OE, University of Jammu, Jammu
- **Sukhwinder Kour**
  Ph.D Research Scholar, Deptt. of DSRS, University of Jammu, Jammu

Editing & Proof Reading :

Dr. Mamta Sharma

M.A Political Science under Non-CBCS

Semester-IV

Session May 2024,2025 & 2026

Course Code: POL-403

Title-International Organization and International Law

Credits: 6 (Six) **Max. Marks: 100**

Internal Assessment: 20 **Time: 3 Hours** **Semester Exam: 80**

Objectives of Course: This course intends to explain evolution and growth on international organization and International Law which have been shaping the behaviour of state actors in international politics. It educates about the goals, principles of International Organization besides describing its contribution in the domain of high politics and low politics. The course explores the need for reforms in the United Nations to keep it relevant in the twenty-first century. It elucidates the symbiotic relationship between international organization and international law as they reinforce each other. It explains relations between International and National Law for the better understanding of the subject. It mandates to elaborate on the sources of International Law, humanitarian law and their utility for the pacific settlement of conflict.

Learning Outcomes: This course enables the learners to consolidate their knowledge base by focusing on the study of International Organization and International Law 'because national politics has close linkages with international politics. It introduces them that the states are bound to honor their commitments to International Organization given uit^er International Law while formulating their national policies. It sensitizes the learners to the right of asylums for the individual and the right to extradition available to the states under international law.

Course Contents

Unit-1: Evolution and Development of International Organization

1.1 International Organization: Definition, Classification and Role

1.2 Theoretical Approaches: Federalist, Functionalist and Neo- Functionalist

1.3 Evolution, Structure and Role of the League of Nations

1.4 Objectives and Basic Principles of the United Nations Charter

Unit-II: The United Nations- Structure, Issues and Reforms

2.1 Principal Organs (The General Assembly and Security Council): Role of the Secretary General.

2.2 Economic and Social Mandate: ECOSOC, Specialized Agencies (ILO and UNESCO); Funds and Programmes (UNDP, UNIFEM): Sustainable Development Goals

2.3 Conflict Resolution: Pacific Settlement of Disputes, Collective Security and; Peacekeeping: Evolving Issues

2.4 Challenges to UN in the 21st Century. Need for Reforms

Unit-Ill: International Law: Meaning, Sources and Subjects

3.1 Meaning, Nature and Bases

3.2 Sources of International Law; Relation with Municipal Law

3.3 Individuals and State: Nationality, Extradition and Asylum

3.4 Role and Privileges of Diplomats

Unit-IV: State Recognition, Sovereignty, Succession and Responsibility

4.1 Recognition of States: Theories, Modes and Consequences

4.2 State Succession and State Responsibility

4.3 Settlement of International Disputes: Pacific and Coercive Methods

4.4 International Humanitarian Law: An Overview of Legal Regimes

Note for Paper Setter

- The Question Paper shall be divided into two sections. The first section will carry eight short questions of which students will be required to attempt five questions.

The upper words limit for the answer of each question will be 200 words. Each question carrying 4 marks.

- The second section will comprise eight questions of which students will have to attempt four questions on the basis of 'WITHIN UNIT' choice. The upper words limit for the answer of each question will be 850 to 1000 words. Each question will carry 15 marks.

Suggested Readings

Armstrong, David, *International Organizations in World Politics*, New York: Palgrave, 2004. Brownlie, Ian, Principles of Public International Law, London: Oxford University Press, 1973.

Dubash, Navroz K., ed., *Handbook of Climate Change and India: Development,* Politics and Governance, New Delhi: OUP, 2012.

Hurd, Ian, I*nternational Organizations: Politics, Law & Practice,* Cambridge: University Press, 2010.

Karns, Margaret P. & Karen A. Mingst, *International Organizations: The Politics and Processes of Global Governance,* New Delhi: Viva Books, 2005.

Malone, David M. ed., *The UN Security Council: From the Cold War to 21st Century,* New Delhi: Viva Books, 2006.

Mehrish, B. N., *The United Nations in the New Millennium: A Changing Scenario*, Delhi: Academic Excellence, 2007.

Oppenheim, L., *International Law: A Treatise,* London: English Language Book Society and Longmans, 1966.

Shaw, Malcolm N., *International Law*, New York; Cambridge University Press, 2008. Starke, J. G., I*ntroduction to International Law,* New Delhi: Aditya Books, 1994. Tandon, M. P., *Public International Law,* Allahabad: Allahabad Law Agency, 1993. Scott, Shirley V, *International Law in World Politics*, 2nd ed., New Delhi, Viva Books, 2102. Terry, James P, *War on Terror:* The Legal Dimension, New Delhi, Pentagon Press,

2014. Ramsbotham, Oliver, *Contemporary Conflict Resolution,* UK, Polity Press, 2011

Kumar, Chanchal, Riamei, 1. and Gupta, Sanju, *Understanding Global Politics,* New Delhi: KW Publishers, 2017.

Mansbach,W.Richard andTaylor, Kirsten L., *Introduction to Global Politics,* New York: Routldge, 2018.

Weiss,Thomas G. and Wilkinson, Rorden (eds.), *International Organization and Global Governance,* New York: Routledge, 2014.

Please, Kally-Kate S. *International Organizations: Perspectives on Global Governance,* New Delhi: Routledge, 2019.

TABLE OF CONTENTS

1.1 INTERNATIONAL ORGANIZATION: DEFINITION, CLASSIFICATION AND ROLE

- Harjit Singh

STRUCTURE

1.1.0 Objectives

In this lesson you will study the evolution, definition and classification of International Organization. After going through this lesson, you will be able to know :

- the concept of International Organization.
- nature and role of Inernational Organization

- classification of International Organization.

1.1.1 Introduction

The urge for peace and self-preservation has inspired man to devise institutions for greater international cooperation and avoidance of confrontation. Though this process of evolving international organisations has existed for long, it received a special impetus as a result of the scientific and technological developments during the past few centuries. However, in the present century this international cooperation assumed new dimensions with the emergence of the League of Nations and theUnited Nations. It would not be wrong to say that the League represented the culmination of the long process of the evolution of international organisation. However, it also radically differed from the institutions created during the past few centuries.

According to Potter the term 'international organisation' refers to"the aggregate of procedures and organs for expressing the unification of nations." He draws a distinction between apparent and international organisations and says that any degree of international unity or community which would supersede national interest, policy and action would satisfy this concept as, for example a mere international custom or an international agreement. He asserts that it is not essential that any strictly international organ should be involved in this process. On the other hand, the term is often used to refer to the agencies and procedures, deliberately set up as the expression of fundamental international organisation. Jacob and Atherton hold that international organisations are in reality "associations of sovereign states. They have governmental functions to perform, but they do not have the powers, normally assumed by the governments."Though the international organisations may differ in their structure and functions, they possess certain common characteristics.

The words 'international' and 'organization' have been a source of puzzlement in the study of international relations. It is worth examining them more closely, before turning to the realities, they represent when joined together. The term 'international', thought to be the creation of Jeremy Bentham, is often seen as amisnomer. Instead, it is claimed, the term 'interstate' or 'intergovernmental' should be used when describing an activity like war, diplomacy, relations of any kind-conducted between two sovereign states and their governmental representatives. A professor of law at Edinburgh University, J. Lorimer,

was probably the first who coined the expression.This state and government-oriented view of the word 'international' has been increasingly challenged over the past three decades. The belief has grown that the term should not be used synonymously with''intergovernmental' to mean 'interstate' or relations between the official representatives of sovereign states. Instead, the term has come toinclude activities between individuals and groups in one state andindividuals and groups in another state as well as intergovernmental relations.

The first types of relationships those not involving activities between governments only-are known as transnational relations. Connections between one branch of government in one state (e:g defence ministry) and a branch of government in other country (its defence ministry or its secret service, for example) and which do not gothrough the normal foreign policy-making channels are called trans-governmental. These relationships-inter governmental, transnational and trans governmental-are now usually included under the heading 'international'.

1.1.2 International Organization: Definition, Meaning and Nature

The use of the term 'organization' is confused by the dual meaning of its singular form and its inter changing in many books with the word institutions. International relations, whether between governments, groups or individuals, are not totally random and chaotic but are, for the main part, organized. One form of the organization of international relations can be seen in institutions-the collective forms or basic structures of social organization, as established by law or by human tradition-whether these be trade, commerce, diplomacy, conferences.An international organization in this context represents a form of institution which refers to a formal system of rules and objectives, a rationalized administrative instrument and have'a formal technical and material organization; constitutions, localchapters, physical equipment, machines, emblems, letterheadstationery, a staff, an administrative hierarchy, and so forth.

Inis Claude says that international organization is a process; international organizations are representative aspects of the phase of that process, which has been reached at a given time. Some writers confusingly refer to such international organizations as international institutions and also reference is often made to the institutions of an organization, such as its assembly, council and secretariat.

This use of 'institutions' to refer to the detailed structure of an international organization or as a synonym for international organizations has a restricted the meaning than the sociological meaning of the word. Duverger's definition, has a wider use that encompasses the notion of a system of relationships, that may not manifest themselves in formal organizations of bricks and mortar, headed note paper, a ready acronym such as NATO or WHO and an international staff. An institutional framework adds stability, durability and cohesiveness to individual relationships, which otherwise might be'sporadic, ephemeral, and unstable.' In personal life, these institutions that bind people together may be represented by an organization such as the Mothers' Union, the Roman Catholic Church or a trade union organization, but may also take the form of the less formal structures of the family or of a religion or of private property. At an international level, relations may be given a 'stability, durability and cohesive-ness' they may be organized-by the practice of diplomatic method or by regular trading-all institutions in the wider sense, as well as by the activities of such international organizations as the World Movementof Mothers, the World Council of Churches or the International Labourorganization (ILO).

Working Definition.

P.M Mehrish in his book 'International Organizations' have made an elaborative attempt in pooling the definitions of various scholars regarding international organizations. According to him, it is possible to define International Organization by examining the essential characteristics. The Yearbook of International Organizationslists eight criteria for inclusion under the rubric of international

- The aims must be genuinely international with the intention to cover at least three states.
- Membership must be individual or collective participation, with full voting rights, from at least three states and must be open to any individual or entity appropriately qualified in the organization's area of operations. Voting must be so, that no one national group can control the organization.
- The constitution must provide for a formal structure, giving members the right, periodically, to elect governing bodies and officers.

- Provision should be made for continuity of operation with a permanent headquarters.Officers should not all be of the same nationality for more than a given period.
- There should be a substantial contribution to the budget from at least three states and there should be no attempt to make profits for distribution to members.
- Those with an organic relationship with other organizations must show it can exist independently and elect its own officials.
- Evidence of current activities must be available.
- There are some negative criteria: size, politics, ideology, fields of activity, geographical location of headquarters, nomenclaturewhich are irrelevant in deciding whether a set-up is an international organization or not.

Wallace and Singer distinguish intergovernmental organizationsby three criteria.

- The organization must consist of at least two qualified members of the international system...' and should have been 'created by a formal instrument of agreement between the governments of national states.' Bilateral international organizations are included on the grounds, that they are still international organizations, and because otherwise certain multilateral organizations (for example, the Rhine River Commission) would have to be excluded for the periods when their membership was reduced to two.
- The organization must hold more or less regular plenary sessions at intervals not greater than once a decade.
- The organization should have a permanent secretariat with a permanent headquarters arrangement, and which performs on going tasks.

Plano and Riggs list eleven essential features of nineteenth centuryinter-governmental institutions. These are the 'basic characteristics and the procedures' of early international organizations,which have become commonplace features of modern international institutions. Other writers have produced less exhaustive, though more precise criteria for international organizations.

Bennett lists their common characteristics as being; a permanent organization to

carry on a continuing set of functions;voluntary membership of eligible parties;a basic instrument stating goals, structure, and methods of operation; abroadly representative consultative organ and a permanent secretariat to carry on continuous administration, research and information functions.

Paul Reuter considers an international organization as a group normally, but not exclusively, of states 'which can permanently express a juristic will; distinct from that of its individual members.' Charles Pentland describes international organizations as institutions with 'formalized sets of relationships expected to persist for a considerable time', whose institutional quality is found in their legal, institutional fabric, their political organs and bureaucratic structures, and their physical and symbolic presence. Professor Tunkin refers to international organizations as 'permanent bodies' that statecreate, to handle matters entrusted to them, and which result frominternational agreements. Any contemporary international organization (intergovernmental) is created by states by means of concluding an international treaty for the purposeand 'a constituent instrument of an international organization provides for certain rights and capabilities of the organization which lead to the conclusion that the organization possesses a certain degree of international legal personality.'

According to Pierre, 'The idea of an international organization is the outcome of an attempt to bring order into international relations, by establishing lasting bonds across frontiers, between governments or social groups, wishing to defend their common interests, within the context of permanent bodies, distinct from national institutions, having their own individual characteristics, capable of expressing their own will and whose role it is to perform certain functions of international importance." One of the French writers on public international law, says that international organizations can be defined as an association of States, established by agreement among its members and possessing a permanent system or set of organs, whose task is to pursue objectives of common interest by means of co-operation among its members.

Professor Grigori Morozov, defines an international organization in the light of the basic tenets of the socialist conception as in its most general form, as a stable, clearly structured instrument of international co-operation, freely established by its members for the joint solution of common problems and the pooling of efforts within the limits laid down by its statutes. Such organization have, as a rule, at least three member countries.

These may be governments, official organizations or non-govern-mental organizations. International organization have agreed aims, organs with appropriate terms of reference and also specific institutional features such as statutes, rules of procedure, membership etc. The aims and activity of an international organization must be in keeping with the universally accepted principles of international law embodied in the Charter of the United Nations and must not have a commercial character or pursue profit-making aims.

According to L. Larry Leonard this development initiated in the nineteenth century and accelerated in the twentieth century resulted in the creation of international organizations with following essential elements:

- Basic charters or constitutions, usually in the form of multilateral agreements, specified the obligations of the member states, limited the authority and responsibilities of the organization, created the structure, and provided for procedures by which the organizations would function.
- Membership was confined to signatory states, which participated through delegates appointed by their governments.
- The structure included a policy-making organ consisting of representatives of all the member governments and meeting at regular intervals of one to five years.
- Sometimes a second policy-making and executive organ was provided for, consisting of a limited membership, having clearly defined authority, and meeting more frequently.
- Voting procedure generally provided one vote for each member, requiring unanimous vote on important decisions.
- The structure also included a secretariat, headed by a Secretary-General or Director and usually consisting of international civil servants who were employed by the organization to carry on day-to-day activities.
- The members were required to make contributions to meet the expenses of the organization.

1.1.3. Characteristic/ Features of International Organizations

International organizations posses' certain characteristic/ features which can be discussed as follows;

1 Membership

The membership of some organizations was'universal' in the sense that all political entities fulfilling the requirements laid down in the basic instruments could join. Others were of limited membership or restricted to a geographic region. Although members usually had to be sovereign states, there were occasional provisions for other political entities to participate. The League of Nations Covenant, for example, had provision for admitting'fully self-governing' dominions or coloniese, India being a member of league of nations before it became independent.

2 Scope of Responsibilities

An organization could have the competence to deal with all international problems, economic, social, and political, in which case it would be considered a general international organization. Its competence, although general in character, could be confined to a geographic area, when it would be considered a regional organization. An international organizational could be assigned a specific responsibility within a particular field, e.g., agricultureor the social field, e.g. labour, and therefore be considered a functional or specialized international organization.

3 Authority

The organization's activities could be wholly confined to the development of international policies, either through the drafting of multilateral treaties or through the adoption of resolutions, making recommendations to the member governments. These policy-making organizations relied wholly upon governments for the implementation of policies. Some organizations had administrative or operating responsibilities, independent of the governments which created them. Although the government delegates would lay down the policies, the organization would have the funds and the powers to carry those out,without relying upon governments to do so. These being the administrative or operating international organizations.

4 Aim

The organization is established with the aim of pursuing the common interests of the members. It may end up not undertaking this task or favouring the interests of one member over that of another,but it should not have the express aim of the pursuit of the interests of only one member, regardless of the desires of others.

5 Structure

The organization should have its own formal structure of a continuous nature, established by an agreement, such as a treaty or constituent document. The nature of the formal structuremay vary from organization to organization, but it should be separate from the continued control of one member. It is this autonomous structure, that differentiates a number of international organizations from a series of conferences or congresses. As such an international organization can be defined as a formal, continuous structure established by an agreement between members(governmental and/or non-governmental) from two or more sovereign states, with the aim of pursuing the common interest of membership.

1.1.4. Classification of International Organisations

In view of the presence of large variety of international organisations in the present day world, their classification poses a serious problem. Different scholars have tried to classify these international agencies and institutions on the basis of different principles. International organizations can be classified on the basis of membership, aims and activities and structure.

1 On the Basis of Membership

Certain scholars like Norman Hill have classified the international organisations on the basis of their membership and activity. On the basis of membership Hill classifies the international organisations as bilateral, regional or universal. The bilateral organisations are usually created by two states through agreement. The best examples of this type of organisations are the Joint Commission for U.S. and Canada, the Anglo-Egyptian Condominium for Sudan etc. The regional organisations are created by the member states of a particular region. The best examples of the regional organisations are the O.A.S., ASEAN, SAARC, etc. The universal organisations have universal membership. The League

of the Nations and the United Nations are the best examples of the universal international organisations.

2 On the Basis of Activities

On the basis of the activities of the organisations they are broadly classified as general and functional. The general organisations pursue much broader objectives as compared to the functional organisations. The United Nations, O.A.S., ASEAN, SAARC etc. are examples of general organisation. On the other hand, the International Telegraph Union, General Postal Union, ILO, FAO, UNESCO, WHO etc. are examples of the functional organisations. It is clear from the above discussion that no single principle can be followed for the classification of international organisations. No wonder scholars have tried to base the classification of international organisations on different principles viz. on the basis of their area of operation, the manner of their creation, and the nature of the functions performed by them. The existence of international organizations isclosely associated with that of the sovereign state but that membershipof some international organizations is not necessarily drawn fromsovereign states or their governmental representatives.The first distinction between the kinds of international organizationsis, those which are interstate or intergovernmental, and those whosemembership is non-governmental. According to Resolution 288 (X) of27 February 1950 of the UN Economic and Social Council.

Every international organization which is not created by means of inter-governmental agreements shall be considered as a non-governmental international organization. This suggests a distinction between intergovernmental organizations and international non- governmental organizations. Some international organizations allow membership to countries, which are not sovereign states but which have governments, and which are usually non-self-governing territories. Examples of international organizations that have accepted such members are the InternationalTelecommunications Union (ITU), the Universal Postal Union (UPU) and the World Meteorological Organization (WMO). C. Wilfred Jenks has made a fundamental distinction betweenorganizations based on a treaty between states and one betweengovernments. An inter state treaty includes all the institutions of the state-administrative, executive, legislative and judicial-whereas an intergovernmental organization is established purely by the administrative branch of

government. D.W. Bowett, observes that in practice there is no significant difference between organization basedon a treaty between states and one between governments. Any interstate agreement has to be made by an agent for those states, and it matters little whether his or her nomenclature is that of head of state or head of government.

The notion of international organizations being established between governments is based on the sovereign state view of international relations, which contains three important elements; firstly, that only sovereign states are the subjects of international law andare equal in their standing in international law, and as sovereign states are constitutionally self-contained, international organizations cannot interfere with the domestic jurisdiction of their governments; secondly, the notion of the sovereign equality of states would allow states to have equal voting power in any international institution. Finally, the inviolability of sovereignty can be protected within international organizations by the doctrine, that states cannot be bound by agreementsto which they are not party.

3. On the basis of Aims and Activities

The most common way of classifying international organization is to look at what they are supposed to do, and what they actually do. Most international organizations have their aims stated, usually in the basic document by which they have been established. The proclaimed aim is the most apparent statement of the intentions behind the existence of an organization. The activities, that an organization is intended to undertake are also often laid down in its basic documents, and they are normally seen to be the fulfilment of the stated aims. This is an area, that can be judged by the record of the organization, enumerating the sort of activities it has undertaken. These may vary from the scientific, technical, social and economic activities.

4. On the basis of Structure

We can also classify international organizations by the structure of their institutions, and the comparative power of these institutions. Since the rise of international organisations in the mid-nineteenth century, these institutions have become increasingly complex. The United Nations is a network consisting of the General Assembly, Security Council, Economic and Social Council, Secretariat, Trusteeship Council, International Court of Justice and the various Commissions, Committees, Conferences, Boards and specialized

agencies attached to these principal organs. On the basis of institutional structure, we can make a typology of international organizations. Three basic things about the structure help in providing an answer; provision made in the organ to balance the interests of member states, institutional power distribution; the balance between the power and influence of the member states and that of the organs reflected in its structure; the balance between governmental and non- governmental representation. The permanent seats have been given to the Great powers in the Council of the League of Nations and the UN's Security Council. Ten of the twenty-four seats of the governing body of the I.L.O. are given to the major industrial states. Another structural way of affecting the distribution of power, and influence between the members within an organization is by means of the voting mechanisms. The League of Nations worked on the unanimity principle. The United Nations has accepted majority voting. The General Assembly takes most of its decisions by a simple majority of members present and voting, while important questions are decided by a two-thirds majority. In the Security Council, while decisions are taken by the affirmative vote of nine of the fifteen members, the permanent members are given the right of veto. Regarding the equation between the member-states and organs of the organization it may be observed that in the early public international unions, the bureaux were quite often run by one member-state; Switzerland in the case of the Universal Postal Union and Belgium for the International Union for the Publication of Customs Tariffs. The advent of the League of Nations brought the notion of an international secretariat to the forefront i:e international civil servants with a loyalty to the organization, rather than to their original home country. The United Nations took over this concept of an international civil service. The UN Charter has given executive and administrative responsibility as well as political powers to the Secretary-General. In practice, the UN Secretary-General have exercised a political role. Both the first and second holders of the office-Lie and Hammerskjold - accumulated a great amount of responsibility using their own interpretation of their duties; some times in opposition to members of the Security Council. There have been serious constraints on the independence of action of the U.N.Secretariat. As regards the balance between governmental and non-government representation and participation, there is no uniformity. There are inter-governmental organizations, which have non-governmental or rather mixed representation, such as the International Labour organization, whose structure is based on tripartite representation i:e representation of governments, employers and workers. In sum up, the

most common classifications of international organizations are by membership, by aims and activities and by structure.

5. On the basis of Functions

On the basis of the functions of the international organisations, the scholars have classified them as political, administrative and judicial. The political organisations are primarily concerned with the preservation of international peace and security. The United Nations is one of such organisations. The administrative organisations, on the other hand have very limited aims and objectives and work merely as administrative agencies. The Trusteeship Council is an example of the Administrative International Organisation. The judicial institutions perform certain judicial functions, and try to resolve the differences among the members. The Permanent Court of International Justice and the International Court of Justice are the examples of this type of international organisations. Critics regard the classification on the basis of functions as unscientific, because it is indeed difficult to draw a distinction between the various types of functions performed by an international organisation.

6 On the basis of Field of Operation

Some scholars have classified the international organisations on the basis of their field of operation as global and regional. A global organisation is a much broader organisation which has usually a universal membership, and extensive jurisdiction. Such a global organisation can have within its jurisdiction several regional organisations. The United Nations is the best example of the Global Organisation. It has within it several regional bodies like the Regional Commissions of the Economic and Social Council Economic Commission for Asia, the Far East, Europe, Latin America, Africa etc. The regional organisations on the other hand cover a much narrower area. They are usually confined to some particular region and undertake very limited functions. These organisations are usually formed by states with similar objectives. The NATO, the Warsaw Treaty Organisation, ASEAN, and SAARC are outstanding examples of the regional organisations.

7 On the basis of Government or State Treaties

The third basis for the classification of international organisations is, whether the Treaty, which created them, has been concluded by the states or the governments. If the

organisation is created on the basis of a treaty concluded between the states it involves all the organs of the government viz., the legislature, the executive (administration) as well as the government. The prominent examples of the international organisation created through inter-state treaties are the Food and Agricultural Organisation, the World Health Organisation, etc. On the other hand, if the organisation is created through a treaty concluded by the governments, only the administrative wing of the government is involved. The International Monetary Fund is the best example of the international organisation created through inter-government treaty. It may be noted that usually only international organisations of non-permanent nature are created through inter-governmental treaties viz. the United National Rehabilitation Administration. Sometimes the governments enter into treaties to create international Organization to overcome the constitutional hurdles.

1.1.5. Nature and Role of International Organization

International organizations posses a certain nature and plays different kind of roles. According to various scholarly views the role can be distinguished on the basis of following views:

1 Traditional View (State Centric)

Whichever manner the types of international organizations are classified, the question to be asked is whether the classification helps in understanding the nature of international organization. Traditional views of international organizations consider them to be part of the institutionalized relationship between states and governments. They have a state-centric view of the political world, and have little interest in international non-governmental organizations. Their starting point was the existence of the present state system, in which there is no common authority over and above the sovereign state, and where there is international anarchy, in the sense of a lack of government at the international level. The realists E.H Carr, Schwarzenberger, Reinhold Niebuhr and Hans Morgenthau view the role of international organization in the inter-state relations as peripheral. According to this view, nation states are the most important actors in international relations. The rules of international law are violated, and are not always enforced. Even when enforcement is undertaken, it is not always effective. Since the beginning of the nineteenth century, each of the major wars- the Napoleonic War, the First and Second World Wars have been followed by attempts to establish international organization for e.g.: the Concert of Europe,

the League of nations and the United Nations. The first two attempts founded, because of the varied interests involved. The United Nations is also seen by realists as being based on unsure foundations. The realists make the point that the creation of such a community, pre-supposes at least the mitigation and minimization of international conflicts, so that the interests, uniting members of different nations may outweigh the interest separating them.

2 Functionalist view (international organizations as international actors)

A noticeable development in international relations literature since World War Il has been the movement away from the State- centred view towards one that admits the importance of international organizations as international actors in their own right rather than as meeting places for or instruments of their member states. This view is represented by the functionalists, and differs with the traditional view of international organizations based on the State-centric model. The functional approach does not focus just an inter-governmental organization, but allows for a network of specialized agencies, many of which could be non-governmental. It favours the weakening of the importance and power of the sovereign state as the middle man between the individual and world community. This approach to world problems implies a political role for international organizations.

3 Neo-functionalist view (international organizations as active agents)

Neo functionalists or integrationists assigned a major role to inter-national organizations, not simply as passive recipients of new tasks and authority, but as active agents of task expansion and spill over. They concerned themselves with attitudinal changes; whether among national elites, international delegates or mass public. With a critique of transformational expectations of integration theory, focus then shifted into a more general concern with how international institutions reflect, and to some extent magnify, or modify the characteristic features of the international system. International organizations have been viewed as potential dispensers of collective legitimacy. Inis Claude's view this as 'collective legitimization'. The capacity of the United Nations to elicit worldwide approval for national policies successfully channelled through that body has emerged as one of the UN major political functions. Moreover, while distinguishing between the UN and other international organizations. The function of legitimization in the international realm has tended in recent years to be increasingly conferred upon international political institutions. International organizations have also been viewed as vehicles in the international politics of agenda

formation, forums for the creation of trans governmental coalitions, as well as instruments of trans-governmental policy coordination, and as means through which global dominance structure is enhanced or possibly be undermined.

The process of global governance is not coterminous with the activities of international organizations, but these organizations do play some role in that broader process. The current pre-occupation in the field of international organization is with the phenomenon of international regimes. Regimes are broadly defined as governing arrangements constructed by States, to coordinate their expectations and organize aspects of international behaviour in various issues areas. They, thus, comprise a normative element, State practice and organizational roles. Examples include the trade regime, the monetary regime, the oceans regime and others. International regimes are commonly defined as social institutions around which expectations converge in international issue-areas.

The concept of international regimes is said to be a composite of four analytical component parts: principles, norms, rules and decision- making procedures. The important point is that international organizations, because of their trappings of universality, are the major venue within which the global legitimation struggle over international regimes is carried out today. Further emphasis on the growth in transactions between societies has been highlighted by Robert O. Keohane and Joseph S. Nye who have been in the forefront of the interdependence school. They have pointed out the consequences of the increase in transnational actions to the study of international relations, such as, the promotion of attitude changes amongst citizens and increase in international pluralism and finally the emergence of autonomous actors with private foreign policies. Keohane and Nye gave international organizations an important role in their complex interdependence model of world politics. They used an international organization model as one for of the explanations of international regime change, that is the change in the sets of governing arrangements affecting relationships of interdependence. In this case, international organizations referred to multi level linkage norms and institutions, which once established, are hard to eradicate.

The decreasing emphasis on the nation state, and the stress on links between groups and individuals by the functionalists, neo-functionalists and writers of the interdependence school, there is another approach that starts from a world-view. It places emphasis on what unites people and on the well being of the ecosystem of the planet

earth. Nuclear escalation, the population explosion, the pollution of the environment, the communications revolution, the world-wide concentration of wealth and world-wide expansion of poverty are all essentially global and not local phenomena. They have given rise to revolutionary demands for mass education, mass health, mass welfare and mass participation in the decisions affecting the fate of mankind. The advocates of this view look forward to a sense of global community based on the hope of protection from war and disaster.

1.1.6 International Organizations and Transnational Organization

So called 'international organizations' often contain members that are not states or governmental representatives but are drawn from groups, associations, organizations or individuals from within the state. Non-governmental actors on the international stage and their activities give rise to transnational interactions. Robert O. Keohane and Joseph S. Nye have defined transnational interactions as covering the movement of tangible or intangible items across state boundaries when at least one actor is not an agent of a government or an international organization. They list four major types of global inter actions- communications, transportation, finance and travel.When such relationships between more than two participants become institutionalized by agreement into a formal continuous structure inorder to pursue the common interests of the participants, one of whichis not an agent of government or an international organization, then a transnational organization (TNO) has been established. In contrast to intergovernmental organization, a TNO must have a non-state actor for at least one of its members.

Transnational organizations are of four types. The genuine inter-non-governmental members. Such organizations bring together the representatives of like-minded groups from more than two countries; examples being the International Olympic Committee and the World Council of Churches. The hybrid international non-governmental organization has some governmental and some non-governmental representation. If such a hybrid organization has been established by a treaty or convention between governments, it should be counted as an lGO, an example being the ILO which has trade union and management (i:enon-governmental) membership as well as governmental representatives. However, some INGOs have a mixed membership, and are not the result of a purely inter governmental agreement. An exampleis the International Council of Scientific Unions, which draws its

membership from international scientific unions, scientific academies, national research councils, associations of institutions and governments. The trans governmental organization (TGO), which results from relations between governmental actors that are not controlled by the central foreign policy organs of their governments. Such relationships are fairly common if the term 'governmental actors is widely defined to include anyone engaged in the governmental process of a country-in the legislature, judiciary or executive, at local government level or aspart of a regional government. Much of these contacts tend to be informal or non-institutionalized, but organizations do exist such as the International Union of Local Authorities (IULA), which brings together the local government authorities of the European Community, the International Council for the Exploration of the Sea (ICES), which has established a network of co-operation between government marine research laboratories, Interpol, the International Criminal Police Organization, and the Inter-Parliamentary Union. A fourth category of TNOs is sometimes made: that of the Business International Non-Governmental Organizations (BINGOs), alternatively called Multinational Enterprises or Corporations: MNEs, MNCs.According to United Nations Group of Eminent Persons, the word transnational would better convey the notion that these firms operate from their home bases across national borders without any form of state control. The UN discussion maintained the distinction between transnational organizations and multinational enterprises. Transnational corporations operate from their home bases across national borders and the term multinational enterprises or corporations is to beused for those, established by agreement between a number of countries and operating in accordance with prescribed agreements.

Multi-or transnational corporations or enterprises have been excluded from the study of international organizations on certain grounds like; both the ECOSOC Resolution 288 (x) of 27 February 1950 and the definition used by the Yearbook of International Organizations exclude them from the term 'international organization.'; multinational corporations (MNCs) cannot really be described as formal, continuous structures established by agreement between members (governmental and/or non-governmental) from two or more sovereign states.' In reality the transnational corporation (TNC), as defined by the UN document quoted above, is an extension across frontiers of a business domiciled in one country; if a MNC is tightly defined as a corporation 'established between a number of countries and operating in accordance with prescribed agreements, then it

would certainly come much closer to being defined as an international organization. An example being the Scandinavian Airline System. However, it has been decided to keepin line with the Yearbook of International Organizations and exclude profit-making organizations from the description. It should, however, be remembered that MNCs, while not defined as international organizations, are no less important international actors.

1.1.7 Regionalism versus Universalism

As a basis of classification, another important aspect of the membership of international organizations is the catchment area from which it is drawn.The two extremes of spread of membership are, first, those of the most limited kind with members drawn from a geographically contiguous area, which has many other factors-economic, social and political-in common. At the other extreme are the universal organizations, which have membership drawn from practically all the sovereign states in the world.The United Nations and many of its specialized agencies fall into this category. The distinction between regional organizations and global or universal organizations informs us, not just about the extent of membership, but also about the aspirations of the organization.

This regional/universal dichotomy in writings on international relations seems to be a result of the values attached to the ideal organization of each type. The regional organization brings together states of similar backgrounds to solve problems, they could not otherwise deal with at a national level and which would be ineffectivelytackled by a wider institution, it can produce a security community,between members, who will no longer expect to resort to force. Mutual relations can provide a form of security against outside threats.The universal organization would, in contrast, stress the indivisibility of world peace and security; it would be the basis of a collective security system. Inis Claude says that 'the constitutional problem of achieving a balance between regional and universal approaches to international organization is far from solved but points to the complementary elements of the two'. Clearly the superiority of theUN, in matters of peace and security is maintained especially as Articles 52 (3) and 53 (1) of the Charter underline that regional arrangements should not impair the peaceful settlement of disputesand peace enforcement activities of the Security Council.

1.1.8 Let Us Sum Up

It can be argued that the international organization field has undergone a healthy maturation in its progression from a sterile preoccupation with legal formal aspects of international relations to be more sophisticated approach towards world politics phenomenon. Over the past decades international organization thinkers have come to view international organization more as an abstract phenomenon to be studied and understood than as a goal to be promoted. Today the study of international organizations represents an exercise in multilateral bargaining for global institutional building. In the contemporary lexicon, international organization can be viewed as asset of instruments for making and implementing 'transnational policy' or 'international public policy' rather than merely as a patterned set of international interactions.

The development of international organization culminated in the formation of the United Nations Organization in 1945 with a view to promote international co-operation and establish international peace and security. Though the United Nations largely borrowed from the League, in matters of organization and functions it certainly marked an improvement over the League of Nations. It is clear from the preceding account that the international organisations like the League of Nations and the United Nations which emerged in the present century were largely based on the principles evolved during the nineteenth century viz general system of international organisation, combination of great power council, universal conferences, specialised functional units and permanent staff. According to Mangone without the experience of the nineteenth century, without the practices and procedures of international consultation for one hundred years, without the example of the international agencies created in two or three generations, the world would never have built such a rare device as the League of Nations and the United Nations.

1.1.9 Exercise

1. Discuss the concept of International Organization ?
2. Discuss the features of International Organization ?
3. Explain in detail the nature and role of International Organization ?
4. Discuss the classifications of International Organization ?

1.2 THEORETICAL APPROACHES: FEDERALIST, FUNCTIONALIST AND NEO-FUNCTIONALIST

Vandana Sharma

STRUCTURE

1.2.0 OBJECTIVES

After going through this lesson you will be able to know:

- Historical background of the international organizations.

- Discuss the key concepts of the federalist approach.
- Basic foundations of the functionalism
- know the Bases of the neo-functionalism

1.2.1 Introduction

International organizations (IOs) represent a cornerstone of the contemporary global order, serving as pivotal mechanisms for international cooperation, diplomacy, and problem-solving. In an era defined by increased globalization and interconnectedness, these organizations play an indispensable role in addressing multifaceted challenges that transcend national borders. This introduction delves into the fundamental aspects of international organizations, exploring their origins, functions, and significance in the modern world. Federalism for long has been an effective organizing political principle guiding power sharing and democratic linkages between different layers of government. With a focus on constitutional arrangements it defines the competences of each organ of the government and safeguards the individual and collective rights. In spite of the universal acceptance of federalism it has no universally accepted definition, as it does not emanate from a single source of theory or grand design. It is, therefore, subjected to extensive interpretations. Federal states in practice follow different patterns of federal arrangements. In a federal set-up both central and regional governments have coordinate powers and relationship not one of superior - inferior. Both have responsibilities over public policy although they are not necessarily exclusive. The Government at the central level, however, might have a larger responsibility in providing identity, coherence and protection of the system as a whole and it has responsibilities on important areas such as currency, defence, foreign affairs, etc. Nonetheless, federalism provides for democratic participation of the units and the governance of larger polities. Most federal states provide for bicameral legislatures at the central level in which one house allows for participation and representation of the constituent units of the large polity although the extent of their participation might depend on the legislative autonomy they enjoy. Hence, there could be variation in the position of the constituent units across federal systems depending upon constitutional equilibrium in the polity.

Neo-functionalism in the late 1950s and the 1960s emerged as a paradigm seeking to provide a theoretical explanation to the complex process of Europe's integration. Prominently developed by American scholars, in its initial days neo-functionalism represented a concern for methodological rigour and rejected the idealism of the federalist movement as well as functionalist versions of supra national paradigm. It did share with them some intellectual ground such as obsolescence of the nation-state and dangers to peace and progress inherent in the realist account of international relations; but, provided a different explanation for such a phenomena. Neo-functionalism did not despise the state system as an evil; rather, viewed it as becoming irrelevant and outliving utility in the contemporary period. Neo-functionalism became a strategy and a theory explaining the gradual erosion of the rigidities associated with nation-state. It is not a model that describes the end shape of constituent units in the integration process. Neo-functionalists partly agreed with the classical functionalists on the strategy but not its design and held that it was inadequate to promote peace and progress. Functionalism, best represented by David Mitrany, held that in a fast changing society, for efficiency in the provision of welfare, common administrative or functional agency institutions could be created involving many states primarily in "non-political" or noncontroversial technical areas. These technical or economic areas tend to expand automatically to include 'political' areas as practical cooperation becomes coterminous with a totality of interstate relations and the "world community" begin to emerge. In this, sovereignty instead of being surrendered will only be pooled up to the extent required for joint performance of functions. The creation of these new international networks would merely change the dimensions of nationalism but not its nature.

Neo-functionalism, initially propounded by Ernst B. Haas in 1958, did not believe in functionalism' "automatic" expansion of the technical and economic areas into political areas in the integration process as well as in the creation of a large number of functional agencies. Neo-functionalism, on the other hand, argued that integration in one sector would advance gradually to include to other sectors in a step-by-step process as such integration would be influenced by "interests" rather than moral principles. Therefore, modifying functionalism, neofunctionalists argued that the process of integration beginning with an economic sector, depending on interest group involvement and incremental creation of de facto solidarity would lead, even by "stealth, to further integration. Here, integration is not automatic but takes place because of the "expansive logic of integration", i.e.,

integration in one sector creates necessary pre-conditions for integration in another sector, what in neo functionalist jargon prominently referred to as the "spillover" effect. This is because without integrating the obstructing sector the purpose of integrating the original sector will not be realised and considering benefits new areas will be brought under integration.

1.2.2 Historical Roots and Evolution

The concept of international organizations traces its origins to the aftermath of World War I, with the establishment of the League of Nations in 1920, aiming to prevent future global conflicts. Despite its limitations and the subsequent eruption of World War II, the idea of fostering international cooperation persisted. In the wake of the Second World War, the United Nations (UN) emerged in 1945 as a more robust and inclusive international body, with the primary goal of maintaining peace and security, promoting human rights, and fostering economic and social development.

1.2.2.1 Diverse Functions and Specializations

International organizations today encompass a diverse array of entities, ranging from global institutions like the United Nations, the World Bank, and the International Monetary Fund, to regional bodies such as the European Union, the African Union, and the Association of Southeast Asian Nations (ASEAN). These organizations serve multifaceted purposes, addressing issues spanning peacekeeping and conflict resolution, humanitarian aid, economic development, trade, environmental conservation, public health, education, and human rights advocacy.

1.2.2.2 Significance in the Modern World

In the face of globalization, international organizations have become essential platforms for dialogue and cooperation among nations. They provide avenues for states to collaboratively tackle challenges that no single country can address in isolation. Issues such as climate change, terrorism, global pandemics, and migration require collective, coordinated responses, making international organizations indispensable. Furthermore, IOs facilitate diplomatic interactions, acting as neutral ground where countries can negotiate treaties, resolve disputes, and foster mutual understanding.

1.2.2.3 Principles Guiding International Organizations

International organizations operate based on principles such as sovereign equality, non-intervention in domestic affairs, peaceful resolution of disputes, and respect for human rights. These principles create a framework for collaboration, ensuring that nations can work together while preserving their individual identities and political systems. Additionally, international organizations often emphasize inclusivity, welcoming participation from both developed and developing nations, thereby promoting a sense of shared responsibility for global well-being.

1.2.2.4 Challenges and Adaptation

While international organizations have made significant strides, they are not without challenges. Criticisms include concerns about bureaucratic inefficiency, lack of accountability, and potential encroachments on national sovereignty. Additionally, the rise of populist movements and nationalist ideologies in some regions has strained the collaborative spirit that underpins these organizations. However, these challenges have also spurred a process of adaptation and reform, encouraging international bodies to enhance transparency, efficiency and democratic governance structures.

1.2.3 THE FEDERALIST PERSPECTIVE

The federalist approach is a theoretical perspective that offers insights into the functioning and evolution of international organizations (IOs). It draws parallels between the structures of IOs and the federal systems of governance seen in various countries. This approach is rooted in the idea that IOs can be viewed as quasi-federal entities, characterized by shared sovereignty, cooperation, and the delegation of authority. In this essay, we will explore the federalist approach to IOs in detail, examining its key concepts, historical roots, and implications.

Historical Roots

The federalist approach to IOs can be traced back to the early 20th century, with thinkers like Richard N. Coudenhove-Kalergi and his concept of a "United States of Europe." However, it gained prominence in the aftermath of World War II when the idea of supranational institutions and regional cooperation gained traction. The creation of the United Nations (UN) in 1945 marked an important step in this direction, as it brought

together sovereign states to address global challenges collectively.

The European integration process, with the establishment of organizations like the European Coal and Steel Community (ECSC) in 1951, further exemplified the federalist approach in practice. These early European institutions aimed to prevent future conflicts by pooling control over key economic resources, setting the stage for broader integration in the form of the EU.

Key Concepts

- **Shared Sovereignty**

At the core of the federalist approach is the concept of shared sovereignty. Similar to how federal states like the United States or Germany share powers between central and subnational governments, international organizations involve the delegation of some sovereignty from member states to a central authority. Member states voluntarily pool their resources and authority to address common challenges and achieve shared goals. This shared sovereignty distinguishes IOs from purely intergovernmental arrangements.

- **Supranational Elements**

Federalist thinking recognizes that some IOs exhibit supranational characteristics. Supra nationalism implies that IOs possess authority and decision-making powers that go beyond the mere aggregation of state interests. For instance, in the European Union (EU), institutions like the European Commission have the authority to propose legislation, akin to a federal government, and the European Court of Justice can issue binding decisions that member states must adhere to.

- **Integration**

Federalist theorists argue that IOs can facilitate deeper political and economic integration among member states. This integration can extend beyond the original objectives of the organization and lead to the formation of common policies, institutions, and even the emergence of a shared identity. The EU is a prime example of how integration can evolve over time, from an economic union to a political entity with its own currency and citizenship.

International organizations (IOs) play a pivotal role in shaping global politics, economics, and security. They are complex entities designed to foster cooperation among states,

transcending national boundaries. To comprehend the essence of these organizations, it is imperative to analyze them through various theoretical lenses. One such lens is the Federalist approach, which provides a unique perspective on the nature and functioning of international organizations.

At its core, Federalism advocates for the establishment of a central governing body that shares power with constituent entities, typically states. This concept, deeply rooted in political theory, has influenced the development of federal states like the United States, where power is divided between the federal government and individual states. When applied to international relations, Federalism suggests a similar division of power among sovereign states and a central international authority, symbolizing a shift from absolute state sovereignty to shared sovereignty.

In the realm of international organizations, the Federalist approach envisions IOs as mechanisms through which states voluntarily delegate certain powers to achieve common goals. Unlike a unitary system where power is concentrated at the national level, Federalism in international organizations proposes a system where states maintain a degree of autonomy while collaborating on issues of mutual interest. This shared sovereignty allows states to pool resources, share expertise, and address global challenges collectively.

The European Union (EU) serves as a prominent example of the Federalist approach in action. Member states of the EU have willingly transferred specific powers to supranational institutions while retaining control over other aspects of governance. This division of authority reflects the Federalist notion of shared sovereignty, enabling the EU to function as a cohesive entity while respecting the individual identities and policies of its member states.

Furthermore, the Federalist perspective emphasizes the significance of subsidiarity, a principle asserting that decisions should be made at the most local level possible. In the context of international organizations, this principle advocates for decentralized governance, empowering states and regional entities to address issues directly relevant to them. By respecting the diversity of needs and priorities among member states, IOs operating under the Federalist framework can foster inclusivity and responsiveness. The Federalist approach highlights the role of IOs as catalysts for peace and stability. By promoting cooperation and shared governance, these organizations mitigate the risk of conflicts that often arise from unilateral actions. In a world where interconnectedness is growing, the Federalist

model offers a pathway to global harmony by encouraging dialogue, collaboration, and the peaceful resolution of disputes.

The Federalist approach provides valuable insights into the conceptualization and operation of international organizations. By advocating for shared sovereignty, subsidiarity, and conflict prevention, this approach fosters a vision of a world where states collaborate seamlessly, transcending national boundaries in pursuit of common goals. As we navigate an increasingly interdependent global landscape, understanding international organizations through the Federalist lens offers a roadmap toward a more unified and harmonious future.

The federalist approach provides a valuable theoretical framework for understanding international organizations as entities that involve the sharing of sovereignty and the potential for supranational elements. It has historical roots in the post-World War II era and finds practical application in organizations like the European Union. While it offers a compelling perspective on the future of global governance, it continues to spark debates regarding the balance between state sovereignty and supranational authority in Ios. The Federalist approach provides valuable insights into the conceptualization and operation of international organizations. By advocating for shared sovereignty, subsidiarity, and conflict prevention, this approach fosters a vision of a world where states collaborate seamlessly, transcending national boundaries in pursuit of common goals. As we navigate an increasingly interdependent global landscape, understanding international organizations through the Federalist lens offers a roadmap toward a more unified and harmonious future.

1.2.4 FUNCTIONAL PERSPECTIVE

International organizations (IOs) constitute a cornerstone of the modern global landscape, fostering collaboration and addressing shared challenges among nations. To grasp the intricate dynamics of these entities, scholars and policymakers often employ theoretical frameworks. Among these, the Functionalism approach offers a profound understanding of how international organizations emerge, evolve, and influence international relations.

- **Foundations of Functionalism:**

Functionalism, rooted in the works of thinkers like David Mitrany and his seminal work "A Working Peace System" (1943), posits that international cooperation begins with addressing specific functional needs. Instead of focusing on overarching political objectives,

Functionalism emphasizes solving practical issues that affect states. These functional needs could range from trade and economic cooperation to health, security, and environmental concerns.

- **The Functional Imperative:**

At the heart of Functionalism lies the functional imperative - the idea that states face common challenges that necessitate cooperation. These challenges, be they economic, environmental, or social, do not respect national borders. Functionalism argues that addressing these challenges collaboratively is not only beneficial but essential for the well-being and progress of states.

- **IOs as Problem-Solvers:**

Functionalists view international organizations as problem-solving entities. IOs emerge when states recognize the limitations of unilateral action in addressing functional issues. By pooling resources, expertise, and authority, states can achieve more collectively than individually. For instance, the World Health Organization (WHO) addresses global health challenges by coordinating international responses to pandemics, showcasing how functional cooperation can yield significant results.

- **Spill-Over and Integration:**

One of the key concepts within Functionalism is spill-over. Functional cooperation in one area often leads to spill-over effects, where success in addressing one problem creates conditions conducive to addressing other related issues. For example, successful economic cooperation can spill over into political collaboration and ultimately lead to deeper regional integration. This spill-over effect is evident in the evolution of the European Union (EU), which began as a coal and steel community and gradually expanded into a complex political and economic union.

- **Functionalism and Contemporary Challenges:**

In the 21st century, Functionalism remains highly relevant. Challenges like climate change, terrorism, and pandemics require coordinated international responses. Functionalist principles underpin initiatives such as the Paris Agreement, where countries collaborate to combat climate change collectively. Similarly, organizations like Interpol exemplify

Functionalism by facilitating international police cooperation, acknowledging that crime is a functional issue that necessitates collaborative action.

1.2.5 NEO-FUNCTIONALISM PERSPECTIVE

In the complex tapestry of international relations, theoretical frameworks provide essential lenses through which scholars and policymakers interpret the functioning and evolution of international organizations (IOs). Among these frameworks, Neo-Functionalism stands out as a significant theoretical approach, offering profound insights into the intricate dynamics of IOs in the 21st century.

- **Foundations of Neo-Functionalism**

Neo-Functionalism, an extension of the earlier Functionalist approach, gained prominence in the 1950s and 1960s, notably through the works of Ernst Haas and Leon Lindberg. Building upon the idea of functional spill-over, Neo-Functionalism posits that integration in one area spills over to other sectors, leading to deeper cooperation and, potentially, political integration. Unlike its predecessor, Neo-Functionalism extends its focus beyond functional cooperation, delving into the political consequences of integration.

- **The Spill-Over Phenomenon**

At the core of Neo-Functionalism lies the concept of spill-over. Functional cooperation in specific sectors can create interdependencies and foster a sense of common purpose among states. As success in one area leads to positive spill-over effects, states are incentivized to collaborate in other related domains, gradually expanding the scope of cooperation. For instance, economic integration within a region can lead to increased political cooperation and the creation of supranational institutions, as seen in the case of the European Union.

- **Supra nationalism and Political Integration**

Neo-Functionalism places significant emphasis on supranationalism, where states voluntarily delegate powers to supranational institutions. This delegation of authority goes beyond mere functional cooperation; it implies a transfer of sovereignty, indicating a shift from a purely intergovernmental system to a supranational entity. Supranational institutions, such as the European Commission in the EU, possess decision-making authority that affects

member states, reflecting a deeper level of integration.

- **The European Union as a Neo-Functional Paradigm:**

The European Union serves as the quintessential example of Neo-Functionalism in action. The establishment of the European Coal and Steel Community (ECSC) in 1951 marked the initial step toward economic integration. The success of this venture spilled over into other sectors, leading to the creation of the European Economic Community (EEC) in 1957 and subsequently the European Union. Over the decades, economic cooperation within the EU evolved into political integration, with the introduction of a common currency (the Euro) and the expansion of supranational institutions like the European Parliament and the European Central Bank. The EU exemplifies how functional cooperation can lead to profound political and economic integration, transcending national boundaries.

- **Neo-Functionalism in the Contemporary World:**

In the 21st century, Neo-Functionalism continues to shape the landscape of international relations. Global challenges such as climate change, terrorism, and pandemics demand collective responses. Neo-Functional principles underpin initiatives like the Paris Agreement, where countries collaborate to combat climate change collectively. Similarly, organizations like INTERPOL highlight Neo-Functionalism by facilitating international police cooperation, recognizing that transnational crime is a functional issue necessitating collaborative action.

Moreover, the digital era has brought new challenges, including cyber security and data privacy concerns. These challenges require states to collaborate closely, fostering interdependence and potentially leading to spill-over effects into broader areas of international cooperation and integration. The emergence of regional organizations in Asia, Africa, and Latin America also demonstrates Neo-Functional tendencies, as states recognize the advantages of working together on common challenges for mutual benefit.

1.2.6 Challenges and Criticisms

The federalist approach has important implications for the study of IOs and international relations. It highlights the potential for IOs to play a significant role in global governance, fostering peace, and promoting cooperation. However, it also faces criticisms, primarily from proponents of state-centric approaches, who argue that the sovereignty of states remains paramount and that IOs are fundamentally intergovernmental rather than

supranational entities. Despite its strengths, Functionalism faces criticism. Skeptics argue that Functionalism oversimplifies complex political realities, neglecting power struggles and geopolitical tensions. Additionally, Functionalism's reliance on the idea of spill-over has been challenged, with critics pointing out instances where functional cooperation did not lead to broader integration. Critics also contend that Functionalism can lead to a technocratic approach, potentially sidelining democratic processes and national sovereignty.

The Functionalist approach provides a nuanced perspective on the evolution and impact of international organizations. By emphasizing functional needs and collaborative problem-solving, Functionalism illuminates the pragmatic motivations behind the formation of IOs. These organizations serve as vital instruments for states, enabling them to navigate the complex challenges of the modern world. While Functionalism has its limitations, its focus on practical cooperation and its adaptability to contemporary issues ensure its continued relevance in the study of international relations. In an era where global challenges demand collective action, understanding international organizations through the Functionalist lens remains essential, guiding policymakers toward effective solutions and fostering a more integrated and cooperative world.

However, Neo-Functionalism is not without its challenges and criticisms. Critics argue that the approach tends to oversimplify the complexities of international politics, downplaying the role of power politics and national interests. Additionally, the erosion of national sovereignty, a necessary consequence of deep integration, raises concerns among some states and their citizens. Balancing supranational authority with democratic accountability remains a persistent challenge, exemplified by debates around the democratic deficit within the EU.

Moreover, the rise of populist movements and nationalist ideologies in various parts of the world poses a threat to the Neo-Functional vision of integrated global governance. These movements often advocate for a return to national sovereignty, challenging the idea of deeper political integration.

Neo-Functionalism offers a powerful lens through which we can comprehend the evolution and impact of international organizations in the contemporary world. By emphasizing spill-over effects and supra nationalism, Neo-Functionalism provides valuable insights into the processes of integration, cooperation, and political convergence among states. The

paradigmatic example of the European Union illustrates the transformative potential of Neo-Functionalism, showcasing how functional cooperation can lead to profound political and economic integration, ultimately transcending national boundaries.

While challenges and criticisms persist, Neo-Functionalism remains a vital theoretical framework in understanding the complexities of our globalized world. As states grapple with increasingly interconnected challenges, from climate change to cybersecurity, the principles of Neo-Functionalism continue to guide efforts toward collective solutions. By acknowledging the interdependence of functional issues and embracing deeper cooperation, international organizations can navigate the intricate landscape of the 21st century, fostering a more integrated, collaborative, and harmonious world.

1.2.7 Lets Us Sum Up

In the intricate web of international relations, diverse theoretical approaches serve as compasses guiding policymakers, scholars, and diplomats in understanding the complex dynamics of the global arena. Federalism, Functionalism, and Neo-Functionalism, each with its unique perspective, shed light on the multifaceted nature of international cooperation and governance. Examining these approaches collectively reveals the richness of international relations theory and offers valuable lessons for navigating the challenges of the modern world.

The diversity of international approaches reflects the multifaceted nature of global interactions. Federalism's emphasis on shared sovereignty encourages collaboration while preserving the essence of statehood. Functionalism's pragmatic focus on problem-solving highlights the importance of addressing practical issues that affect states directly. Neo functionalism spill-over concept showcases the intricate interconnectedness of different sectors, indicating the potential for broader integration. These approaches, though distinct, are not mutually exclusive; they can coexist and intersect in the complex landscape of international relations.

From the Federalist perspective, we learn the significance of finding common ground amid diversity. In a world marked by varying political ideologies and cultural norms, shared sovereignty models provide pathways for cooperation without imposing uniformity. Functionalism teaches us the art of addressing global challenges systematically. By dissecting complex issues into manageable components, nations can collaborate effectively, ensuring

that solutions are pragmatic, sustainable, and inclusive. Neo-Functionalism, with its spill-over effects, underscores the importance of recognizing the interconnectedness of issues. Solutions in one domain can catalyze progress in others, advocating for comprehensive, holistic approaches to global problems. While these approaches offer valuable insights, it is essential to acknowledge the challenges they face. Nationalism, political polarization, and divergent national interests sometimes hinder the realization of collaborative initiatives. However, the adaptability of these approaches lies in their capacity to evolve. Federalism can find inspiration in successful regional federations, such as the European Union, to address contemporary challenges of sovereignty and integration. Functionalism, by focusing on urgent global issues like climate change and inequality, can foster a sense of urgency and collective responsibility. Neo-Functionalism, in recognizing the interdependence of modern challenges, can inspire innovative, cross-sectoral solutions.

In this rapidly changing world, the convergence of these international approaches emphasizes the need for a sense of global citizenship. The challenges humanity faces - from environmental degradation to pandemics - do not recognize national borders. They require collaborative, inclusive efforts. Embracing a global perspective means appreciating the richness of diversity and acknowledging the shared destiny that binds all nations. It means transcending political, cultural, and ideological differences to focus on our common humanity.

The study of international approaches serves as a call to action. It urges nations to look beyond immediate interests, fostering a spirit of cooperation and understanding. It prompts policymakers to envision innovative solutions that bridge the gap between theory and practice, ensuring that international relations theories translate into tangible, positive changes in the lives of people worldwide. By embracing the principles of Federalism, Functionalism, and Neo-Functionalism, nations can forge a path toward a harmonious, interconnected world, where collaboration triumphs over discord and shared aspirations unite humanity in the pursuit of a better tomorrow.

1.2.8 Exercise

1. Define Federalist approach of International Organization ?

2. Discuss Functionalist and Neo Functionalist approach ?

1.3. EVOLUTION, STRUCTURE AND ROLE OF LEAGUE OF NATIONS

Harjit Singh

Structure

1.3.0 Objectives

After going through this lesson, you will be able to know :

- the stages in the creation of League of Nations
- the Concert of Europe and its origin
- League of Nations, its origin, structure and performance including the success and failures

1.3.1. INTRODUCTION

The Paris peace conference aimed at the maintenance of world peace through international cooperation on the lines laid down in the covenant of league of nations. The maintenance of collective security, against wars of aggression, was henceforth, entrusted to the league. The establishment of league of nations at the Paris peace conference (1919) represented one of the ambitious efforts ever made to regulate international relations for the promotion of world peace. A permanent general international organization of a universal charactercame into existence for the first time after World War I. This development marked another stage in the history of international organization. It owned much to the experience and experiments, including the many abortive plans and projects, of the past. 'Modern international organization,' stated Mangone, 'with its wide array of institutions, evolved

from the conferences of the preceding centuries.'In the new world of the twentieth century, the older techniques were not adequate, but they did provide the foundations upon which the present complex structure of international organization has been built.

1.3.2. STAGES IN THE CREATION OF THE LEAGUE OF NATIONS

The evolution of league of nations was not an abrupt idea. It was simmering for quite a long time. It passed through certain stages to become a full-fledged reality. The various stages that contributed towards its formation can be discussed as follows:

1.3.2.1. The Concert of Europe

The idea of having an international organisation to maintain peace and promote prosperity is a very old one. The Amphictyonic League of Greek cities provides the earliest example of the international organisation. Many statesmen since early times have placed proposals for forming of world organisation. However, these proposals did not materialise till the First World War. No institution springs suddenly into full-blown existence. The League of Nations was no exception. Violence is as old as mankind. War is as old as political association. Likewise, reaction against war and plans forpreventing it have a long history. The nature of the international institutions created by the covenant was considerably determined by pre-war movements.The concert of Europe was the first of these pre-war movements. It had emergedas a result of a long and continuous development of international organizationin the past. It served as a model for the Council of the League.

1.3.2.2. Hague Conference

Another element that went into the formation of the league of Nations was the movement for limitation of armaments andsystematization of arbitration. It culminated in the Hague Conference of I899 and 1907. These Conferences served as a model for the assembly of the League, which would take over, and develop further the legislative functions initiatedby the Hague conferences.

1.3.2.3. Public International Unions

Another element was the development and successful functioning of a number of public international unions. While, some of these organisations were set up to deal with an administrative problem, such as the Universal Postal Unions, other had considerable power to deal with local situation, such as Rhine Commission and European orDanube

Commission. As such ample precedents for League of Nations may be found in preceding international institutions.

1.3.2.4. Proposals for Peace

The idea of the League of Nations had beenin gestation, long before it took to concrete shape at Versailles in 1919. Professor Rappard of Switzerland set up a committee to study the bases of lastingworld peace, after the outbreak of World War 1. A group of persons under the leadership of Lord Bryce, made specific proposals for world peace in Great Britain. The League of Nations Society of England; league of nations should be established by treaty, disputes between member states should hesettled by arbitration, or by a council of conciliation; periodic conferences should be held to codify international law. An importantorganisation called 'The League to Enforce Peace' was formed in the USA in January, 1915 under the leadership of ex-President Taft, to advance peace-proposals. Sweden, Denmark and Norway also published peace plans. Lloyd George, the British Prime Minister made a very significant policy speech, at Stockholm in 1919. In January, 1919 he said, that we must seek by the creation of some international organization, to limit the burden of armament and diminish the probability of war.

1.3.2.5. Phillimore Committee

After assuming office as a minister, in the coalition Government in 1916 Lord Robert Cecil circulated a minutein the foreign office. He suggested that an inter-departmental committee should be appointed to prepare the draft of an agreement between nations for the maintenance of peace through mutual cooperation. He wanted to put into effect the proposal of Sir Edward Grey to establish some sort of an international society of nations, to guard against any future catastrophe of war.This proposal was approved. A committee was set up under the chairmanship of Lord Phillimore. The Phillimore Committee did not make arbitration compulsory, nor did it propose the establishment of a permanent organization. As envisaged by the Phillimore Committee, the League was not to be world-wide, but limited to the Allies in the beginning. The committee had no suggestion about disarmament nor about the wider interests of a world organization. The French Government also appointed a Committee under the Chairmanship of Ex-Prime Minister Leon Bourgeois to Study the project of a League. The report of the Committee was moredefinite, than that of the Phillimore Committee. According to it, aninternational tribunal was to be empowered

to settle the disputes and to see, that the decision are fully carried out. A detailed list of diplomatic, legal and economic sanctions was also prepared.

1.3.2.6. Woodrow Wilson's Fourteen Points

On January 8, 1918, President of USA Woodrow Wilson made a speech, in which he enunciated his famous 'fourteen points' as a programme of World's Peace. The concluding portion of these points read gave the idea that a general association of Nations must be formed under specific covenants, for the purpose of affording mutual guarantees of political independence, and territorial integrity to great and small states alike. Wilson studied the Phillimore andFrench Report, and then put forward his own draft. It provided for meetingsof representatives of Powers, permanent Secretariat, guarantees of territory,disarmament, compulsory arbitration and organization of military forces of the states against any member who went to war.

1.3.2.7. Cecil Draft and Smut's scheme

Towards the end of 1918 Cecil Draft came into existence in England. In December 1918, General Smuts published a pamphlet on the League, which paid great attention to the mandate system. His scheme consisted of the details of structure and machinery. He pointed outthat plans, were vague on this particular point. He proposed a general conference of all members, a council and an arbitration court.

1.3.2.8. Hirst Miller Drafts

All this was followed by Wilson's second and third drafts, and the official British draft. The agreed Anglo-American views were embodied in a single draft known as 'Hirst Miller Draft'. This was presented to the League of Nations Commission of the Peace Conference.

1.3.2.9. The Covenant

The covenant was a well drafted document, mainly because it was drawn up by men of exceptional ability. The commission responsible for the task of drafting of the covenant had in the beginning only 10 members, two representatives from each of the Five Great Powers. After a protest from the small states, it was enlarged by nine additional members. President Wilson served as Chairman. As part of the Treaty of Versailles, the Covenant was signed on June28, 1919-1920. After the required number of ratifications were

obtained, it went into effect on January 10, 1920. Thus, the League of Nations came into existence on January 10, 1920.

1.3.3. SOURCES OF THE LEAGUE OF NATIONS

League of nations is based on certain sources like:

Private and Public Schemes. The immediate sources of the League of Nations are to be found in the development of both private and public schemes during the war e.g., League to Enforce Peace in U.S.A., the League of Nations Society in U.K., Cecil's draft, Phillimore's draft, Wilson's Project of Fourteen Points, Colonel's House's Pamphlet, J.C. Smuts' Plan etc.

Special Committee. The actual formulation of the covenant of the League of Nations was the work of a special Committee established by theParis Peace Conference which began its session in January, 1919.

Hirst-Miller Draft. A combination of British and American Plans 'TheHirst-Miller Draft'was used as the basic working paper.Wilson Cecil and Smuts earned the title of'Fathers of the League'.

The Covenant. Presented to the plenary conference on April 28,1919. Covenant became an integral part of the Treaty.

Concert of Europe. The Council of the League of Nations was a new edition of the Concert of Europe.

Structure. The Assembly of the League represented the realization of the hopes and plans of the Hague statesmen for a general conference ofthe Nations. Thesecretariat was aninstitutional flowering of the seminal concept of the international bureau, which had been found in the earlier unions. Thepermanent Court of International Justice which was anticipated in Article14of the covenants, constituted the full-fledged international judicial organ, which the Hague conferences had vainly tried tocreate.

Composite of 19th century International Documents. The creation of the League may also be regarded as a rationalization, localization, and consolidation of previous organization developments. The League was, a composite of the institutional documentsof the l9th century agencies, it pulled together the separate lines of development into a coherent

system.

19th Century beginning. The League was also the product of nineteenth century beginning, in the sense, that it picked up the ideas, adopted the assumptions,and reached to the awareness which has been emerging in earlier period.

Product of First World War. In important respects the League was the product of the of the first World War. It was a response to realization of the vital need to, prevent wars.

Prevention of Accidental Wars. The League was based on reaction against the blind hostilities in 1914. The concept of the accidental war under lay the system of prudent precautions, which was outlined in the covenant providing guarantee, that people and government should have and utilize opportunities for cooling off, facing facts and reaching decent settlements in any future crisis .The League was established to prevent the accidental war.

War-Time Cooperation. The experience of war-time cooperation among the members of the victorious coalition inspired peoples to meet the moral challenge of proving, that they cooperated readily to promote the values of peace and avoid the catastrophe of war, as they have done to bring the war to successful conclusion.

Legitimation of Settlements. In 1919, the triumphant allies desired to invest the fruits of victory; to keep the spoils, which they had gained to establish, and uphold a new status quo reflecting the shift in power relations, which military events had proclaimed, and to maintain their coalition to keep Germany in a posture of defeat. The major allies asserted the right to make the settlement and assumed the responsibility to dominate the future course of events, since the small states hardly had any determining voice at Paris.

Ideological Climate.The League was product of the ideological climate of the time. Its sources included not only the heritage of past institutional inventions and the political realities of the present, but also the aspirations for the future, derived from a combination of facts and ideas, circumstances and purposes, objective conditions and subjective conception.

1.3.4. NATURE OF THE LEAGUE OF NATIONS

The League of Nations was not in any sense a world State and Super State federation exercising independent powerover its component states which remained intact, as is the rule of unanimity on all major issues. The judgment of the member states was jealously

guarded in the covenant of the League. Vital decisions required unanimity among all members. The interpretations of the obligations,the decision as to action or inaction rested with the component states, which action if this should at any time be seen more in accordance with their interests as in the case of Japan and Germany. The decisive bases of armed power rested with the separate state and not with the League.The League of Nations was in fact a grouping of victor imperialist powers and of secondary states. The colonial peoples were "represented" only by their master. Soviet Russia, no less than defeated Germany, Australia, Hungary and Turkey, were excluded from invitation. The mandate system was a transparent cover for the division of the colonial spoils of the defeated Germany. A proposal by Japan to include in the covenant a clause recognizing "the principle of equality of nations and just treatment of their nationals and guaranteeing "no distinction on account of race and nationality", though supported by a majority, was defeated by British and American opposition. Lord Cecil objected that such a suggestion raised extremely serious problems for the British empire. President Wilson protested that it would raise the race issue throughout the world. Soviet Russia regarded the original conception of the League of Nations with suspicion as "a coalition of certain states endeavouring to usurp power over other states" and a pseudo-international body, which really serves as a mere mask to conceal from the masses the aggressive designs of their vassals. The founders of the Leagueapproved the basic principles of the traditional Multi-State System. Theyaccepted the independent sovereign state as the basic entity, the great powers as the predominant participants, and Europe as the central core of the world political system. The League was the manifestation of reform movement, an effort to improve the producers and assist the operation of the world political system. A conspicuous effort had been made to create a systematic relation for the first time. As designed at the Paris Peace Conference, the League combined new with old. It was intended to introduce radical changes in the operation of the multi-state system.

1.3.5. STRUCTURE OF THE LEAGUE OF NATIONS

The League of Nations was the direct outcome of the horrors of WorldWar I. It was established to ward-off the recurrence of war, and to ensure peace and security in the war-weary world.

1.3.5.1. Membership of the League

There were two types of members of the League of Nations-the original and non-original. The original members of the League of Nations were those states and dominions, who were the signatories to the Treaty of Peace, or those states, who were invited to accede to the Covenant, and actually acceded before March 20, 1920. About the non-original members, the Covenant provided in Article 1(2) that, any fully self-governing state, dominion or colony not named in the annexure, may become a member of the League, if its admission is agreed to by two-thirds of the Assembly, provided that it shall give effective guarantees of its sincere intention to observe its international obligations, and shall accept such regulations as may be prescribed by the League in regard to its military, naval and air forces and armaments. There were 42 original members of the League ofNations. Seventeen states were subsequently admitted as members. Certain states were refused membership on numerous grounds.

League's membership of a state could be terminated by voluntary withdrawal, by expulsion and by the lapse, consequent upon dissent from amendments under Article 26. Article 1(3) provided that any member of League may, after two years notice of its intention so to do can withdraw from the League, provided that all its obligations under the Covenant shall have been fulfilled at the time of its withdrawal. During the life-time of the League 16 states with drew from its membership. U.S.S.R. was the only country to be expelled from the membership of the League for violating Article 16 of the Covenant, when she committed aggression on Finland in December, 1939. Though 62 states were members of the League of Nations, its total strength ever exceeded 58.

1.3.5.2. Organization of The League of Nations

The League of Nations had three main organs-the Assembly, the Council and the Secretariat. In addition to these three were two other organisations, viz., the Permanent Court of International Justice and the International Labour Organisation.

1.3.5.2.1. The Assembly

Every member of the League of Nations automatically became a member of the Assembly. Although each state was permitted to send three representatives to the Assembly, it had only one vote.The Assembly closely resembled a diplomatic conference. It was not an international legislative body. All important decisions could be taken by the Assembly by

the unanimous agreement of the members present at the meeting. The Assembly could be convened as and when necessary. The Assembly elected its own President at every new session by a majority ofvotes. Usually, the President was taken from some small state, not at that time represented on the council.

Functions of the Assembly: The Covenant had not drawn a clear line of demarcation between the functions of the Assembly and the Council. The powers of the two organs were defined in identical language; each had the power to "deal at its meeting with any matter within the sphere of action of the League of affecting the peace of the World" **[Articles 3(3) and 4(5)]**

However, the Covenant also conferred on both the bodies a number of specialor exclusive functions. The exclusive functions assigned to the Assemblyincluded:

- the right to admit new members to the League of Nations by a two-third majority.
- election of the non-permanent members of the Council.
- apportioning the expenses of the League among the member states.
- advising reconsideration by members of the League, of the treaties which had become inapplicable
- considerations of international conditions whose continuance might endanger the peace of the world.
- supervising the work of the Council.
- election of fifteen judges of the Permanent Court of International Justice every nine years by majority vote.
- amendment of the Covenant and
- approval of the nomination of the Secretary General by the Council.

1.3.5.2.2. The Council

The Council was designed to be a small body to serve as the executive organ of the League. It consisted of five permanentmembers (the U.S.A., the British Empire, France, Italy and Japan) and fournon-permanent members; mostly lesser power. Due to failure of

the United States of America to join the League, the membership of the Council stayed at eight, until two non-permanent seats were added in 1922. The Council could increase the number of permanent and non-permanent members, with theapproval of the majority of the Assembly. It was in pursuance of this power that Germany was given a permanent seat in 1926 and U.S.S.R. was made a member in 1934. The number of the non-permanent members was also eventually increased to eleven.The Council was expected to meet at least once a year. It met either at the seat of the League or at such other place as was decided upon. Emergency meetings of the Council could be summoned during the emergency arising out of war or threat of a war. Every member of the Council had only one vote. When a state was not represented on the Council, and a matter pertaining to that state came up for consideration, a special invitation was to be extended to the state concerned.

Functions of the Council: The Council could deal with all the, matters within the sphere of the League or affecting the peace of the world. In addition, the Council was specifically entrusted with the following functions:

- nomination of additional permanent member of the Council.
- formulating plans for the reduction of armaments, taking into account the geographical situation and circumstances of each state.
- to advise how the evil effects of manufacture of munitions and implements of war by private enterprise can be prevented. However, due regard had to be given to the necessities of those members of the League, which were not able to manufacture the munitions and implements of war necessary for their safety.
- to advise upon the means which the members of the League were to preserve, as against external aggression, the territorial integrity and existing political independence of their fellow members.
- to define the scope of authority or control to be exercised by the Mandatory power under the Mandate System.
- to direct the work of the Secretariat and receive reports from their subsidiary organs of the League.

- To recommend to the several government effective military sanctions and expulsion of any member who had violated any of the covenants of theLeague. The Council also prepared plans for disarmament and nominated theSecretary-General, subject to the approval of the Assembly.

1.3.5.2.3. The Secretariat

The Covenant provided for a permanent Secretariat, headed by the Secretary General, at Geneva. It was to consist ofsuch secretaries and staff as may be required. The Secretary-General was appointed by the Council, with the approval of the Assembly. The Secretary and other staff of the Secretariat was appointed by the Secretary-General with the approval of the Council. The expenses for the maintenance of the Secretariat were contributed by the member states, in proportion decided by the Assembly. Unlike the Assembly and the Council, which held periodical meetings, the Secretariat worked throughout the year. While on duty officials of the League were entitled to diplomatic privileges and immunities, the members of the league were in no way responsible to their respective governments.

Functions of the Secretariat: The chief functions of the Secretariat included:

- co-ordinating the widespread activities of the League carried on by its various organs.
- providing a source of continuity and follow-up for League work.
- keeping the records of the League's agencies.
- furnishing information and analysis to organs and delegates.
- registration of treaties and international engagements entered into by the members of the League.
- arrangement of the meetings and the like.
- indirectly influencing in a limited manner, the settlement of disputes and formulation of League policy.

1.3.5.2.4. The Permanent Court of International Justice

Article 14 of the Covenant had entrusted to the Council the responsibility of formulating and submitting to the member plans for the establishment of a Permanent Court of International Justice. Accordingly in 1920, the Council appointed a Commission of jurists.

The Commission prepared a statute of the proposed Court, which was submitted for approval to the Council, Assembly and the members of the League. After the statute was ratified by the member states,a Court was set up at the Hague. By 1939, fifty-one states had become the members of the Court.

Composition:Originally, the International Court of Justice consisted of 11 judges and 4 deputy judges. The strength of the judges was increased to 15 through an amendment in 1930. In 1936, the offices of deputy judges were abolished.These judges were elected for a term of 9 years by the Council and the Assembly.The candidates were nominated by the national groups of the Hague Permanent Court of Arbitration, each group having the right to name 4 candidates, only 2 of whom were to be of its own nationality. The Secretary-General of the League prepared a list of the persons so nominated, and transmitted it to the Council and the Assembly. These two bodies concurrently elected the judges.

Jurisdiction of the Court: The Court gave its judgments on questions involving the interpretation of international law, treaties and other mutual obligations. However, it had jurisdiction only over such disputes, as members were willing to submit to it. A few countries, agreed in advance to submit all their disputes to the courtfor settlement. Others reserved the right to submit only those cases to the court, which they like. In the words of Schuman, the establishment of the PermanentCourt of International justice was 'the most important and successful effort thus far made to establish as international judicial tribunal for the adjudication of controversies between states. During its existence, the Court tried sixty-five cases and handed down thirty-two judgments, twenty-seven advisory opinions and several hundred orders.Thus,it created a body of legal precedents of great utility for the solution of future international cases of justiciable character.

1.3.5.2.5. International Labour Organisation

This was set up as a part of the organisation of the League, and an integral part of League. All members of the League also became its members. Its main objective was to promote international peace through the promotion of social justice, by regulating working hours, labour supply, prevention of unemployment, providing adequate living wages, protection of workers against sickness, disease, injury etc., protection of children and women, vocational and technical education, freedom of association and technical assistance to under development countries.The chief objective of the ILO was to gain recognition for

workers as human social beings, rather than as mere commodities, to be bought cheaply and tobe exploited in the process of industrial and agricultural production. ILO worked under the control of a governing body consisting of 32 persons. While 16 of these members represented the Governments, 8 represented the employers and 8 represented workers The term of the governing body was fixed at three years. ILO provided an international forum for the discussion of labour legislation. It prepared the ways for the formulation of international standards of labour legislation. It worked as a useful agency for the collection and publication of labour statistics. It continued to work even during SecondWorld War. In December, 1964 it became a specialised agency of the U.N.

1.3.6. FUNCTIONS OF THE LEAGUE OF NATIONS

The functions of the League of National have been specified in the preamble to the Covenant, which says that the high contracting parties, inorder to promote international co-operation and to achieve international peace and security by the acceptance of obligations, not to resort to war by the prescription of open just and honourable relations between nations, by the firm establishment of the understandings of international law as the actual rule of

conduct among governments and, by the maintenance of justice and scrupulous respect for all treaty obligations, in the dealings of the organized people withone another, agree the Covenant of the League of Nations. In pursuance of the objectives laid down in in the preamble the followingwere the functions of League of Nations:

Disarmament. The League had to Formulate plans for the reduction of national armaments to the lowest point consistent with national safety.

Protection. The league had to undertake to respect and preserve; as against external aggression, the territorial integrity and existing political independence of all members of the League. In case of any such aggression,the Council was expected to advise the means, by which this obligation wasto be fulfilled. The Senate of U.S.A. refused to ratify the treaty of Versailles, mainly on the grounds of Article 10. Consequently U.S.A. could not become a member of the League of Nations.

Settlement of international disputes. Under Article 12, the members were obliged to submit their disputes, which were likely to cause rupture, either to arbitration or judicial settlement,

or to the inquiry by the Council. They were not to resort to war until three months, after the awards by the arbitrations orthe judicial decision or the report by the Council. The members were expected to comply with the award or decision; the council could propose the necessary

steps to give effect to the same. If a state resorted to war inviolation of the covenant, it was ipso facto considered to have committed an act of war against all other members of the League, which were expected to severe all trade and financial relations and prevent all financial, commercial or personal intercourse between the nationals of the covenant breaking state, and the nationals of any other state. The council could also demand from several governments concerned, necessary contribution of armed forces. In extreme cases, members violating the Covenant of the League, could be expelled from the membership of the League. Russia was actually expelled from the membership of the League in 1940 following her invasion of Finland.

Peaceful Changes. The League of the Nations was expected to takes teps to bring about peaceful changes. For the purpose, the Assembly could from time to time advise the re-consideration by members of the League of the treaties, which had become in applicable, and the consideration of international conditions,whose continuance could endanger the peace of the world.

Supervision and Human Welfare. The League was expected to exercise supervision over the mandate territories. The League was expected to take the necessary steps for the promotion of human welfare.

International Understanding.The League helped to make people aware of the existence of world conditions and world problems, and to dispel ideas concerning purely national and isolated difficulties.

1.3.7 ROLE/ ACHIEVEMENTS OF LEAGUE OF NATIONS

League of nations have played a prominent role in various spheres be it political economic or social etc. its role can be summarized as follows:

1.3.7.1. Political Role

One of the chief objectives for the creation of the League was to promote international

co-operation and achieve international peace and security. During its existence, the League was called upon to examine about 40 political disputes between different states. Most of these disputes were handled by the Council. Some of them were also referred to Assembly, or the Permanent Court of International Justice. Some of these disputes were of serious nature; which could threaten the peace of theworld, while other disputes were of minor importance. The League was able to assert its authority effectively against small nations. The big and strong powers, however, did not submit to its authority, on the plea that it infringed their sovereign rights. It played a prominent role in following manner:

1.3.7.1.1. Solution of Disputes

Following were the main disputes handled by the League:

Island Dispute. Island dispute was one of the first disputes brought to the attention of the League Council. This island lay between Sweden and Finland, both of which once belonged to Sweden. These were acquired by Russia in 1809. During the Russian Revolution of 1918, Finland declared her independence, which was recognised by Sweden. The residents of the island,who were mainly Swedish, began to agitate for union with Sweden. Though the Swedish government remained indifferent, the people of Sweden wanted their government to help the islands. Great Britain, exercising her rights under Covenant, brought the case to the attention of the Secretary-General. The matter was referred to a committee of Jurists, which decided, that the dispute was not a matter of domestic jurisdiction as claimed by Finland. The Council gave its decision in June 1921, by which Finland's sovereignty over the island was recognised. The residents of the islands were to be guaranteed autonomy, and protection of political rights. Use of Swedish in schools wasto be preserved. The archipelago was to be neutralized and unfortified. In April,1922, an international convention guaranteed the neutrality of the islands and gave them the requisite international protection.

Dispute of Eupen and Malmedy.In 1920-21 Germany protested to the Council, against the attribution of Eupen and Malmedy to Belgium. InSeptember 1920, the council decided to recognise the transfer of the districts of Eupen and Malmedy to Belgium as final. On February 22,1922 Germanywas informed by the Secretary-General, that the decision was final.

Mosul Boundary Dispute. As per terms of the Treaty of Lausanne(1923) a mutually

acceptable boundary line was to be drawn between Turkeyand Iraq. As both the parties failed to draw a mutually acceptable boundary line, and claimed Mosul Vilayet; an area rich in oil, the matter was referred to the League in 1924. An emergency session of the League Council was called at Brussels. It drew a provisional boundary line pending final judgment. Ultimately, the same line was made a permanent line between Turkey and Iraq. Though Great Britain and Iraq accepted the award, Turkey refused to do so.By a compromise treaty concluded between Turkey and Great Britain in 1926,a small part of the Vilayet was given to Turkey along with some royalties from the Mosul oil fields.

Greeco-Italian Dispute (The Corfu Incident). In August 1923, certain military officers were murdered on Greek soil. The Italian government demanded apologies and full reparations for the crime from the Greek government. As the latter failed to comply with the demands of Italy. She occupied the island of Corfu. In September, 1923 the Greek Government referred the matter to the League Council. The League Council notified, that communication had been received from the Conference of Ambassadors, informing about the settlement of the dispute by diplomatic negotiations.

The Greeco-Bulgarian Crisis. In October, 1925 a border incident led to an invasion of Bulgarian territory by Greek forces. To repair the breach of Covenant obligations, the Bulgarian government requested an immediate meeting of the Council of the League. The acting President of the Council ordered, that until the Council had heard both the sides, all troops must be withdrawn to their respective frontiers. The belligerents acceded to the demand. Military attaches of Great Britain, France and Italy went to the scene of action, to verify the position. Calm was restored on both the sides within nine days of the aggression.

War in Gran Chaco. In 1928 trouble started in Gran Chaco, situated between Bolivia and Paraguay. As soon as the matter came to the notice of the Council, it sent a telegram to both the parties, urging both the parties to reach an amicable settlement. As a result, the immediate quarrel was resolved. However, fresh troubles started in 1932, which could not be checked by the efforts of the neighbouring states. Impelled by the circumstances, the League sent a Commission of Inquiry. The war between the two states ended in 1936, by the exhaustion of both the belligerents rather than by the concerted effortsof the Inquiry Commission. However, the incident certainly demonstrated the interest, which the League was taking in the preservation of peace everywhere.

ManchurianDispute. In 1931, a serious dispute arose between Japanand China over Manchuria. In September 1931, Japan occupied central Manchuria, on the plea that China had destroyed her railway properties. China appealed to the League Council, which called upon the disputants to withdraw their troops. As the Japanese failed to withdraw their troops, the Council appointed a five-men commission to study the situation. In the meanwhile, Japan attacked shanghai. China once again appealed to the Assembly, which adopted aresolution on March 4, 1932 calling on Japan to evacuate Shanghai. Tokyodid quit Shanghai under the Armistice of May 5, 1932, but she continued to hold on to Manchurian. The League could not do anything, except that some of the powers of the League refused to recognise Manchukuo.

Italian Attack on Ethiopia. In October, 1935 Italy attacked Ethiopia. Ethiopia asked the League to take action under Article 16 of the Covenant.The League Council appointed a 'Committee of six' which reported thatItalian Government had resorted to war in utter disregard of its obligations under Article 2. On October 9, 1935, the Assembly adopted the report, and decidedto apply economic sanctions against Italy. The appeal for economic sanction met with very favourable response, and by November 18, 1945 the economic siege of Italy was completely enforced. But Italy did not bother about the resolutions of the League, and continued bombing. Addis Ababa fell to the invaders, and the whole country lay at the mercy of Mussolini. On May 5,1936 Italy declared that the war is over, and Abyssinia is Italian. Thus, the League sanctions failed to stop the invading Italian armies. By July 1936, the measures taken in execution of Article 16 were withdrawn, and Ethiopia was left to herfate.

German Aggression. Germany posed the most serious challenge to the League. On October 14,1933 she withdrew from the League. On March16, 1935 she ordered conscription in violation of the Treaty of Versailles. OnMarch 7, 1936, the Rhineland was remilitarized in violation of the LocarnoTreaties. In March 1938, Austria wasoccupied. In March, 1939 Czechoslovakiawas invaded and seized. The League took no effective action against Germany for all these violations; except adopting resolutions and giving warnings. In

September, 1939 Germany invaded Poland and the World War II started. By this time the League had become almost defunct.

Other Disputes. In addition to the above cases the League also handled the case of city of

Vilna between Poland and Lithuania (1920-22), thecase of Hungarian optants between Hungary and Rumania (1923-30), dispute over nationality decrees between Great Britain and France(1921), dispute over Faworzina District between Poland and Czechoslovakia (1923-24), Demir Kapurcase between Bulgaria and Greece (1925-26), Austro-German Customs Union case between Great Britain, France and Austria in 1931. During the years l924 to 1930 Germany was also included as a member in the League. Members attached great importance to the activities of the League, as is evident fromthe fact that prior to 1924, the member states were not represented at Genevaby their Foreign Ministers. In 1924, when MacDonald and Herriot came toGeneva for the Assembly of 1924, they set a precedent of far-reaching importance. Soon the foreign ministers of most other European powers alsostarted attending nearly every session of the Council and Assembly. In course of time, Geneva came to be recognized as the meeting place for the states men of Europe. This increased the strength of League and she was able to settle almost all the cases referred to her during this period.

Other activities related to political sphere.

Besides these political engagements of the league in diffusing the various tensions, it has worked upon in performing its duties in various other institutional mechanism in political spere like:

Mandates Commission.The Mandate Commission; a body composed of eleven experts in colonial government, received annual reports from the Mandatory Powers on the territories administered by them. The Commission submitted these reports to the Council with its comments and recommendations.The Council considered these reports, and made necessary recommendations to the Mandatory Powers.

Problem of Minorities. The League also looked after the problem of the minorities. It appointed a committee of three members of the Councilfor this purpose. The Committee would receive complaint from the minorities, and discussed the matter with the Government of the concerned state. It generally succeeded in obtaining an undertaking from the government, to remedythe grievance complained of. However, if the committee failed to obtain satisfaction, it could refer the petition to the Council. Thus, the League worked through the method of persuasion and consent.

Saar Commission.The League also successfully administered the Saar territory, through a

Governing Commission from 1920 to 1935, till aplebiscite was conducted there in January 1935. It also guaranteed the constitution of the free city of Danzig and appointed a High Commissioner to arbitrate on disputes between the Free City and Poland. However, both the parties were given the right to appeal to the council against the decision ofthe High Commissioner.

1.3.7.2. Role in Economic sphere

Besides its political role it played a role in economic sphere also like:

Financial and Economic Committee. In the economic sphere, the League provided for a new and elaborate machinery for international cooperation. It set up financial and economic committees composed of experts from various countries. These committees met annually at Geneva, and directed the work of the financial and economic sections of the League. The Financial Committee of the League helped in tackling the problem of counterfeiting, falsification of commercial documents, double taxation and fluctuating value of gold. The

Economic Committee did the preliminary work on a number of major inter-national conferences like the World Economic Conference of 1927 and the Monetary and Economic Conference of 1933.

Autonomous Communications and Transit Organisation. For the implementation of Article 23 of the Covenant which asks to make provision to secure and maintain freedom of communications and of transit, and equitable treatment for the commerce of all members of the League, the League createdan autonomous Communications and Transit Organisation. The organisation was concerned with the freedom of international transit, the collection oftransit statistics, press facilities and accuracy of reporting, the simplification of passport and other travel documents, discrimination against foreign shipping in ports, the use of inland waters, the uniformity of highway traffic regulation, coordination of the national public works programmes, etc.

1.3.7.3. Social role of League of Nations

Besides performing a number of political and economic roles the league of nations fared with much more enthusiasm in social sphere also. It played important role in following manner:

Elimination of Slavery. In the social sphere, the League did are mark able job. In 1925, a Slavery convention was concluded at Geneva andin 1932, the League decided to set up a Permanent Slavery Commission.

Improvement of Labour Conditions. The League tried to improve the lot of the working people through the International Labour Organisation; though the various conventions concluded by the I.L.O. were generally notratified by the member states.

Regarding improvement of Health. In terms of Article 23 of the Covenant,the League set up in 1923 a Health Organisation; with a Health Committeeand Secretariat. It closely collaborated with the governments in organising action against malaria, small-pox, leprosy, rabies, cancer, tuberculosis, syphilis, heart disease, etc. With a view to improve the national health, theHealth Organisation held technical conferences and helped researches in medicine. The League co-operated with China, to organise relief work in flood areas. The League did notable work in combating infant mortality, collecting statistics, fixing dietary standards and controlling plagues.

Resettlement Co-operation. The League also successfully solved the problem of the care and resettlement of millions of war prisoners and refugees. Dr Nansen played an important role in the settlement of refugees under the aegis of the League.

Intellectual Co-operation and reforms. To assist the intellectuals in the war devastated areas the League appointed an International Committee on Intellectual Cooperation in 1922. In 1926, the International Institute of Intellectual Cooperation was set up at Paris to co-ordinate international collaboration, with a view to promoting the progress of general civilisation and human knowledge and notably the development and diffusion of science, letters and arts. This was achieved through conferences, lectures published materials to urge collective security, support of the League, elimination of inflammatory material from text books and radio broadcasts, etc. League in this regard worked mainly through co-ordination, with the help of funds provided by the states and private charitable institutions.The League also did useful work in the field of controlof traffic in dangerous drugs, promotion of child welfare, prison reform,prohibition of traffic in women, suppression of trade in obscene publications, etc.

1.3.8. CAUSES OF FAILURE OF LEAGUE

League of nations played a very important role nd contributed in formation of certain precedents and institutional setup for furtherance of cause of peace and checking the intensity of wars. But it failed in its objective and was unable to check the occurrence of World War II. The reasons for its failure can accounted by V.K. Malhotra in the following manner:

1. Incorporation of Covenant in the Peace Treaties

The Covenant of the League of Nations was made a part and parcel of the peace treaties. Hence, it came to be regarded as an instrument of the victorious states to maintain status quo. It would have been better if the Covenant had been kept separate from these peace treaties. There were a number of states, who were not satisfied with the peace treaties, and were unwilling to ratify the same, due to which they were automatically debarred from the membership of the League. Forexample, Germany looked at the Treaty of Versailles as a symbol of her national humiliation, and was always in the look out to wreck it at the earlier opportunity.

2. It was not Broad based.

The League was not broad-based. A number of states like Russia, Germany, Austria and Turkey were not invited to join the League at the initial stages. It gave the feeling, that the League was not a gathering of free nations, but an assembly of the victorious imperialists and their satellite states, which had assembled to preserve the fruits of their victory and maintain the status quo. Major powers, who joined the League of Nations, were unwilling to co-operate. As a result of Senate's refusal to ratify the treaty of the Versailles, U.S.A., which played an important part in the birth of the League could not join it. Even England had accepted the obligations of the League Covenant, in the hope that the U.S.A. with her vast resources, would be by her side in the new enterprise, was disheartened.

3. Structural Defects

There were inherent defects in the structure and constitution of the Covenant of the League. These were as follows

Permission to War. Prof. Morgenthau says that, a grave constitutional weakness of the League was that it permitted the states toresort to war under certain conditions. Making distinction between the offensive and defensive war, the Covenant had permitted the latter.

The Covenant seemed to assume that war was the normal solution of international disputes.

Unanimitywas unworkable.The Covenant insisted that all decisions should be taken by a unanimous vote of the members of the Council, except the parties to the dispute. This rule proved unworkable and ultimately, the Assembly moved towards the rule of simple majority.

It was having no Teeth. The League lacked teeth, as no international force was provided to enforce its decisions. It could merely request the member states to act in a particular manner in a given situation. Its request was not binding on them.The Covenant did not make any provision for immediate action on the partof the League. League did not intervene until a crucial stage had been reached. By that time, the major powers would commit themselves, and it was not possible for them to recede without loss of prestige.

4. Lack of cooperation by major powers.

The failure of the League was due to the absence of the will on the part of the powers, to work on it. In the absence of a spirit of co-operation, even the best organisation is bound to fail. A. Potter sys that the ultimate culprits in the failure of the League were the member states. It was not the League of Nations, but the Nations of the League which failed, in so far as there was failure. The legal obligation,or the legal theory of the organisation was defective on this side, but this did not preclude action by the members for effective promotion or security and welfare. Members of the League wanted to use the League for furtherance of their own ends. France was interested in its security against Germany. She supported Italy in Ethiopia to win her over against Germany. England viewed the League as a valuable organ for canalizing a settlement of international disputes, for the promotion of its economic recovery and social co-operation and for the preservation of an international balance. Even U.S.S.R did not sincerely support the efforts of the League. In 1940, it undertook aggression in Finland in violation of the Covenant of the league, which led to her expulsion from the league. On the other hand, Germany used the League to change some of the features of the Treaty of Versailles. She left the League because it clashed with her ideal of world hegemony. Italy and Japan also had similar attitude towards the League.

5. There was lack of faith among small nations.

As a result of the attitude of the major powers, the small nations lost faith in the capacity of the League to save them from any aggression. The principle of Collective Security was

not applied in actual practice. Aggression would have been checked and the prestige of the League increased, had all the states joined hands against Japan and Italy on the questions of Manchuria and Abyssinia respectively. As each state decided to follow its own policy, and the League could not make anyconcerted effort, the principle of collective security was weakened. This gave rise to a feeling in the minds of smaller nations, that they could not depend much on the League.

6. The equal status of members.

The equal status granted to all the members of the League irrespective of their size was not a proper basis of representation in the international organisation. According to Anthony Eden,the idea of 'one nation', 'one vote' led to Liberia being treated as important as the Soviet Union and Costa Rica as important as the United Kingdom. This being not fair to big nations, who had to bear the major responsibility.

7. Narrow nationalism.

According to Prof. Potter, the League of Nations failed, in so far as the people of Germany, Japan and Italy preferred to support their government in careers of imperialistic conquest, and becausethe people of England, France and the United States discouraged their government from taking effective action, early enough to stem the tide of Axis aggression. The peoples and governments of totalitarian states were more responsible for the destruction of international collaboration under the League auspices, than those of the liberal states, but the latter must bear a large share of negative blame.

8. Lack of Sanction

The League was not provided with any independent force to effectively deal with the states threatening the peace and security of the World. All the forces to be used against such states were under normal circumstances, left under the national government concerned. Only during the time of crisis, these forces were put under international control. The states were free to contribute such forces to the international authority or refuse to do so.Though the League possessed an effective weapon in economic sanction, but it was never applied effectively in actual practice. Economic sanctions were applied against Italy in a half-hearted manner, and they failed to achieve the desired result. Even the member states were reluctant to apply the economic sanction because it hit their economy in turn.

9. It is said that it was ahead of time of its formation.

It is said that the League of Nations failed because it was formed ahead of its time, The people of the world were given to the habit of thinking in terms of national interest and not the interest of the world. The ideas of 'sovereignty' and 'freedom of action' was so deeply entrenched in their minds that it was impossible to replace them with the ideas of internationalism. Therefore, they never felt it binding on them.

10. Unanimity rule and the imbalance

International Relations other than procedural, was to be taken by a unanimous vote of all the members. However, in actual practice, due to power rivalries, this unanimityof vote could not be achieved and the League could hardly take any action in the face of crises.

According to Prof. Hogan, The League of Nations rested upon three or four main pillars. These were provisions for the reduction of armaments (Art. 8), the guarantees against aggression (Articles 10 and 16), the settlement of disputes (Article 12 to15and 17) and the provision for peaceful change (Art. 19). The last two dovetailed into each other somewhat, as the settlement of a dispute may involve a considerable revision of existing treaties. Because these pillars were not of equal strength, the League suffered from imbalance. The drafters of the Covenant attempted to make the guarantees against aggression very strong, while the provisions for reduction of armaments and for peaceful change were made relatively weak. Thus, the League failed to preserve the security and peace of the world. However, its greatest achievement was that it did not die but merged with the U.N.

1.3.9. Let Us Sum Up

According to Cordell Hull, The League of Nations has been responsible for more humanitarian and scientific endeavour than any other organisation in history. According to Walters, Establishment of the League was a revolutionary step. It involved changes of principles, changes even in the general conviction, which form the basis of public opinion. Before the League it was held both in theory and practice that every state was the sole and sovereign judge of its own acts,owing no allegiance to any-higher authority, entitled to resent criticism, or even questioning by other states. With the establishment of the League, the belief, that aggressive war is a crime against humanity, and that it is in the interest, the right, and the duty of every state to join in preventing it is now every where taken for granted. Now the League as a working institution is dead, but the ideals which it sought to

promote and the agencies it created have become an essential part of the political thinking of the civilised world. Potter says that, it measured by what other international organisations had accomplished in the past, the League's performance even in the security field rates very high, indeed higher than that of any other international institution with the exception of a very few highly special and limited agencies. From the above discussion, it is evident that the League of Nations had much to its credit in the political, social, economic and educational fields. International Justice, which had so far existed in thought only. It also goes o the credit of the League of Nations that it pulled together separate lines of development into a coherent system. Above all, the significance of the League lies in the fact that it made a bid to improve the procedures and assist the operation of the world political system. It also introduced radical changes in the multi-state system. The Mandate System introduced by the League of Nations helped the backward communities to escape annexation by big powers. Henceforth the big powers were to treat these territories as the sacred trust of civilisation and could not annex them without the consent of the League of Nations. For about two decades the League worked as an effective institution and could boast of number of achievements in the political, economic and social fields. No doubt, ultimately the League failed and its structure showed many weaknesses, but this does not undermine its contribution to the growth of international organisation. The mere fact that the United Nations created after the Second World War was largely based on the League of Nations bears a testimony to the importance of the League as a body of international organization. As Lord Cecil put it "The League is dead, long live the United Nations".

1.3.10 Exercise

1. Discuss the origin, objectives and performance of Concert of Europe in International affairs ?
2. Discuss the origin, goals, structure and performance of the League of Nations ?
3. Discuss the casues of failure of League of Lations ?

1.4. OBJECTIVES AND BASIC PRINCIPLES OF UNITED NATIONS CHARTER

Harjit Singh

Structure

1.4.8 Exercise

1.4.0 Objectives

In this lesson you will study the emergence of Unied Nations as an International Organization and its institutional meachanism. After going through this lesson, you will be able to know :

- the post Second World War international context and power structure in which the United Nations emerged
- the basic objectives of the United Nations
- the basic principles of the United Nations
- the organs of the United Nations

1.4.1. Introduction

The setting up of the United Nations Organisation (UNO) represented a renewed attempt to accomplish world peace through international organisation, as different from world government. The makers of the United Nations Charter were basically the representatives of the victorious nations in the Second World War. They quickly got the charter signed by the concerned states, while the crucial last stage of the war was still being fought in Europe and Pacific. Their idea was that, wartime unity and cooperation would side line the hurdles that arise more easily in time of peace and security. Thus, the UN Charter was purposely drafted as a means of justice and orderliness in international relations; a document of the world community at large and not as a subsidiary to victorious allied coalition. The drafters were interested to disassociate the Charter of theUnited Nations from any postwar peace treaty, such as Versailles after World War I, that might hamper the smooth operation of the world organisation in the long run. It was also essential to delink the United Nations from its weak predecessor, the League, whose unimpressive record and alienation from great powers, such as the United States and the Soviet Union could at best discourage the participation of these countries in the new world organisation.

The UN Charter was signed by representatives of fifty-one nations at San Francisco on

June 26, 1945. Within three months the Charter was ratified by all of the permanent members of the Security Council and by majority of the signatories. On October 24,1945 the United Nations formally came into existence. Claude has very beautifully summarised the composite of forces and interactions, that produced the United Nations Charter. In his own words, 'the charter was the outcome of past experience in the building and operation of international institutions, war time planning, great power and particularly American leadership, intensive negotiation amid an intricate pattern of national disagreements and conflicts of interest, and popular pressures for realisation of the desperate demand and noble aspiration for a just and durable peace.'

1.4.2. The UN Charter

This charter document contains more than ten thousand words, with 111 Articles divided into 19 chapters. It clearly states the purposes, principles and general nature of this international organisation. The Charter delineates all the United Nations subsequent relationship and programs. Bennett says that 'the Charter also is a multilateral treaty, establishing the pattern of agreements among, and obligations of its members and as such, is an important addition to international law. As a written constitution, the Charter provides the UN's Organisational structure, principles, powers and functions.' As the United Nations is neither a world government nor a world federation, its members obligations are limited, and only their cooperation can put UN functions in to practice. Unlike national governments, the organisation has no means of enforcing its measures. Even the final interpretation of Charter obligations depends upon its members.

Like most other constitutions, not all principles and practices can be determined by simply going through the Charter. Interpretation and actual usages of the document have been far more significant than the few amendments incorporated into it. In thisconnection, Bennett rightly observes that only by examining United Nations practices, can its Charter's functions, non functions, and malfunctions really be understood. Sometimesits constitutional principles have acted either as catalysts or as barriers to action; at other.times, the attitude and will of the members have been more influential.Originally the UNO had 51 member countries. By September 2000 membership rose to 189 countries. Now it has 193 members.

1.4.3. Purposes of UN Charter (Article 1)

The Purposes of the United Nations areto maintain international peace and security, and to that end, to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations, which might lead to a breach of the peace, and also to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace. To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion and to act as a centre for harmonizing the actions of nations in the attainment of these common ends.These purposes of the United Nations according to Article 1 of the Charter are elaborated as follows:

1 To Maintain International Peace and Security.

The means for achieving this purpose include peaceful settlement of disputes (Chapter V) and collective security (ChapterVI) for prevention and removal of threats to the peace or acts of aggression. The Security Council is assigned primary duty for peace maintenance, but shares this function with the General Assembly and the International Court of Justice. The Chapter VII dilates upon the role to be played by regional organisations in maintaining peace.

2 To develop friendly relations among nations

Various organs and agencies of the UN provide excellent platform to member-states for developing friendly relations among themselves.

3 To co-operate in solving international economic, social, cultural and humanitarian problems.

The Economic and Social Council is to serve as the major organ for putting this goal in practice with enough support from the General Assembly and from such autonomous international specialised agencies in the economicand social sphere as governments may

create and bring into formal relationship withthe United Nations. The Charter lacks in giving any specific or detailed meaning of thisobjective.

4 Promoting respect for Human Rights

Major responsibilities for promoting human rights are assigned to the General assembly and to the Economic and Social Council. The Economic and Social Council is directed to establish one or more commissions in the area of human rights and empowered to recommend and prepare draft Conventions on human rights. The Encouragement of respect for human rights and fundamental freedom is declared to be a basic objective of the trusteeship system. In 1948, the General Assembly adopted overwhelmingly the Universal Declaration of Human RightsSince then the UN has endeavoured to develop covenants (with treaty-binding powers) rather than Declarations.

5 To be a centre for harmonising the actions of nations in attaining these common ends and more specific goals

This as well as other statements of purposes in either thePreamble and Article 1 of the Charter are vague and devoid of means of implementation.These vague goals are; taking appropriate measures to strengthen universal peace; practicing tolerance and living together in peace as good neighbours; and establishingjustice and respect for international law.

1.4.4. Basic Principles (Article 2)

The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.

1. The Organization is based on the principle of the sovereign equality of all its Members.
2. All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall ful fill in good faith the obligations assumed by them in accordance with the present Charter.
3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.
4. All Members shall refrain in their international relations from 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.

5. All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action.

6. The Organization shall ensure that states which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security.

7. Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

As such the United Nations acts according to the principles mentioned in Article 2 of the Charter; sovereign equality of its members; to fulfil in good faith their Charter obligations; to settle international disputes by peaceful means; to refrain from the threat or use offorce against other States; give the United Nations every assistance to any action it takes inaccordance with the Charter; not to assist States against which the United Nations is taking preventive or enforcement action; to ensure that States which are not members act in accordance with these principles; and no authorization the United Nations to intervene in matters of domestic jurisdiction of state.

The principles discussed above constitute a substantial body of basic norms on which the United Nations structure and functions are superimposed. Although this group of norms is not always clear as to meaning and is not internally consistent. It represents, in combination with the purposes of the organisation, the essential statementof the philosophy of the United States observes Bennett. As a philosophy is not very useful without execution, the international behaviour of states determines these normsor others are prevalent in international politics.

1.4.5. Basic Objectives of UN

The overarching strategy of the United Nations is captured in the United Nations Common Agenda. It involves various objectives which mainly may be taken as:

- Maintaining international peace and security.
- Promoting human rights.
- Fostering social and economic development.
- Developing friendly relations among the nations of the world.
- Providing humanitarian aid during natural calamities, famine and armed conflict.
- Solving international problems of any nature (economic, cultural, social).

The core principles and objectives of the United Nations Organization are based on primary goals of the United Nations Organization (UNO); to maintain global peace and security, to promote the well-being of the world's peoples, and to achieve these goals via international and friendly collaboration; to promote worldwide cooperation in economically, socially, and cultural development; it includes acknowledging all the fundamental human rights of the people; it also aims to foster good ties between governments based on the ideals of equal rights and self-determination; to serve as a commonplace of the centre for coordinating these national initiatives toward common goals.On the basis of the above objectives united nations have acted on various pedestals in order to fulfil them which can be analysed in following spheres.

Peace Keeping and Security

The UN, after approval by the Security Council, sends peace keepers to regions where armed conflict has recently ceased or paused to enforce the terms of peace agreements and to discourage combatants from resuming hostilities. Since the UN does not maintain its own military, peacekeeping forces are voluntarily provided by member states. These soldiers are sometimes nicknamed "Blue Helmets" because they wear distinctive blue helmets. Peace keeping forces as a whole received the Nobel Peace Prize in 1988.

The UN has carried out 71 peace keeping operations since 1947, and as of April 2021, over 88,000 peacekeeping personnel from 121 nations have been deployed on missions

The largest is the United Nations Mission in South Sudan, which has close to 19,200 uniformed personnel, and the smallest, the United Nations Military Observer Group in India and Pakistan, consists of 113 civilians and experts charged with monitoring the ceasefire in Jammu and Kashmir. UN peace keepers with the United Nations Truce Supervision Organization (or UNTSO) have been stationed in the Middle East since 1948, the longest-running active peacekeeping mission.A study by the RAND Corporation in 2005 found the UN to be successful in two-thirds of their peace keeping efforts. It compared efforts at nation-building by the UN to those of the United States, and found that 87.5% of UN cases are at peace, as compared with 50% of U.S.cases at peace.In 2005, the Human Security Report documented a decline in the number of wars, genocides, and human rights abuses since the end of the Cold War, and presented evidence, albeit circumstantial, that international activism - mostly spearheaded by the UN - has been the main cause of the decline in armed conflict. Situations in which the UN has not only acted to keep the peace, but also intervened include the Korean War, and the authorization of intervention in Iraq after the Gulf War. Further studies published between 2008 and 2021 determined UN peace keeping operations to be more effective at ensuring long-lasting peace and minimizing civilian casualties.The UN Buffer Zone in Cyprus was established in 1974 following the Turkish invasion of Cyprus.

Efforts for Disarmament

In addition to peacekeeping, the UN is also active in encouraging disarmament. Regulation of armaments was included in the writing of the UN Charter in 1945, and was envisioned as a way of limiting the use of human and economic resources for their creation. The advent of nuclear weapons came only weeks after the signing of the charter; resulting in the first resolution of the first General Assembly meeting, calling for specific proposals for 'the elimination from national armaments of atomic weapons and of all other major weapons adaptable to mass destruction'.The UN has been involved with arms-limitation treaties such as the Outer Space Treaty, the Treaty on the Non-Proliferation of nuclear weapons, the Sea bed Arms Control Treaty, the Biological Weapons Convention, the Chemical Weapons Convention, and the Ottawa Treaty.Three UN bodies oversee arms proliferation issues; the International Atomic Energy Agency, the Organization for the Prohibition of Chemical Weapons and the Comprehensive Nuclear-Test-Ban Treaty Organization Preparatory Commission. Additionally, many peace keeping missions focus on

disarmament; several operations in West Africa disarmed roughly 250,000 former combatants and secured tens of thousands of weapons and millions of munitions.

Human Rights

One of the UN's primary objectives'is promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion', and member states pledge to undertake 'joint and separate action' to protect these rights.In 1948, the General Assembly adopted a Universal Declaration of Human Rights, drafted by a committee headed by American diplomat and activist Eleanor Roosevelt, and including the French lawyer, Rene Cassin. The document proclaims basic civil, political and economic rights common to all human beings, though its effectiveness towards achieving these ends has been disputed since its drafting. The Declaration serves as a common standard of achievement for all people and all nations rather than a legally binding document, but it has become the basis of two binding treaties, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. In practice, the UN is unable to take significant action against human rights abuses without a Security Council resolution, though it does substantial work in investigating and reporting abuses.

In 1979, the General Assembly adopted the Convention on the Elimination of All forms of Discrimination against Women, followed by the Convention on the Rights of the Child in 1989. With the end of the Cold War, the push for human rights action took on new impetus. The United Nations Commission on Human Rights was formed in 1993, to oversee human rights issues for the UN, following the recommendation of that year's World Conference on Human Rights. A scholar of the UN, describes the organization's mandate as broad and vague, with only meagre resources to carry it out. In 2006, it was replaced by a Human Rights Council consisting of 47 nations. In 2006, the General Assembly passed a Declaration on the Rights of Indigenous People.

Other UN bodies responsible for women's rights issues include the United Nations Commission on the Status of Women, the United Nations Development Fund for Women and the United Nations International Research and Training Institute for the Advancement of Women. The UN Permanent Forum on Indigenous Issues, one of three bodies with a mandate to oversee issues related to indigenous peoples, held its first session in 2002.

Economic Development and Humanitarian Assistance

It includes

- Millennium Development Goals.
- Eradicate extreme poverty and hunger.
- Achieve universal primary education.
- Promote gender equality and empower women.
- Reduce child mortality.
- Improve maternal health.
- Combat HIV/AIDS, malaria, and other diseases.
- Ensure environmental sustainability.
- Develop a global partnership for development

To achieve International Co-operation

In solving international problems of an economic, social, cultural and humanitarian character, numerous bodies have been created to work towards this goal, primarily under the authority of the General Assembly and the ECOSOC. In 2000, the 192 UN member states agreed to achieve eight Millennium Development Goals by 2015.The Sustainable Development Goals were launched in 2015 to succeed the Millennium Development Goals. The SDGs have an associated financing framework called the Addis Ababa Action Agenda.The UN Development Programme (UNDP); an organization for grant-based technical assistance, is one of the leading bodies in the field of international development. The organization also publishes the UN Human Development Index; a comparative measure ranking countries by poverty, literacy, education, life expectancy, and other factors. The Food and Agriculture Organization (FAO) promotes agricultural development and food security. The United Nations Children's Fund (UNICEF) was created in 1946 to aid European children after the Second World War, and expanded its mission to provide aid around the world and to uphold the convention on the Rights of the Child.

The World Bank Group and the International Monetary Fund (or the IMF) are independent,

specialized agencies and observers within the UN framework.They were initially formed separately from the UN through the Bretton Woods Agreement. The World Bank provides loans for international development, while the IMF promotes international economic co-operation and gives emergency loans to indebted countries. The World Health Organization (WHO), which focuses on international health issues and disease eradication, is another of the UN's largest agencies. In 1980, the agency announced that the eradication of small pox had been completed. In subsequent decades, WHO eradicated polio and leprosy. The Joint United Nations Programme on HIV/AIDS (UNAIDS) co-ordinated the organization's response to the AIDS epidemic. The UN Population Fund, which also dedicates part of its resources to combating HIV, is the world's largest source of funding for reproductive health and family planning services.

Along with the International Red Cross and Red Crescent Movement, the UN takes a leading role in co-ordinating emergency relief. The World Food Programme (WFP) provides food aid in response to famine, natural disasters, and armed conflict. The organization feeds an average of 90 million people in 80 nations per year. The Office of the United Nations High Commissioner for Refugees (UNHCR) works to protect the rights of refugees, asylum seekers and stateless people. The UNHCR and the WFP programmes are funded by voluntary contributions from governments, corporations, and individuals, though the UNHCR's administrative costs are paid for by the UN's primary budget.

Environment and Climate

It includes various programmes like United Nations Environment Programme, United Nations Framework Convention on Climate Change, and Intergovernmental Panel on Climate Change. Beginning with the formation of the UN Environmental Programme (UNEP) in 1972, the UN has made environmental issues a prominent part of its agenda. A lack of success in the first two decades of UN work in this area led to the Earth Summit in Rio de Janeiro, Brazil, in 1992. It sought to give new impetus to these efforts. In 1988, the UNEP and the World Meteorological Organization (WMO); another UN organization, established the Intergovernmental Panel on Climate Change, which assesses and reports on research on global warming. The UN-sponsored Kyoto Protocol set legally binding emissions reduction targets for ratifying states.

Other Global Issues

Since the UN's creation, over 80 colonies have attained independence. The General Assembly adopted the Declaration on the Granting of Independence to Colonial Countries and Peoples in 1960 with no votes against but abstentions from all major colonial powers. The UN works towards decolonization through groups including the UN Committee on Decolonization.The UN also declares and co-ordinates international observances, that bring awareness to issues of international interest or concern like World Tuberculosis Day, Earth Day, and the International Year of Deserts and Desertification.

1.4.6. ORGANS OF THE UNITED NATIONS

For fulfilling its objectives and purposes, the UN Charter provides for the six principal organs of the United Nationswhich plays important role in fulfilling the objectives, notably; General Assembly; the Security Council; the Economic and Social Council; Trusteeship Council; the Secretariat; and the international Court of justice. An elaboration of the same can be taken as follows

1.4.6.1. General Assembly

The General Assembly is a paramount and central organ of the UN. According to Padelford and Lincoln 'it acts as the plenary forum, wherein all members of the United Nations meet each year to considerand debate the major issues of international politics... And to its rostrum come foreign ministers, ambassadors, and leading statesmen to present the views of their country onthese issues and to appeal to world opinion for support,'. The General Assembly is composed of all the members of the UN. Although each state can send the maximum of five representatives, it has only one vote. Therepresentatives act according to the directions of their respective Governments while deliberating in the General Assembly, and are answerable to their respective States. All important matters are decided by two-thirds majority. These important matters being; recommendations regarding peace and security, selection of non-permanent membersof the Security Council and the members of the Trusteeship Council, expulsion of members and budgetary questions.

The General Assembly performs deliberative, supervisory, financial, elective andconstituent functions. Its functions are to discuss, make recommendations, consider, call the attention, notify and initiate studies. It largely plays recommendatory and advisory role. Its supervisory

and investigating responsibilities are immense. It has power in regard to finance, non-self-governing territories, the election of the membersof the Security Council, the Economic and Social Council, the judges of the InternationalCourt of Justice, alongwith the Security Council, and the admission of new members, onthe recommendations of the Security Council.

The General Assembly has several committees and subsidiary organs for performing its role properly. Seven main committees being; Political and Security Committee, Economic and Financial Committee, Social, Humanitarian and Cultural Committee, Trusteeship Committee, Administrative and Budgetary Committee, Legal Committee and Procedural Committee, The Assembly can also form more committees, for dealing with specific problems. The General Assembly meets once a year in regular session commencing on the third Tuesday in September. There is also provision for special sessions and emergencysessions.

Uniting for Peace Resolution

The 'Uniting for Peace Resolution' adopted in 1950, enlarged the sphere of activity of the General Assembly. As a consequence of this resolution, if the Security Council fails toexercise its power for maintenance of international peace and security, owing to lack of unanimity among the permanent members, the General Assembly is authorised to consider the matter immediately, and make appropriate recommendations for collective measures. In case of breach of peace or act of aggression, it can authorise the use of armed forces, when necessary to maintain international peace and security. The Uniting for Peace Resolution transformed the General Assembly, from a merely deliberative body, into an organ with effective power, to solve crises situation, and has made it the ultimate custodian of collective security. With the passing of time, the role and importance of the General Assembly was enhanced by the contemporary world politics and by the enhanced use of certain constitutional devices, like:

- by shifting of issues from the Security Council to the GeneralAssembly; it can recommend with regard to issues on the agenda of the SecurityCouncil.
- by passing of the Uniting for Peace Resolution by two-thirds majority.

- its recommendations are being followed, as if they are legally binding decisions.
- ithas considerable moral authority, because of its strength based on sheer strength (193member states). It is like the town meeting of the world, open conscience of mankind and the Parliament of Man. 'This prominence and centrality were not necessarily established by design in the Charter, but was soon achieved through vigorous exercise by the General Assembly, of its clearly designated functions, and through its assertion of additional authority in areas, such as the maintenance of peace and security, in which its Charter mandate is ambiguous' (Bennett.)

1.4.6.2. Security Council

The Security Council is an 'action agency' of the UN, and is very much alike the executive organ of government. Unlike the General Assembly it is a much smaller, but acontinuous body, capable of meeting on any given day. Originally it consisted of 11members. The first amendment of the Charter in 1965 expanded its strength to 15members. Now it has five permanent members; China, France, Russia, the United Kingdom and the United States and ten non-permanent members, elected by the GeneralAssembly for two years terms, without eligibility for immediate re-election. At the time of election of the non-permanent members, due consideration is accorded to the contribution of members of the UN, to the maintenance of international peace and security, and alsoto equitable geographical distribution e.g. five from Asia and Africa, two from LatinAmerica, one from Eastern Europe and two from Western Europe and other states. Each member of the Security Council can send only one representative.The Security Council is so organised as to be able to function continuously and regularly to tackle any crisis situation. A representative of each of its members must be present at all times at the UN headquarters. The Council may meet elsewhere than at headquarters, if it considers this advisable. The rules of the Security Council require meetings of the Council at intervals of no more than fourteen days, but this rule is frequently ignored. By common consent, actually the frequency of meetings is determined by such considerations, as the existence of disputes or threatening situations, the willingness of states to bring these situations before the Security Council, and the nature of thedispute and parties involved in relation to any prospects for the Security Council, to contribute to the resolution of the conflict, or to provide propaganda advantage for any state or group of states.

The five permanent members enjoy the right to veto. On substantive matters their concurrence is essential, but on procedural matters an affirmative vote of any 9 members is sufficient, such matters being; chairmanship of the Council, items on the agenda,dates and timings of the meeting, But, whether a particular matter is procedural or substantive, is to be decided by the vote required for a substantive issue. This way the permanent members enjoy double veto. According to Hari Hara Das, "the political logic of the Charter provided for thelinking of the two factors viz, the dominant position of the Council in the United Nations and the dominant position of the five Great Powers in the Council. Thus, Great Powers unity was the basic factor, on which the whole concept of the Security Council was based". It is said that there was pre-eminence of the big powers in the United Nations and its Security Council. "The big powers, which dominated both the war effort against the Axis, and postwar planning for an international organisation, visualised the Security Council as the paramount organ of the United Nations. It was to be a mechanism to aid in maintaining international peace and security; which was to be the primary purpose of the new organisation' and enforcement would depend upon the power of the large states... Therefore, the big powers, it was felt, should have positions of authority on the Security Council commensurate with their responsibilities for maintaining world peace and security " (Bennet).

Broadly, the Security Council enjoys deliberative, executive, elective and regulative powers, The role or functions of the Security Council are listed below:

- to consider discuss, investigate and make necessary recommendations in regard to situations arising out of threat to peace, breach of peace or an act ofaggression or any other controversy.
- to take or execute such action as may be necessary, to facilitate the pacificsettlement of international disputes, to deal with threat of the peace, breachesof the peace, and acts of aggression, including enforcement measures andsupervision of military action taken by the United Nations.
- to recommend to the General Assembly admission of states for membership in the United Nations.

- to recommend expulsion of states for violations of the Charter, or restoration of privileges.
- to formulate plans for the regulation of armaments.
- to review the administration of strategic areas and trusteeship territories.
- to participate with the General Assembly in the election of judges to theInternational Court of Justice.
- to make recommendations or decide upon measures to be taken to give effect to judgement of the International Court in the event a party fails to perform its obligations.
- to recommend to the General Assembly, the person to be appointed Secretary-General of the United Nations.
- to participate in deciding, whether a conference to revise the Charter should be held.
- the council, is obliged, like other organs, to submit annual report and special reports to the General Assembly.

The Security Council could not fully perform the role that was assigned to it by the UN Charter. It is said that over the years, the number of its sessions has decreased, and the scope of the political issues taken by it for discussion has considerably narrowed. The reasons for the decline of the importance of the Security Council were firstly, rifts and disagreements among the Great Powers in the post-war years; secondly, the adoption of the Uniting for Peace Resolution by the General Assembly in 1950; and thirdly, the emergence and growth of powerful regional security alliances like the NATO, SEATO, CENTO and Warsaw Pact, etc. during Cold War years of late forties and early fifties.

The role and prestige of the Security Council has changed from time to time. It is said that 'from an optimistic beginning, through a period of growing frustration manifested by frequent exercise of the veto and the use of the Council as an East-West propaganda arena, the Security Council sank in world esteem to a low point in the 1950s.' Loss of the effectiveness of the Security Council was compensated by strengthening the General Assembly and by

utilising the initiative of the Secretary-General. In the 1960s the Security Council regained some of its lost prestige and power. Meetings were more frequent, and stalemate was eschewed by the increased use of abstentions, the adoption of resolution by consensus, restraint in the exercise of the veto, and endeavours to accommodate divergent views in the drafting of resolutions before they were brought to a vote.

The end of the Cold War in 1990-91 began new era in the history of the Council. In the contemporary time the Council's activities have the following four important dimensions; mainly; Expanding the Charter conception of the meaning and requirements ofinternational peace and security to tackle new challenges within the parameters of the Charter; deployment of vastly vitalised peace-keeping operations in theatres of conflict; compelling the targeted parties through non- military sanctions to comply with the decisions of the Council; and authorisation of necessary use of force by interested individual member states in situations, where UN capabilities are not deemed sufficient.New type of challenging tasks has been taken by the Security Council, other than exercises of supervision of adherence to cease-fire arrangements between the parties to a conflict. These tasks are humanitarian, administrative, electoral and police functions; conduct of elections or referendum (as in Cambodia, Mozambique, Namibia and Western Sahara), refugee relief and repatriation (as in EI Salvador, Mozambique, Rwanda and Somalia), whetting the human rights record of civilian police (as in EI Salvador); disarming or demobilisation of armed men (as in Angola, El Salvador and Somalia), and protection of areas designated for the safety of civilian populations (as in BosniaHerzegovina and Rwanda). Not only this, the Security Council sometime takes upassignments, which the concept of peace keeping apparently does not include, and forwhich it is not suited e.g. enforcement of no-flying zones in the former Yugoslavia and rehabilitation of State structures in Somalia.

1.4.6.3. The Economic and Social Council

Under Article 55 of the Charter, the UN is expected to create conditions of stability and well-being which are essential for peaceful and friendly relations among nations.To accomplish this objective, there should be economic and social progress, leading tohigher standard of living and full employment. Collective effort at international level is required to solve socio-economic problems. For this the Economic and Social Council (ECOSOC) works as another principal organ of the United Nations. All members are elected by the

General Assembly for three-years terms, with one third of the terms expiring each year. No state is entitled to continuous membership, but as a practical matter, to assure adequate financial and general support of programs, all of the permanent members have been regularly re-elected. Other seats are rotated on aregional basis. Small and underdeveloped states are in majority in ECOSOC, and can pass resolutions, favourable to their own interests, as all decisions are taken by simple majority vote. But implementation of these decisions and measures depend mostly onthe financial support of rich and powerful states. The Council meets twice annually, with a spring session in New York and a summer session in Geneva.

The following are the powers and functions of the Council:

- to make or initiate studies and reports with respect to international economic, social, cultural, educational,health and related matters.
- to make recommendations with respect to above matters to the General Assembly, to the members of the UN and to the specialised agencies concerned.
- to make recommendations for the purpose of promoting respect for and observance of human rights and fundamental freedoms for all.
- to prepare draft conventions for submission to the General Assembly with respect to matters falling within its competence.
- to enter into agreements with specialised agencies, bringing them into relationship with the United Nations.
- to call international conferences oneconomic, social and humanitarian cooperation among nations.
- to coordinate theactivities of the specialised agencies of the United Nations and to obtain reports fromthem.

Among its significant activities and achievements are its persistent concern for human rights. Since 1960, with the adoption of General Assembly declarations proclaiming the 1960s and 1980s as the Second and Third Development Decades, ECOSOC has remained busy in solving the problems, and fulfilling the aspirations of the developing nations. Some of the major results of the study and research activities of the ECOSOC are the World

Economic Survey, the Report on the World Social Situation, the United Nations StatisticalYearbook, the United Nations Demographic Yearbook, and the United Nations Yearbook onHuman Rights. Achievements and extensive research projects of the specialised agencies of the UN are also significant.The Council works through commissions, committees and other subsidiary bodies, like Statistical Commission, Population Commission, Commission for Social Development, Commission on Human Rights, Commission on the Status of Women, Commission on Narcotic Drugs. Five regional commissions; Economic Commission for Africa, (Add is Ababa, Ethiopia), Economic and Social Commission for Asia and Pacific (Bangkok, Thailand), EconomicCommission for Europe (Geneva, Switzerland), Economic Commission for Latin Americaand the Caribbean (Santiago, Chile) and Economic and Social Commission for Western Asia (Amman, Jordan). Six standing committees on Programme and Coordination, on Natural Resources, on Non-governmental Organisations, on Inter-governmental Agencies, on Transnational Corporations and on Human Settlements. A number of standing expert bodies on such subjects as crime prevention and control, development planning, international cooperation in tax matters, and transport of dangerous goods.

1.4.6.4. The Trusteeship Council

(on 1st November, 1994 it suspended its operations after the last remaining trust territory 'Palau' got independence)

The Trusteeship Council was set up after the end of World War II to supervise and administer trust territories placed under its disposal by individual agreements. Chapter XII of the UN Charter provided for an international trusteeship system which shall apply to (a) territories heldunder mandate; (b) territories which may be detached from enemy states as a result of the Second World War; and (c) territories voluntarily placed under the system by States responsible for their administration. The objectives of the system were; furtherance of peace and security; promotion of socio-economic interests of their inhabitants; progress towards self-government; encouragement of respect for human rights and for fundamental freedoms and; promotion of equal treatment in social, economic and commercial matters for all membersof the United Nations and their nationals.

The role of the Trusteeship Council was to supervise, on behalf of the international community; those non-self-governing territories, that were designated as trust territories.The

administration of each territory was carried out by the General Assembly, through the agency of the Trusteeship Council. All other functions of this Council pertain to themethods for exercising this supervisory role, like preparation of a detailed questionnaireon the political, economic, social and educational advancement of the inhabitants ofterritory, to be used as a basis for an annual report by the administering authority. The receipt and examination of petitions from individuals or groups within the trust territory, and periodic visits to each trust territory by delegates of the Trusteeship council. At the maximum, during the 1950s theTrusteeship Council had 14 members with the United States, the United Kingdom, andFrance among the seven administering members of the Security Council, and five other members elected by the General Assembly. By 1975, 10 out of 11 trust territories gained their independence leaving only the five permanent members of the Security Council on the Trusteeship Council. After 1975 the only remaining area under its supervision was the Trust territory of the Pacific Islands (the Republic of Belau or Palau) with the United States as trustee. Independence of this territory in 1994 left the Trusteeship Council with no business to perform and it has become non-functional. Its works completed; theTrusteeship Council now consists of the 5 permanent members of the Security Council.It has amended its rules of procedure to allow it to meet as and when occasion requires.The rules of procedure of the Trusteeship Council contained in Council resolution 2200 (LXI) of May 25, 1994 will become operational and the Council may meet as and when occasion may require. The Secretary-General in his 1994 Annual Report on thework of the organisation has recommended that the General Assembly may proceed with steps to eliminate the organ in accordance with Article 108 of the Charter. Now it exists only in paper.

1.4.6.5. The International Court of Justice (ICJ)

The International Court of Justice is the principal judicial organ of the UnitedNations, with headquarters in the Hague. It functions in accordance with its Statute, which is an integral part of the United Nations Charter. The Court is open to the parties of this Statute which automatically includes all members of the United Nations. A state which is not a member of the UN may become a party to the Statute, on conditions determined in each case by the General Assembly, upon the recommendation of the Security Council. The Court consists of 15 judges known as the members of the Court. They are elected by a concurrent vote of the General Assembly and Security Council. They are chosen onthe basis of their

qualifications, not on the basis of their nationality. Care is taken, to see that the principal legal systems of the world are represented in the Court. No two judges can be nationals of the same state. The judges serve for a term of nine years, with the terms of five judges expiring every third year. They may be re-elected. They cannot engage in any other occupation during their term of office. Inhearing a specific case, if there is no judge on the court of the nationality, of one or more of the states, that are parties to the case, such state or states may appoint a national judgeto sit for that case. These additional judges participate with full voting rights.The members (judges) of the Court elect their President and Vice-President for three years; they may be re-elected. They appoint their own Registrar. Cases are decided by majority vote of the participating judges. Nine judges constitute a quorum. In case of a tie, the President of the Court has a casting vote. The Court hears those cases that are referred to it by the contending parties. Onlystates may bring cases before the court, but no state is required to submit any case forhearing any decision in contrast with national legal system. The ICJ does not have compulsory jurisdiction. This is a great deficiency of the Court. The Security Council may recommend that a legal dispute be referred tothe Court.The General Assembly and the Security Council can ask the Court for an advisory opinion on any legal question; other organs of the United Nations and the specialised agencies, when authorised by the General Assembly, can ask for advisory opinion onlegal questions within the scope of their activities. More than three-fourths of all requests to the Court for advisory opinions have been made by the General Assembly.The jurisdiction of the Court covers all questions which States refer to it, and all matters provided for in the UN Charter or in treaties or conventions in force. States may bind themselves in advance to accept the jurisdiction of the Court in special cases, either by signing a treaty or convention, which provides for reference to the Court, or by making a special declaration to this effect. Such declarations accepting compulsory jurisdiction may exclude certain classes of cases.

In accordance with Article 38 of the Statute, the Court, in deciding disputes submitted to it, applies; international conventions establishing rules recognised by the contesting States; international custom as evidence of a general practice accepted by law; the general principles of law recognised by nations; judicial decisions and the teachings ofthe most highly qualified publicists of the various nations, as a subsidiary means for determining the rules of law. The Court may decide; according to what is just and good, i.e. on a basis of practical

fairness, rather than strict law, but only if theparties concerned so agree.The Security Council can be called upon by one of the parties in a case to determine measures to be taken to give effect to a judgement of the Court, if the other party fails to perform its obligations under that judgement. Despite several deficiencies and weaknesses, ICJ has played a significant role in the growth of international legal system.

1.4.6.6. The Secretariat

The Charter establishes a Secretariat that is the principal administrative body of the UN consisting of thousands of international civil servants headed by the SecretaryGeneral. He is appointed by the General Assembly on the recommendation of the Security Council for a five-year term. The major obstacle to selection is the agreement on a candidate by the major powers, since any permanent member of the Security Council may exercise a veto. Deadlocks usually took place in the selection process, and the termof the first Secretary-General had to extended by the General Assembly without concurrence of the Security Council.

The Secretaries-General who served this organisation were:

NameYear	Country
Trygve Lie1946Norway	
Dag Hammarskjold	1953 Sweden
U Thant	1961 Burma
Kurt Waldheim	1972 Austria
Javier Peres de Cuellar	1982 Peru
Boutros Boutros Ghali	1992 Egypt
Kofi Annan1997 Ghana	
Ban Ki Moon	2007 South Korea
Antonio Guterres	2017 Portugal

The work of the Secretary-General involves a certain degree of inherent, creative tension that stems from the Charter's definitions of the job; both Secretary, as the chief executive of the Secretariat responsible for its administration and, General, as spokes personand embodiment of the will of the international community.

The major functions of the Secretary-General are:

- to be the chief administrative officer of the organisation.
- to act as secretary to all the major delegate bodies of theUnited Nations.
- to perform functions assigned to him by the General Assembly and the three Councils.
- to make an annual report to the General Assembly on the work of the organisation.
- to appoint the Secretariat staff under regulations established by theGeneral Assemblyand
- to act on his own initiative to bring to the attention of the Security Council any matter that in his opinion threatens international peace and security.

In practice, the role of the Secretary-General has enlarged far beyond the expectation of the makers of the Charter. This enlarged role has resulted both from circumstances and from the initiative of each of the incumbents in the office.The post of Deputy Secretary-General was created by the General Assembly in December 1997 as a part of Secretary-General Kofi Annan's reform package. Ms Louise Frechette of Canada was appointed as the first Deputy Secretary-General, who took upher duties in March 1998. Main responsibilities of the Deputy Secretary-General are; to raise the profile of UN's development activities; to direct the implementation of the reform agenda and; to strengthen the leadership of the UN and women's role in it.

An international staff assists the Secretary-General. The highest standard of efficiency, competence and integrity govern recruitment, which is on as wide a geographical basis as possible. In performing their duties, the Secretary-General and his staff must not seek or receive instructions from any Government or any other authority external to the United Nations. Member States of the United Nations have agreed to respect exclusively international character of the responsibilities of the Secretariat and not to seek to influence

it in carrying out those responsibilities. The Secretariat consists of a total staff of about 8,700 drawn from 160 countries.The Secretary-General and the Assistant Secretaries General enjoy full diplomatic immunity. The officials of the UN enjoy immunity from legal process for all their statements, writings and deeds, performed by them in their official capacity. They enjoyexemption from taxation for their salary and emoluments paid them by the UN.

1.4.7. Let Us Sum Up

United Nations Organization (UNO) is a global organization of autonomous and independent states, founded on October 24, 1945. The aftermath of World War 2 led to the establishment of the United Nations Organization to maintain peace and keep nations away from war and destruction. Around 51 countries of the world got together to maintain world peace and security. They agreed to form the United Nations by signing a treaty known as the United Nations Charter. The United Nations is headquartered in New York City and has added offices in Nairobi, Geneva, Vienna, and The Hague. To fulfil its purposes and objectives, the United Nations Organization has six main principles that work for the goal of world peace and security. Each organ has its own set of purposes and works toward cooperation in United Nations activities. Security Council has core responsibility of sustaining international peace and security. The Security Council of the United Nations Organization (UNO) is responsible for deciding when and where a United Nations peace-related mission should be conducted.The General Assembly's role is to study, debate, and make recommendations on issues of global security and peace, such as development, human rights, international law, and the peaceful resolution of international conflicts. Economics and Social Council was established to serve as the UN's premier platform for addressing global economic and social issues. The work of the Economics and Social Council includes resolutions, conducting research, making meaningful suggestions, and drafting treaties for the General Assembly's consideration. UN Secretariat is in charge of carrying out the legislative and administrative work of the UN as instructed by the Security Council, General Assembly, and other entities. The Trusteeship council's mission is to oversee and facilitate the transition to independence and self-governance of the Axis Powers' colonies from World War II and the League of Nations designated areas. It was decommissioned on November 1, 1994, in conjunction with the independence of Palau, the last surviving United Nations Organization (UNO) trustee territory.International Court

of Justiceis the primary judicial body of the United Nations (UNO) having two primary functions; to decide on legal issues presented by States in line with international law and; to provide legal advice on matters presented to it by authorized UN bodies and specialized organizations.

In addition to six principal organs, the United Nations have specialised agencies such as the WHO, UNESCO, ILO, FAO, ICAO, ITU, UPU, IME, IBRD etc. Besides Agencies, some Commissions are also associated with the UN, such as the International Law Commission, Human Rights Commission, United Nations High Commissioner for Refugees (UNHCR) etc. Moreover, there are some major United Nations programmes and funds devoted to achieving economic and social progress in the developing countries like United Nations Development Programme, (UNDP), United Nations Children's Emergency Fund (UNICEF), the United Nations Fund for Population Activities (UNFPA) etc.

1.4.8 Exercise

1. Discuss the emergence of the United Nations ?
2. What are the objectives and principles of the United Nations ?
3. Examine the functioning of the United Nations ?
4. Explain the main organs of the United Nations ?

2.1 PRINCIPAL ORGANS (THE GENERAL ASSEMBLYAND SECURITY COUNCIL): ROLE OF SECRETARY GENERAL

- Suneel Kumar

STRUCTURE

2.1.0 OBJECTIVES

In this lesson you will study the institutions of the United Nations, i.e., General Assembly and Secretary General. After going through this lesson, you will be able to know:

- Composition and structure of the UN General Assembly (UNGA)
- Voting Procedure and Decision-Making Methods of the UNGA
- Power and Functions and role of the UNGA
- Procedure of Appointment of the UN Secretary General (UNSG)
- Powers and Functions and role of the UNSG
- Role of powers and funtions of Security Council
- Role of Secretary General

2.1.1 INTRODUCTION

The General Assembly and Secretary General are the two significant components of the UN System. The UNGA is considered as the deliberative, legislative and representative body of the System and UNSG is the administrative chief of the Organization. Both of the components are the product of the UN Charter which was finalized in the San Francisco Conference of 1945. Since the formation of the UN System both of these have played a noteworthy role in the global affairs. Hence, the present lesson explains the composition/ structure, powers, functions and role of the UNGA. Besides, an attempt has also been in the lesson to describe the appointment procedure, powers, functions and role of the UNSG.

2.1.2 GENERAL ASSEMBLY

The General Assembly is the chief deliberative, policymaking and representative organ of the United Nations. It is also termed as the world's legislature or the "parliament of the nations". At present, it is comprised of all 193 members of the UN. It provides a unique forum for multilateral discussion on the various international issues including peace and security, human rights, terrorism, climate change, international economic order, rights and problems of the developing and underdeveloped countries, small island countries, stateless peoples and indigenous people and destruction caused by the natural and unnatural forces. Important decisions on the questions of peace and security, admission of new members and budgetary matters are taken by the UNGA as the procedure prescribed under the UN Charter and also time to time adopted by it. Chapter-IV of the UN Charter from article-9 to 22 deals with the composition, working procedure and powers and functions of the UNGA. Hence, one full-fledged chapter and 24 Articles of the UN Charter explain the diverse aspects of the UNGA.

2.1.2.1 Composition/Structure of the UNGA

The Composition of the UNGA has been explained in the Article-9 and 22 of the UN Charter. According to Article-9, the UNGA is consisted of the all the members of the UN and all the members have the right to send the maximum five representatives to the UNGA. Article-22 of the UN Charter authorizes the UNGA to establish its subsidiary organs to perform its functions. At present, it has total 54 subsidiary organs including Boards, Commissions, Committees, Councils and Panels and Working Groups. These subsidiary organs make their recommendations in the form of draft resolutions and decisions to a plenary meeting of the Assembly for its consideration. The UNGA has following six main committees in which each Member State has a right to send its one representative in the each Main Committee. Member States can also assign advisers, technical advisers, experts or persons of similar status to these committees.

Six Main Committees:

1. Disarmament and International Security Committee
2. Economic and Financial Committee
3. Social, Humanitarian and Cultural Committee

4. Special Political and Decolonization Committee
5. Administrative and Budgetary Committee
6. Legal Committee

Other Committees:

The other two committees are as under:-

1. The Credentials Committee: This Committee examines the credentials of representatives of Member States and to report to the General Assembly.
2. The General Committee: This Committee reviews the progress of the General Assembly and its committees and to make recommendations for furthering such progress.

Boards:

The list of UNGA's boards includes the following:-

1. Boards of Auditors
2. Trade and development Board
3. United Nations Joint Staff Pension Board
4. Advisory Board on Disarmament Matters

Apart from this, the UNGA has following three executive boards:-

1. Executive Board of the United Nations Children's Fund
2. Executive Board of the United Nations Development Programme and of the United Nations Population Fund
3. Executive Board of the World Food Programme

Commissions:

The list of its six Commissions is give as under:-

1. Disarmament Commission
2. International Civil Service Commission

3. International Law Commission
4. United Nations Commission on International Trade Law(UNCITRAL)
5. United Nations Conciliation Commission for Palestine
6. United Nations Peace-Building Commission

High-level Committee:

The UNGA has following high level committee:-

1. High-level Committee on South-South Cooperation

Special Committees:

The special committees include:-

1. Special Committee on Peace-keeping Operations
2. Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization
3. Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples
4. Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories

Assemblies:

The UNGA has one assembly given as under:-

1. United Nations Environment Assembly of the United Nations Environment Programme

Councils:

The UNGA has constituted following three councils:-

1. Human Rights Council
2. Governing Council of the United Nations Human Settlements Programme, UN - Habitat
3. Council of the United Nations University

The UNGA performs its functions with the assistance of support of these subsidiary organs.

2.1.2.2 Voting and Decision-Making Procedure

The UN Charter in its two articles - 18 and 19 - describes the voting procedure of the UNGA. Article-18 establishes the principle of one state, one vote. Hence, each member of the UNGA has one vote. The UNGA takes decisions on the basis of two-third majority of the members present and voting and also with a majority of the members present and voting. The UNGA takes the decision with the two-third majority of the members present and voting on the following matters:-

- Recommendations with respect to the maintenance of international peace and security;
- Election of the non-permanent members of the Security Council;
- Election of the members of the Economic and Social Council;
- Election of the members of the Trusteeship Council;
- Admission of the new members to the United Nations;
- Suspension of rights and privileges of the membership;
- Expulsion of the members;
- Questions related to the operation of the Trusteeship System; and
- Budgetary Questions

Decisions related to all the other matters are taken with the majority of the members present and voting. The decisions related to the determination of additional categories to be decided by a two-third majority are also made by the majority of the members present and voting.

Article-19 provides that a member of the UN shall not have a right to vote if that member is in arrears in the payment of its financial contributions to the Organization and amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two complete years. Nevertheless, the UNGA can permit such a member to vote if it is satisfied that the failure to pay is not deliberative, but due to conditions beyond the control of that member.

The UNGA, as Articles-20 and 21 explain, meets regularly in the annual sessions. A majority of the members of the UN or the UN Secretary General at the request of the Security Council can also call for the special sessions of the UNGA. The UNGA is authorized to adopt its own rules of procedure and elect its President for its each session.

2.1.2.3 Powers and Functions

The powers and functions of the UNGA have been described in detailed in the UN Charter from Article-10 to 17. Some of the powers and functions of the UNGA have been mentions in the other parts of the UN Charter. All these have been discussed as below:-

1. Deliberative and Recommendatory Powers and Functions: The UNGA has the power to make recommendations to States on international issues within its competence. According to the Article-10, the UNGA is empowered to discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter, and also to make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters. However, as per article-12, the General Assembly cannot make any recommendation with regard to that dispute or situation unless the Security Council so requests.

2. Consideration and Recommendations on the General Principles of International Cooperation: The UNGA is responsible to consider and then empowered to make recommendations on the general principles of cooperation in the diverse areas of international concern. This provision has been made in the Article-11 of the UN Charter. It provides that the General Assembly can consider the general principles of co-operation in the maintenance of international peace and security, including the principles governing disarmament and the regulation of armaments, and may make recommendations with regard to such principles to the Members or to the Security Council or to both.

3. Discussion on Peace and security Related Issues: It is also empowered to discuss any questions relating to the maintenance of international peace and security that brought before it by any Member of the United Nations, or by the Security Council, or by a state which is not a Member of the United Nations and also to recommendations with regard to any such questions to the state or states concerned or to the Security Council or to both.

Any such question on which action is necessary can be referred to the Security Council by the General Assembly either before or after discussion (Article-12). The General Assembly can also call for the attention of the Security Council to situations which are likely to endanger international peace and security.

4. Studies and Recommendations To Promote the International Cooperation in the Assorted Areas: The General Assembly, as Article-13 says, is empowered to initiate studies and make recommendations for the following purposes:

- Promoting of international co-operation in the political field and encouragement of the progressive development of international law and its codification;
- Promotion of international co-operation in the economic, social, cultural, educational, and health fields, and assistance in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

5. Recommendation of Measures for the Peaceful Adjustment of Any Situation: The General Assembly, according to Article-14, is authorized to recommend the required measures for the peaceful adjustment of any situation that deems to harm the general welfare or friendly relations among nations. Such measures can also be recommended to resolve a problem which has resulted from a violation of the provisions of the present UN Charter.

6. Power to Receive and Consider the Annual Reports of the Other UN Organs: The General Assembly receives and considers annual and special reports from the Security Council. As Article-15 says, in such reports, the Security Council provides the account of the measures that either it has decided upon or taken to maintain international peace and security. Besides, the UNGA also receive and consider reports from the other organs of the United Nations.

7. Functions Related To the International Trusteeship System: Under Article-16 of the UN Charter, **t**he General Assembly is also responsible to perform such functions which are related to the international trusteeship system and, are assigned to it under Chapters-XII and XIII. It gives approval to the trusteeship agreements related to non-strategic areas.

8. Elections and Appointments: The UNGA also elects the non-permanent members of the Security Council (Article-23), members of the Economic and Social Council and members of the Trusteeship Council and others organs of the United Nations. It also appoints the Secretary- General on the recommendation of the Security Council (Article-97).

9. Admission and Expulsion of Member States: The General Assembly admits the new members in the Organization. It has also the power to expel the existing members.

10. Financial and Budgetary Powers: It has financial and budgetary powers. It considers and approves the budget of the UN. The expenses of the Organization are borne by the Member states according to apportion done by the General Assembly. It considers and approves any financial and budgetary arrangements with specialized agencies referred to in Article-57. It is also responsible examine the administrative budgets of such specialized agencies with a view to making recommendations to the agencies concerned.

11. Uniting for Peace Resolution and Actions to Ensure the International Peace and Security: The Assembly can also take action in cases of a threat to the peace, breach of peace or act of aggression, when the Security Council has failed to act owing to the negative vote of a permanent member. In such instances, according to its "Uniting for Peace" resolution of November 1950 (resolution 377 (V)), the Assembly can consider the matter immediately and recommend to its Members collective measures to maintain or restore international peace and security.

In brief, the UNGA is empowered to make various appointments and elections and to discuss the issues that come under its purview. It has the right to admit or expel the members of the members of the organization. It receives and considers the reports received from the other organs. It performs financial and budgetary functions.

2.1.3 ROLE OF THE UNGA

Exercising its powers, the UNGA has had played an important role regarding the Organization related issues and international affairs. It has initiated diverse social, economic, political, legal and humanitarian that have affected the nations and peoples throughout the world. Its role is being discussed as below:-

1. Forum for Multilateral Negotiation: Since all the member states are represented in the UNGA, it has emerged as a unique forum for the multilateral discussion and negotiation among the member countries on the international issues covered by the Charter. In its regular annual and special sessions international problems are discussed and required measures are suggested to resolve those problems. It cannot force action by any State, but its recommendations reflect the world opinion and represent the moral authority of the community of nations. In 1945, it had only 46 items on its agenda, but now this list has increased. In 2008, it had 150 items on its agenda including the United Nations reform, restoring respect for the rule of law, the needs of Small Island developing States, climate change and related humanitarian dangers, and participation by all States in the global trading system. It had adopted the Millennium Declaration in 2000. In its, World Summit Outcome Document of 2005, Member States had shown their commitment to achieve specific goals to attain peace, security and disarmament along with development and poverty eradication; to safeguard human rights and promote the rule of law; to protect our common environment; to meet the special needs of Africa; and to strengthen the United Nations. Hence, it is a forum for multilateral negotiations. During the 1980s, the Assembly became a forum for the "North-South dialogue": the discussion of issues between industrialized nations and developing countries. These issues came to the fore because of the phenomenal growth and changing makeup of the UN membership. In 1945, the UN had 51 members. It now has 193, of which more than two-thirds are developing countries. Because of their numbers, developing countries are often able to determine the agenda of the Assembly (using coordinating groups like the G77), the character of its debates, and the nature of its decisions. For many developing countries, the UN is the source of much of their diplomatic influence and the principal outlet for their foreign relations initiatives.

2. Articulation of General Principles: The General Assembly has often articulated new principles through its resolutions that have further become the basis for international law. For example it called seas as the "common heritage of the mankind". This principle was incorporated in numerous law-making treaties or conventions such as Outer Space Treaty of 1967 and United Nations Convention on the Law of Sea (UNCLOS), 1982. These principles represent a widespread international consensus.

3. Codification of International Law: It also plays a significant role in the process of standard-setting and the codification of international law. The General Assembly has

produced a large number of multilateral law making treaties such as the Vienna Convention on Diplomatic Relations (1961), NPT (1968), Seabed Treaty (1971) and the United Nations Convention on the Law of Sea (UNCLOS), 1982.

3. International Peace and Security:- Under the UN Charter, however, the General Assembly cannot discuss and make recommendations on peace and security matters which are at that time being addressed by the Security Council. Despite the UN Charter's provision limiting the General Assembly's powers with regard to peace and security matters, there may be cases when the Assembly can take action. In accordance with the General Assembly's "Uniting for Peace" resolution of November 1950 [resolution 377 (V)] , if the Security Council fails to act, owing to the negative vote of a permanent member, then the General Assembly may act. This would happen in the case where there appears to be a threat to the peace, breach of the peace or act of aggression. The General Assembly can consider the matter with a view to making recommendations to Members for collective measures to maintain or restore international peace and security. The Uniting for Peace Resolution has been invoked in several major crises: the Middle East (1958, 1967), Hungary (1956), Suez (1956), the Congo (1960), Afghanistan (1980), Palestine (1980, 1982), Namibia (1981), the occupied Arab territories (1982) and illegal Israeli actions in occupied East Jerusalem and the rest of the occupied Palestinian Territory (1997, 1998, 1999, 2000, 2001, 2002). In all cases, the emergency special sessions addressed situations in which the Security Council found itself deadlocked.

2.1.4 REFORMS TO MAKE THE UNGA MORE POWERFUL AND EFFECTIVE

Reform of the United Nations General Assembly includes the following proposals to change the powers and composition of the UN General Assembly:-

- The one state, one vote power structure is faulty and potentially allows states comprising just five percent of the world population to pass a resolution by a two-thirds vote.
- Increasing of the powers of the General Assembly vis-à-vis the United Nations Security Council is also proposed as majority of the works are done by it on the recommendations of Security Council. It should have more powers that of the independent from the Security Council.

- Since the UNGA resolutions are not a binding force on its members, they do not implement them properly. Hence, the UNGA should be empowered to evaluate how well its member states implement the UNGA resolutions.
- There is a proposal to make its debates more constructive and less repetitive.

The UN Secretary General Kofi Annan, on 21st March 2005, presented a report titled *In Larger Freedom*. In this Report, he had criticized the General Assembly for focusing so much on consensus that it was passing watered-down resolutions reflecting "the lowest common denominator of widely different opinions." He also criticized the Assembly for trying to address too broad an agenda, instead of focusing on the major substantive issues of the day, such as international migration and the long-debated comprehensive convention on terrorism. Annan recommended the following points:-

- Streamlining the General Assembly's agenda, committee structure, and procedures;
- Strengthening the role and authority of its president;
- Enhancing the role of civil society; and
- Establishing a mechanism to review the decisions of its committees, in order to minimize unfunded mandates and micromanagement of the United Nations Secretariat.

Annan reminded the UN members of their responsibility to implement reforms, if they expect to realize improvements in UN effectiveness. The reform proposals were not taken up by the United Nations World Summit in September 2005.

2.1.5. SECURITY COUNCIL

The Security Council (UNSC) is the most important organ of the United Nations. It is responsible for the maintenance of international peace and security. The UNSC is the only UN organ that has the authority to issue binding resolutions to member states. Like the United Nations as a whole, the Security Council was created following the Second World War to address the failings of the League of Nations in maintenance of world peace and security. It accepts the entry of new members to the United Nations and also approves any changes to the UN Charter. Its powers and functions include the establishment of peace-keeping operations, the establishment of international sanctions, and the authorization

of military action through the Security Council resolutions. The UNSC accepts the entry of new members to the United Nations and also approves any changes to the UN Charter. Its first session was held on January 17, 1946. During the Cold War, the UNSC was largely paralyzed due to the rivalry between two superpower blocks. Only exception to this was its resolution of 1950 which authorized the US-led coalition to repel the North Korean invasion of South Korea. This resolution was passed in the absence of the Soviet Union. Even then, it authorized peace-keeping missions in the Suez Crisis, Cyprus, Congo and West New Guinea. In the post-Cold War era, the UN peace-keeping efforts increased rapidly. The Security Council has had authorized major military and peace-keeping missions in Kuwait, Namibia, Cambodia, Bosnia, Rwanda, Somalia, Sudan and Congo. Hence this background, the present lesson explains the structure and working procedure of the UNSC. This also discusses the powers and functions of the UNSC along with its role in peace and security. This lesson also analyses the demands for reforms in its structure and functioning.

2.1.5.1 COMPOSITION/STRUCTURE OF THE UNSC

The UN Charter in its Chapter-V and Article-23 explains the composition and structure of the UNSC. Article-23(1) provides that the Security Council shall consist of fifteen Members of the United Nations. Out of 15 members, five countries – China, France, Russia, the United Kingdom and the United States of America – shall be permanent members of the Security Council. Ten other non-permanent members of the UNSC are elected by the General Assembly. While electing the non-permanent members of the UNSC, due regard is paid, in the first instance to the contribution of Members of the United Nations to the maintenance of international peace and security and to the other purposes of the Organization, and also to equitable geographical distribution. The non-permanent members of the Security Council are elected for a term of two years. A retiring member is not eligible for immediate re-election. Each member of the Security Council shall have one representative. The UN General Assembly, in 1963, decided the geographical distribution of the 10 non-permanent Members would consist of three from the African group, two from the Asian group, two from the Latin American and Caribbean group, two from the Western European and Others group and one from the Eastern European group. To perform its functions as per Article-29 of the UN Charter, the UNSC has established

following subsidiary organs as it deems necessary for the performance of its functions. The UNSC has established three standing committees given as under:-

- Security Council Committee of Experts
- Security Council Committee on Admission of new Members
- Security Council Committee on Council Meetings away from the Headquarters

Apart from the above standing committees, the UNSC has also established the Ad-Hoc Committees such as the Governing Council of the United Nations Compensation Commission established through resolution no. 692 (1991) and Counter-Terrorism Committee established through resolution no. 1373 (2001). The Security Council has also formed the sanctions committees to implement the resolutions related to the Somalia (1992), Rwanda (1994), Al Qaida and Taliban and associated individuals and entities (1999), Congo (2004) and Sudan (2006). It has the following working groups:-

- Working Group on Peace Keeping Operations
- Ad-hoc Working Group on Conflict Prevention and Resolution in Africa
- Working Group Established Pursuant to Resolution 1566 (2004)
- Working Group on Children and Armed Conflict
- Informal Working on General Issues of Sanctions
- Informal Working Group on Documentation and Other Procedural Questions

It has also established the Peace-Building Commission (PBC), the 1540 Committee and the UN Monitoring, Verification and Inspection Commission (UNMOVIC). International Tribunals have also been established for the former Yugoslavia and for the prosecution of persons responsible for serious violations of humanitarian law and genocide in Rwanda.

In brief, the Security Council consists of fifteen members. To ensure its smooth functioning, the UNSC has established various committees, commissions, working groups and tribunals. However, critics of the UNSC often describe it as an undemocratic body.

2.1.5.2 DECISION-MAKING AND WORKING PROCEDURE

Article-27 of the UN Charter explains the UNSC's decision-making procedure. According to this, each member of the Security Council have one vote. Decisions of the Security Council on procedural matters are made by an affirmative vote of nine members of the 15 members. However, decisions of the Security Council on the substantive matters are made by an affirmative vote of nine members including the concurring votes of the five permanent members. This is the rule of great powers unanimity. This is often called as the veto power. This veto power of five permanent members reflects the unequal structure of the UNSC. According to Article-28, the Security Council is so organized as to be able to function continuously. For this purpose, each member of the Security Council is represented at all times at the seat of the Organization. It holds periodic meetings at which each of its members can, if it so desires, be represented by a member of the government or by some other specially designated representative.It can hold meetings at such places other than the seat of the Organization as in its judgment are best facilitating its work.

The Security Council, as per Article-30, adopts its own rules of procedure, including the method of selecting its President. Any Member of the United Nations which is not a member of the Security Council can participate, without vote, in the discussion of any question brought before the Security Council whenever the latter considers that the interests of that Member are specially affected (Article-31). Besides, any Member of the United Nations which is not a member of the Security Council or any state which is not a Member of the United Nations, if it is a party to a dispute under consideration by the Security Council can be invited to participate in the discussion relating to the dispute but having right to vote. The Security Council is authorized to lay down such conditions as it deems just for the participation of a state which is not a Member of the United Nations (Article-32). Its working was affected during the Cold war period. Initially, in 1940s, it convened approximately 130 meetings in a year. However, in 1959 only 5 meetings were held. In 1960s onwards, it tried to regain its lost status and between 1980 and 1985 it passed 119 resolutions out of which only 29 resolutions were vetoed by the P-5 and, 75 resolutions were passed unanimously including by the P-5. It became more active after the Cold war as it passed 625 resolutions with consensus and only 7 resolutions were vetoed.

2.1.5.3 POWERS AND FUNCTIONS

Powers and functions of the UNSC have been described in detail in the Chapter-V, VI, VII and VIII of the UN Charter. Some of its powers and functions are mentioned in the Chapter-II and XII. All these are discussed below in detail:-

1. Maintenance of International Peace and Security: Article-24 of Chapter-V explains the primary responsibility of the Security Council. According to this provision, 'primary responsibility' for the maintenance of international peace and security has been conferred to the Security Council. To discharge such duties the Security Council acts in accordance with the Purposes and Principles of the United Nations. The specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII, and XII. Chapter-VI "Pacific Settlement of Disputes" from Article-33 to 38 authorizes the Security Council to use various methods to resolve the existing or potential conflicts peacefully. Article-33 stipulates that the parties to any dispute, the continuance of which may endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice. In this context, the Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means. Further, the Security Council, as Article-34 provides, has the power to investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to threaten the maintenance of international peace and security. Besides, under Article-35, any Member of the United Nations has the right and responsibility to bring any dispute, or any situation of the nature referred to in Article-34, to the attention of the Security Council. Even a state which is not a Member of the United Nations may bring to the attention of the Security Council or of the General Assembly any dispute to which it is a party if it accepts in advance, for the purposes of the dispute, the obligations of pacific settlement provided in the present Charter. At any stage of a dispute of the nature referred to in Article-33 or of a situation of like nature, the Security Council has the power to recommend appropriate procedures or methods of adjustment. While making any recommendation in this regard, the UN Charter desires that the UNSC should take into consideration any procedures for the settlement of the dispute which have already been adopted by the parties. In making recommendations under this Article, it is also

desired that the Security Council should also take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court (Article-36). If the parties to a dispute fail to settle it by the means indicated in the Article-33, then as it is stipulated in the Article-37, they refer it to the Security Council. If the Security Council deems that the continuance of the dispute is in fact likely to endanger the maintenance of international peace and security, it decides whether to take action under Article-36 or to recommend such terms of settlement as it may consider appropriate. If all the parties to any dispute so request, then under Article-38 of the UN Charter, Security Council is authorized to make recommendations to the parties with a view to a pacific settlement of the dispute.

Chapter-VII authorizes the Security Council to deal with actions related to the threats to the peace, breaches of the peace and acts of aggression. The Security Council determines the existence of any threat to the peace, breach of the peace, or act of aggression and makes recommendations, or decides what measures should be taken to maintain or restore international peace and security (Article-39). In order to prevent an aggravation of the situation, the Security Council, before making the recommendations or deciding upon the measures provided for in Article-39, calls upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. Under Article-40 of the UN Charter, such provisional measures are not prejudice to the rights, claims, or position of the parties concerned. The Security Council duly takes account of failure to comply with such provisional measures. Under Article-41, it decides what measures not involving the use of armed force are to be employed to give effect to its decisions. It also calls upon the Member states to apply such measures. These includes complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio and other means of communication, and the severance of diplomatic relations to put pressure on the aggressor(s). If the Security Council feels that measures adopted under Article-41 are inadequate or have proved to be inadequate, as per Article-42, it has the power to take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

In this context, in order to contribute to the maintenance of international peace and security, all the member states undertake to make available to the Security Council, on its call and

in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security. Such agreement or agreements govern the numbers and types of forces, their degree of readiness and general location, and the nature of the facilities and assistance to be provided. Such agreements are negotiated on the initiative of the Security Council and are concluded between the Security Council and Member states and, as per Article-43, are subject to ratification by the signatory states in accordance with their respective constitutional processes. In order to enable the UNSC to take urgent military measures, Member states hold immediately available national air-force contingents for combined international enforcement action. The strength and degree of readiness of these contingents and plans for their combined action is determined within the limits laid down in the special agreement or agreements by the Security Council with the assistance of the Military Staff Committee (Article-45). It plans for the application of armed force with the assistance of the Military Staff Committee (Article-46). Hence, a Military Staff Committee is established to advise and assist the Security Council on all questions relating to its military requirements for the maintenance of international peace and security, the employment and command of forces placed at its disposal, the regulation of armaments, and possible disarmament of aggressor. The Military Staff Committee is consisted of the Chiefs of Staff of the permanent members of the Security Council or their representatives. Any Member state of the United Nations not permanently represented on the Committee can also be invited by the Committee to be associated with it if the efficient discharge of the Committee's responsibilities requires the participation of that Member state in its work. The Military Staff Committee is responsible under the Security Council for the strategic direction of any armed forces placed at the disposal of the Security Council. Questions relating to the command of such forces are worked out subsequently. The Military Staff Committee, with the authorization of the Security Council and after consultation with appropriate regional agencies, can establish regional sub-committees (Article-47).

The action required to carry out the decisions of the Security Council for the maintenance of international peace and security are taken by all or by some of the UN Members, as the Security Council determines (Article-48). The Member states join in affording mutual assistance in carrying out the measures decided upon by the Security Council (Article-49). If preventive or enforcement measures against any state are taken by the Security

Council, any other state, whether a Member of the United Nations or not, which finds itself confronted with special economic problems arising from the carrying out of those measures have the right to consult the Security Council with regard to a solution of those problems (Article-50). The UN Charter recognizes the inherent right of individual or collective self-defence if an armed attack occurs against a Member State of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence are required immediately to be reported to the Security Council. Such measures does not affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

2. Functions Related to Strategic Areas: The UNSC performs all functions related to the strategic areas including the approval of the terms of the trusteeship agreements and of their alteration or amendment. The Security Council, subject to the provisions of the trusteeship agreements and without prejudice to security considerations, avails itself of the assistance of the Trusteeship Council to perform those functions of the United Nations under the trusteeship system relating to political, economic, social, and educational matters in the strategic areas (Article-83). It is the duty of the administering authority to ensure that the trust territory shall play its part in the maintenance of international peace and security. For this purpose, the administering authority can make use of volunteer forces, facilities, and assistance from the trust territory in carrying out the obligations towards the Security Council undertaken in this regard by the administering authority, as well as for local defence and the maintenance of law and order within the trust territory (Article-84).

3. Submission of Annual and Special Reports: The Security Council submits annual reports and, when necessary, special reports on the issues related to peace and security to the General Assembly for its consideration (Article-24).

4. Formulation of Plans for Armament Regulation System: In order to promote the establishment and maintenance of international peace and security with the least diversion for armaments of the world's human and economic resources, the Security Council shall be responsible for formulating plans, with the assistance of the Military Staff Committee referred to in Article-47, to be submitted to the Members of the United Nations for the

establishment of a system for the regulation of armaments (Article-26).

5. Admission of New Members to the UN: Under Article-4, membership in the United Nations is open to all other peace-loving states which accept the obligations of the Organization and, are able and willing to carry out these obligations. However, the admission of any such state in the United Nations is effected by a decision of the General Assembly upon the recommendation of the Security Council.

6. Suspension and Restoration of Rights and Privileges of Membership: A Member of the United Nations against which preventive or enforcement action has been taken by the Security Council may be suspended from the exercise of the rights and privileges of membership by the General Assembly. However, General Assembly does so only on the recommendation of the Security Council. The exercise of these rights and privileges may be restored by the Security Council (Article-6).

7. Expulsion of Member States: If a Member state persistently violates the Principles contained in the present Charter the Security Council can recommend the expulsion of that State from the Organization to the General Assembly (Article-7).

8. Appointment of Secretary-General: The UN Secretary-General is also appointed by the General Assembly on the recommendation of the Security Council (Article-97).

Thus, in brief, the UNSC has vast powers to maintain the international peace and security. Its powers include the establishment of peace-keeping and special political missions, the imposition of international sanctions on member states, authorization of military enforcement action, and the ability to refer matters to the International Criminal Court (ICC). It is only body in the UN system that can make decisions that are legally binding on all members. As per Article-25, the Member States agree to accept and carry out the decisions of the Security Council in accordance with the present Charter. It recommends the admission of new member states to the UN, appoints the UN Secretary-General and also the elects judges to the International Court of Justice.

2.1.5.4 UN ROLE IN PEACE AND SECURITY

Maintenance of peace and security is the main responsibility of the Security Council. Hence, in this context, the UNSC has attempted to play a significant role to ensure that

international peace and security may not be threaten or disturbed by the state or non-state actors.

First of all, time to time, the Security Council has had established and Monitored the peace-keeping operations**.** As per Chapter-VI, it has tried to prevent various conflicts that may have had endangered the international peace and security. It has responded to different conflicts around the world on a case-by-case basis. It has explored different option taking diverse factors into account while establishing new peace-keeping operations. It has had observed that whether there is a ceasefire in place and the parties have committed themselves to a peace process intended to reach a political settlement; whether a clear political goal exists and whether it can be reflected in the mandate; whether a precise mandate for a UN operation can be formulated; whether the safety and security of UN personnel can be reasonably ensured, including in particular whether reasonable guarantees can be obtained from the main parties or factions regarding the safety and security of UN personnel. Then, it has established peace-keeping operations through various resolutions which also set out mandate and size of the mission. The Security Council has not only established the peace-keeping operations but also taken the responsibility to monitor the work of such Peacekeeping operations. It has received periodic reports from the Secretary-General and organized its sessions to discuss the work of specific peace-keeping operations. As of 2015, 106,245 peacekeeping soldiers and 18,501 civilians are deployed on 16 peace-keeping operations and one special political mission. From 1945 to 2016, it has established 64 peace-keeping operations in the different countries. Between 1945 and 1987, it established only 13 peace-keeping operations. But as situation changed, between 1988 and 2003, it established 42 peace-keeping operations. Largely, peace-keeping operations, approximately 20 operations have been established in African countries. At least 118 countries have voluntarily provided more than 7, 50,000 military and civilian police personnel to the Security Council for its peace-keeping operations. These were established to enforce the peace agreement, supervise the cease-fire, and patrol the demilitarized zones and, also to act as buffer between the hostile parties.

First peace-keeping force was established in 1956 to resolve the Suez Crisis. In 1960, the UN deployed the United Nations Operation in the Congo (UNOC) to restore order to the breakaway State of Katanga. The Security Council deployed the United Nations Temporary Executive Authority in West New Guinea in 1962 and the United Nations

Peace-keeping Force in Cyprus in 1964. In the post-Cold War period, the Security Council did a radical expansion in its peace-keeping duties. The Security Council adopted more than doubled resolutions between 1988 and 2000. The peace-keeping budget was also increased more than tenfold. The Security Council resolved the crisis of Salvadoran Civil War, launched a successful peace-keeping mission in Namibia, and oversaw democratic elections in post-apartheid South Africa and post-Khmer Rouge Cambodia. The Security Council imposed arms embargo in Europe in an effort to quell the rising tide of insurrection between ethnic groups in Yugoslavia in 1991. In its Resolution No. 757, it imposed mandatory trade sanctions against the Federal Republic of Yugoslavia, excepting only shipments of food and medicine for humanitarian purposes. An arms and air traffic embargo was imposed on Libya through its Resolution No. 748 adopted on March 31, 1992 and further, it voted to widen these sanctions through its Resolution No. 883 adopted on November 11, 1993 to include freezing Libyan bank accounts, closing the offices of Libyan Arab Airlines, and prohibiting the supply of materials for construction and maintenance of airports. The sanctions also banned the supply of pumps, turbines, and motors used at export terminals and oil refineries. It adopted wide-ranging economic and trade sanctions against the military regime in Haiti through its Resolution No. 841 adopted on June 16, 1993.This military regime had unseated Haitian President Jean-Bertrand Aristide in 1991. The UNSC acted in conjunction with similar sanctions imposed by the Organization of American States. Hence, it directed members not to sell oil, weapons, ammunition, military vehicles, military equipment, and spare parts to Haiti. In addition, it authorized members to blockade the country to prevent those items from being delivered to Haiti. It also authorized member countries to freeze Haitian funds. The sanctions were lifted when the military regime agreed to restore President Aristide. The Security Council imposed an arms embargo on Rwanda on May 30, 1993 through its Resolution No. 918. It imposed the embargo in an effort to protect its UN Assistance Mission for Rwanda (UNAMIR) and other international humanitarian relief workers, as well as the civilian population, from the rampant lawlessness and violence that had broken out in connection with the resumption of that country's civil war between ethnic Hutus and Tutsis. Apart from this, following a military coup, a petroleum and arms embargo was imposed on Sierra Leone on October 8, 1997 by adopting its Resolution No. 1132. An arms embargo was placed on the Federal Republic of Yugoslavia to resolve the crisis in Kosovo, between

Serbian forces and ethnic Albanian Kosovars on March 31, 1998. Besides, on October 15, 1999, the Security Council had imposed a limited air embargo and funds and financial assets embargo on the Taliban regime in Afghanistan.

Second, it has also applied collective security apparatus, given in the Chapter-VII of the UN Charter against the aggressor countries. This happened in 1950 when North Korea had invaded the South Korea. After this, largely due to the Cold War rivalry and (mis)use of veto power, Security Council was unable to apply this mechanism. During the Cold War period, form 1946 to 1989, only 17 resolutions related to the Chapter-VII were passed by the Security Council. Nevertheless, in 1990s, it passed 158 resolutions of Chapter-VII out of which 123 resolutions were passed unanimously. In the post-Cold War era, the UNSC applied this mechanism against the Iraqi occupation of Kuwait in 1991. In 1990, Iraq invaded Kuwait with 100,000 troops and occupied the country. The Security Council responded to it with historic speed and unanimity. It passed 12 resolutions condemning the invasion, invoking Chapter-VII of the Charter to impose economic sanctions on Iraq. When these sanctions proved ineffective, a 680,000-strong multi-national military force, led by 410,000 United States troops, was authorized by the Security Council resolution to restore the national sovereignty of Kuwait. The allies began a six-week aerial bombardment of Iraq and Kuwait on January 16, 1991 and on February 25, 1991, the ground attack began. Then the allied forces defeated Iraqi army and liberated Kuwait. The collective security mechanism was again applied in Libya in 2011.

Third, apart from above contribution, Security Council has considered terrorism a threat to international peace and security and adopted different resolution creating anti-terrorism mechanism. After the terrorist attacks by al-Qaeda network on the United States on September 11, 2001, the UN Security Council had established a Counter Terrorism Committee (CTC) through its Resolution No. 1373 which was adopted on September 28, 2001. The UNSC through this resolution had called upon states to prevent and suppress the financing of terrorist acts; to refrain from providing any support to entities or persons involved in terrorist acts; to deny safe haven to those who finance, plan, support, or commit terrorist acts; to bring those individuals or entities to justice; and to exchange information on the actions or movements of terrorists or terrorist networks. The Security Council also adopted other resolutions regarding the threats to international peace and security caused by terrorist acts, including Resolution No. 1377 adopted on November

12, 2001, Resolution No.1438 adopted on October 14, 2002, and Resolution No. 1440 adopted on October 24, 2002. Furthermore, a global strategy to counter terrorism has been agreed in September 2006. As a result of this, for first time all the UN Member States have agreed to a common strategic and operational framework to fight terrorism. The Strategy forms a basis for a concrete plan of action: to address the conditions conducive to the spread of terrorism; to prevent and combat terrorism; to take measures to build state capacity to fight terrorism; to strengthen the role of the United Nations in combating terrorism; and to ensure the respect of human rights while countering terrorism.

Fourth, the Security Council has shown its interests to protect people, groups and communities from diverse forms of violence. Therefore, through its Resolution No. 1674, adopted on April 28, 2006, the UNSC has reaffirmed the provisions World Summit Outcome Document of 2005 regarding the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. The Security Council reaffirmed this responsibility to protect in its Resolution No. 1706 which was adopted on August 31, 2006. These resolutions commit the Security Council to take action to protect civilians in an armed conflict, including taking action against genocide, war crimes, ethnic cleansing, and crimes against humanity.

Fifth, as it has been observed, world military expenditures exceeded some 1.5 trillion US dollars in 2010. All types of weapons from nuclear weapons to conventional firearms and landmines have been considered as a threat to international peace and security by the UNSC. Thus, the UNSC has arranged various multilateral disarmament and arms limitation conventions and treaties, including the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) (1970), the Biological Weapons Convention (1975), the Chemical Weapons Convention (1997), the Comprehensive Nuclear test Ban Treaty (CTBT) (1996) and the Land-Mine Ban Convention (1999). The objective of UNSC through these convention and treaties ranging from halting the proliferation of landmines, small arms and light weapons to reducing and eventually eliminating nuclear weapons, destroying chemical weapons and strengthening the prohibition against biological weapons.

Sixth, since women remain a minority of combatants and perpetrators of war, they suffer the greatest harm in conflict or war. Hence, through its Resolution No. 1325 on women, peace and security, the UNSC has recognized that including women and gender perspectives

in decision-making can strengthen prospects for sustainable peace. This resolution has specifically addressed the situation of women in armed conflicts and called for their participation at all levels of decision-making on conflict resolution and peace-building.

2.1.5.5 EVALUATION OF UNSC'S PERFORMANCE

Points discussed in the section-1.4.5 of this lesion reflect that the UNSC has had made decisive efforts at international level to ensure international peace and security. Although, during the Cold War period, veto system affected its working adversely to take action against the aggressor(s) under the Chapter-VII, yet it did an excellent job under the Chapter-VI. It has indulged in the peace-keeping and peace-building activities in different countries especially in African continent. It is actively working to protect and promote the human rights of the diverse populations including women. It has also developed a global mechanism to fight against the terrorism. However, it has been criticized for its mission's failures in Somalia, for its failure to prevent ethnic cleansing in Bosnia and its non-intervention to prevent the genocide in Rwanda in 1994.

It is also argued that permanent members of the UNSC predominately address their strategic interests and political motives. For example, P-5, they protected the oil-rich Kuwait in 1991 but did not protected poor Rwandans in 1994. Many times its resolution has been violated and violators have not face any punishment. During the Darfur crisis, Janjaweed militias committed violence against an indigenous population and killed thousands of civilians. Similarly, Serbian troops committed genocide against Bosnaiks, irrespective of the fact that Srebrenica had been declared a UN safe area, protected by 400 armed Dutch peace-keepers. The Security Council has also been criticized for failure in resolving the Israeli-Palestinian conflict.

The present structure of the UNSC is also termed as flawed and undemocratic, and hence, there is a demand for its restructuring and expansion. Out of P-5, three permanent members are European and three are predominantly white Western nations. Therefore, the Security Council has been described as "a pillar of global apartheid". Political boundaries and international power structure in the 21st century is quite different than that from the political boundaries and power-structure of the post-Second World War period. As a result of decolonization, the number of sovereign states having UN membership has

increased. Similarly, now new economic and military powers have also emerged. In this scenario, the existing structure is considered as outdated and Europe-centric and therefore, there is a demand to expand the UNSC and increase the number of permanent members. Four countries – Brazil, Germany, India, and Japan – have made the strongest demands for permanent seats. Japan and Germany are second and third largest funders of the UN respectively. Brazil and India are two of the largest contributors of troops to UN peace-keeping missions. Italy, sixth largest funder of the UN is leading a movement known as the Uniting for Consensus in opposition to the possible expansion of permanent seats. Countries like Canada, South Korea, Spain, Indonesia, Mexico, Pakistan, Turkey, Argentina and Colombia are the main members of this group. These are lobbying to create a new category of seats, i.e., semi-permanent seats. It does not imply any change in existing category of seats. Since the veto system has been mis(used) there is also demand for abolition and/ or limitation of the application of the veto only to Chapter-VII matters. A UN Penal established by the former UN Secretary-General Kofi Annan to make recommendations for reforming the United Nations, had proposed in 2004 to increase the number of permanent members by five, which, in most proposals, would include Brazil, Germany, India, Japan known as the G-4 nations, one seat from Africa most likely between Egypt, Nigeria or South Africa and/or one seat from the Arab League. The P-5 has announced their positions on this issue. The United States has unequivocally supported the permanent membership of Japan and lent its support to India and, some additional non-permanent members. The United Kingdom and France essentially supported the expansion of permanent and non-permanent members and the accession of Germany, Brazil, India and Japan to permanent member status in the UNSC. Both the countries are also agreed to enhance the presence of African countries in the UN Security Council. China has supported the stronger representation of developing countries and firmly opposed Japan's membership.

The UN Charter established six main organs of the United Nations, including the Security Council. It gives primary responsibility for maintaining international peace and security to the Security Council, which may meet whenever peace is threatened. All members of the United Nations agree to accept and carry out the decisions of the Security Council. While other organs of the United Nations make recommendations to member states, only the Security Council has the power to make decisions that member states are then obligated to implement under the Charter.

The argument of many critics of the United Nations Security Council is that it isn't effective and that it needs to be fundamentally reformed. The loudest calls for reform come from those who believe that the inclusion of a host of new permanent members is the answer to the effectiveness deficit. Many argue that the Security Council's membership and working methods reflect a bygone era. Though geopolitics have changed drastically, the Council has changed relatively little since 1945, when wartime victors crafted a Charter in their interest and awarded "permanent" veto-wielding Council seats for themselves. Since 1993, the UN General Assembly has hotly debated Council reform but has not been able to reach agreement. A handful of states aspire to "permanent" status for themselves, while many other countries reject such claims. As a result, little progress has been made since 1993 in spite of the number of proposals that have been suggested.

2.1.6 SECRETARY GENERAL

The Chapter-XV, from Article-97 to 101 contains provisions related to the office of the UN Secretary General.

2.1.5.1 Appointment Procedure and Status of the UNSG

Article-97 makes the provision of the office of the Secretary General. It says, the Secretariat shall comprise a Secretary-General and such staff as the Organization may require." Hence, it also describes the procedure of its appointment. According to this the UN Secretary General is appointed by the General Assembly upon the recommendation of the Security Council. Provision of Article-18 and 27 make it clear that for the nomination of the Secretary General by the Security Council, an affirmative vote of seven members, including the concurring votes of permanent members is required; and that for his appointment by the General Assembly. A simple majority of the members of that body present and voting is sufficient, unless the General Assembly itself decides that a two-third majority is called for. The same rules are applied to the renewal of the appointment.

The Article has also defined the status of the Secretary General in the Organization. According to the same provision of the UN Charter, he/she is the "the chief administrative officer" of the Organization.

2.1.5.2 Tenure

The term of the Secretary General is five years. The appointment is open to renewal at the end of that period for a further five-year term. In the absence of any stipulation on the subject in the Charter, the General Assembly and the Security Council are free to modify the term of the office of future Secretary General in the light of past experience.

Since a Secretary General is a confident of many governments, it is desirable that no Member should offer him at any rate immediately on retirement, any governmental position in which his confidential information might be a source of embarrassment to other members, and on his part a Secretary General should refrain from accepting any such position.

2.1.5.3 Powers and Functions

Powers and of the UNSG have been explained in Chapter-XV from Article- 98 to 101. Some of these are mentioned in the other parts of the Charter that deal with the other organs of the Organization. These are discussed as below:-

1. According to the Article-98, the Secretary-General also acts as the Secretary General of the General Assembly, the Security Council, the Economic and Social Council and the Trusteeship Council during the meetings of the respective organs and performs such other functions that are entrusted to him by these organs. He/she prepares the agenda and minutes of the meetings and other documents related to these organs.

2. The Secretary-General prepares an annual report related to the working and functioning of the United Nations and submits it to the General Assembly (Article-98).

3. Article-99 authorizes the Secretary-General to bring the attention of the Security Council on any matter which in his opinion may threaten the maintenance of international peace and security. This is an important provision related to the office of UNSG. According to Javier Perez de Cueller, this article contains three elements, rights, responsibility and discretion. As a result of the flexible interpenetration of this article, Secretary Generals have been able to moderate the conflicts or negotiate the solutions.

4. Being Head of the Secretariat, article-101 authorizes the UN Secretary General to appoint the staff of the Secretariat under regulations established by the General Assembly. Further he/she, he assigns appropriate staffs permanently to the Economic

and Social Council, the Trusteeship Council and to other organs of the United Nations. These staffs form a part of the Secretariat.

5. As per the financial regulations of the UN General Assembly, Secretary General is also responsible to prepare the budget, for the allocation of funds and for the control of the expenditure of the organization.

6. The UN Secretary General also calls the special session of the UN General Assembly on the request of Security Council (Article-21).

7. He is the main channel of communication with the United Nations or any of its organs.

2.1.5.4. Responsibility and Accountability of Secretary General

The UN Charter makes it clear that while performing their duties the Secretary General and the staff shall not seek or receive instructions from any government or from any other authority external to the Organization. They shall refrain from any action which might reflect on their position as international officials responsible only to the Organization. Therefore, all the Member states of the United Nations are agreed to respect the exclusively international character of the responsibilities of the Secretary General and the staff and not to seek to influence them in the discharge of their responsibilities (Article-100).

2.1.7 ROLE OF THE UNSG

The UN Secretary General has been a key factor in the emergence of the United Nations itself as an autonomous actor in global politics. It is the leadership of the Secretary General that UN has been transformed being a form a forum of multilateral diplomacy into something which more than the sum of its inputs. It makes decisions on the behalf of the whole community of nations-states. Since 1945, it took the advantages of the opportunities of initiatives and applied flexible interpretation of the Charter to assume the role of global leadership. Till the date eight persons – Trygve Lie, Dag Hammarskjöld, U. Thant, Kurt Waldheim, Javier Perez de Cueller, Boutros Boutros-Ghali, Kofi Annan and Ban Ki Moon – have served on this position. Three factors – personality of the Secretary Generals, interpretation of the UN Charter and world events increased the powers, resources and importance of the position. Role played by different Secretary Generals have been explained as following:-

1. Trygve Lie as First UN Secretary General: Trygve Lie of Norway was appointed as the first Secretary General for a five-year term on 1st February 1946 and was reappointed on 1st November 1950 for three years. He resigned on 10 November 1952 and was succeeded by Dag Hammarskjöld of Sweden on 10th April 1953. During his tenure, he performed the following:-

Interpretation of Charter:-Lie took the initiative of advising the Security Council on the Secretariat's interpretation of the Charter. The Council was considering its first case, the Iranian complaint against the USSR. The Secretary General delivered a sharply different legal opinion from that of the Security Council. The Security Council did not accept his interpretation. But even then it upheld his right to present his views. After setting this precedent, Lie submitted legal opinions on other matters.

Question of the Representation of People's Republic of China: - Lie took a definite stand on the issue of People's Republic China's representation to the United Nations. Numerous states, including the USSR and the United Kingdom – permanent members of the Security Council – had recognized the mainland government of the People's Republic of China by the end of 1949. But even then, it had not been given the entry and representation in the UN. The USSR representatives, having failed to obtain the seating of the representatives of the People's Republic, began boycotting UN meetings n January 1950, at which China was represented by delegates of the Republic of China, based on Taiwan. Thus, Lie tried to solve the impasse in private meetings with delegations. He adduced various reasons, including a ruling of the International Court of Justice, for the thesis that non-recognition of a government by other governments should not determine its representation in the UN.

Plan for the General Settlement of the Cold War: - Lie took an extraordinary initiative in 1950 to ensure the peace. He proposed a solution to outstanding problems of the world in his plan "Twenty-Year Program for Achieving Peace through the United Nations". In this Plan he proposed:- (i) A new international machinery to control atomic energy and check the competitive production of armaments; and (ii) establishment of a UN force to prevent or stop localized outbreaks of violence. Lie visited first to Washington, then to London, to Paris, and finally to Moscow. He held conversations with US President Harry S Truman, British Prime Minister Clement Attlee, French President Vincent Auriol

and Soviet Premier Joseph Stalin and also with foreign ministers and high-ranking diplomats these countries on these proposals and other memoranda, including the one on Chinese representation. Reception of Lie was cordial in Moscow, warm in Paris, and friendly in London, but cool in Washington.

The Korean War: - With the outbreak of the Korean War, the international picture changed abruptly. The attitude of a number of governments toward the UNSG Lie changed dramatically. Lie intervened in the emergency meeting of the Security Council on 24th June 1950 and unequivocally labelled the North Korea aggressors as it had crossed the 38th parallel. He declared that the conflict constituted a threat to international peace, and urged that the Security Council had a clear duty to act. After the Council had set in motion military sanctions against North Korea, Lie endorsed this course of action and rallied support from member governments for the UN military action in Korea. These moves brought him into sharp conflict with the USSR. He was accused of "slavish obedience to Western imperialism" and to the "aggression" which according to the Soviet perspective, the US had committed in Korea. As the Korean conflict grew more portentous with the intervention of the People's Republic of China, Lie played an active role in getting cease-fire negotiations underway in the field. At the same time, he fully identified himself with military intervention in Korea on behalf of the UN.

Hence, Lie took definite stands on issues such as the Chinese presentation, peace plan and Korean War each of that earned him the dislike of some permanent members of the Security Council. He completed his term on 31st January 1951. The Soviet Union vetoed a resolution recommending him for a second term and subsequently announced that it would accept anyone other than Lie who was acceptable to the other members of the Council. The US announced that it would veto anyone but Lie. The Council was unable to recommend a candidate for the office of Secretary General to the General Assembly, a situation unforeseen in the Charter. A in the General Assembly Resolution extend the term of Lie for term for three years. The Resolution was carried by 46 votes to 5, with 8 abstentions. The negative votes were cast by the Soviet bloc. The Soviet Union termed the extension of the term as illegal and said that it would not consider him as Secretary General. He tendered his resignation to the General Assembly on 10th November 1952.

2. Dag Hammarskjöld as the Second UN Secretary General: After Lie, Dag

Hammarskjold was appointed the Second UNSG and he was also reappointed for a further five year term in 1957. He died in a plane crash in Africa on 17th September 1961. Hammarskjöld's activities in the political field were more numerous and far-reaching than Lie's had been. Both the General Assembly and the Security Council repeatedly relied on his initiative and advice and entrusted important tasks to him. He did the following works:-

Release of US Fliers: - The General Assembly asked the Secretary General to seek the release of 11 US fliers held prisoner by mainland China. The Assembly resolution left the course of action entirely to his judgment. After various preparations, Hammarskjöld flew to Peking for personal negotiations with that government. He succeeded to convince the PRC to release the 11 US fliers. This success greatly increased the readiness of the Assembly to rely on the Secretary General as a trouble-shooter.

The Suez Crisis: - Grave responsibilities were entrusted to the secretary-general by the General Assembly in connection with the establishment and operation of the UN Emergency Force (UNEF). On 4th November 1956, at the height of the crisis resulting from British, French, and Israeli intervention in Egypt, the secretary-general was requested to submit a plan within 48 hours for the establishment of a force to secure and supervise the cessation of hostilities. The Assembly approved his plan and, at his suggestion, appointed Major General E. L. M. Burns, Chief of Staff of the UN Truce Supervision Organization, as the chief of UNEF. The Assembly authorized the secretary-general to take appropriate measures to carry out his plan, and an advisory committee of seven UN members was appointed to assist him. Hammarskjöld flew to Egypt to arrange for the Egyptian government's consent for UNEF to be stationed and to operate in Egyptian territory. He was given the task of arranging with Egypt, France, Israel, and the United Kingdom the implementation of the cease-fire and an end to the dispatch of troops and arms into the area and was authorized to issue regulations and instructions for the effective functioning of UNEF.

Jordan-Lebanon Crisis, 1958:- Hammarskjöld took an active hand in this crisis after a resolution for stronger UN action failed to carry in the Security Council. He announced that he would nevertheless strengthen UN action in Lebanon. He said that he would accept the consequences if members of the Security Council were to disapprove; none did.

South East Asia, 1959:- In 1959, the Soviet Union did not favour a visit by the Secretary General to Laos especially the assignment of a special temporary UN ambassador. Despite this, he went to Laos to that corner of Southeast Asia and assigned a high UN official as the head of a special mission to Laos. In March 1959, Hammarskjöld sent a special representative to help Thailand and Cambodia settle a border dispute. He acted at their invitation without specific authorization by the Security Council or the General Assembly. The dispute was settled.

The Congo Crisis:- The greatest responsibilities Hammarskjöld had to shoulder were in connection with the UN Operation in the Congo (now Zaire). On 12th and 13th July 1960, respectively, President Joseph Kasavubu and Premier Patrice Lumumba of the newly independent Congo each cabled the Secretary General, asking for UN military assistance due to the arrival of Belgian troops and the impending secession of Katanga. At Hammarskjöld's request, the Security Council met on the night of 13th July. He gave his full support to the Congo's appeal and recommended that the Council authorize him to take the necessary steps to set up a UN military assistance force for the Congo, in consultation with the Congolese government and on the basis of the experience gained in connection with the UNEF in the Middle East. The Security Council so decided. Since the Congo operation thus initiated was of much greater dimensions than the UNEF operation, the responsibilities imposed upon the secretary general were correspondingly heavier, for, although the Security Council and the General Assembly guided Hammarskjöld, he himself had to make extraordinarily difficult decisions almost daily, often on highly explosive matters that arose as a result of serious rifts within the Congolese government and many other factors. Various member governments, including the USSR and certain African and Western countries, criticized Hammarskjöld for some actions that the UN took or failed to take in the Congo. At times, he had to face the possibility that some country that had contributed military contingents to the UN force would withdraw them. When it became known in February 1961 that Lumumba, who had been deposed by Kasavubu early in September 1960 and later detained by the Léopoldville authorities, had been handed over by them to the Katanga authorities and subsequently murdered, Hammarskjöld declared that the UN was not to blame for the "revolting crime." However, several delegates claimed that he should have taken stronger measures to protect Lumumba.

The "Troika" Proposal: Soviet Premier Khrushchev as head of the Soviet delegation

to General Assembly in 1960 accused Hammarskjöld of lacking impartiality and of violating instructions of the Security Council in his conduct of the UN operation in the Congo. He also proposed a basic change in the very institution of the Secretary General. He argued that since the Secretary General had become the interpreter and executor of decisions of the General Assembly and the Security Council, this one-man office should be replaced by a collective executive organ consisting of three persons, each of whom would represent a certain group of states – namely, the West, the socialist states, and the neutralist countries. He argued that the institution of a "troika," would guarantee that the UN executive organ would not act to the detriment of any of these groups of states. Hammarskjöld rejected the accusations against his impartiality. He declared that he would not resign unless the member states for which the organization was of decisive importance or the uncommitted nations wished him to do so, and received an ovation from the overwhelming majority of the delegations. He also stated that to replace the one-man Secretary General by a three-man body would greatly alter the character and limit the scope of the UN. Outside the Soviet bloc there had been little support for the "troika" proposal, but some "subtroika" proposals were advanced. Hammarskjöld in turn suggested that his five top aides, including a US and a Soviet citizen, advise the Secretary General on political problems.

Because of dangerous developments in the Congo, Hammarskjöld flew there in September 1961. On the night of 17 September, the plane carrying him from Léopoldville to a meeting with the Katanga secessionist leader at Ndola, Northern Rhodesia, crashed in a wooded area about 16 km west of Ndola airport. Hammarskjöld and all 15 UN civilian and military personnel travelling with him, including the crew, were killed.

3. U. Thant as the Third UNSG: U Thant of Burma was appointed Secretary General on 3rd November 1961. Thant's approach to his office was different from that of Hammarskjöld. Thant did not take the same initiatives as his predecessor. Nevertheless he consistently sought to use the prestige of his office to help settle disputes. Moreover, both the General Assembly and the Security Council assigned him to mediate extremely delicate situations.

Disarmament:- In his annual reports, he put forth proposals on basic issues, such as disarmament and many of his suggestions were adopted. PTBT, NPT and Outer Space Treaty were held during his tenure.

Dispute between Indonesia and the Netherlands, 1961:- U Thant resolved the long-standing dispute between Indonesia and the Netherlands over the status of West Irian. The territory, formerly known as West New Guinea, had belonged to the Dutch East Indies, and Indonesia now claimed it as its own. In December 1961, when the fighting broke out between Dutch and Indonesian troops, he appealed to both governments to seek a peaceful solution. He helped them arrive at a settlement. That settlement, moreover, brought new responsibilities to the office of the Secretary General. For the first time in UN history, a non-self-governing territory was, for a limited period, administered directly by the world organization.

Cuban Missile Crisis, 1962:- U. Thant also played an active role to resolve the Cuban Missile Crisis of 1962.

The Cyprus Operation:- Inter-communal clashes broke out in Cyprus on Christmas Eve 1963 between Greek and Turkish communities. The Security Council on 4th March 1964 unanimously authorized U. Thant to establish a UN Peacekeeping Force in Cyprus (UNFICYP) for three months to prevent the recurrence of fighting, to help maintain law and order and to aid in the return to normal conditions. The Council also asked the Secretary General to appoint a mediator to seek a peaceful settlement of the Cyprus problem. He succeeded to resume the inter-communal talks in June 1968.

Indo-Pakistan War of 1965 and 1971:- Hostilities between India and Pakistan broke out in Kashmir in early August 1965. At the behest of the Security Council, U. Thant visited the sub-continent from 9 to 15 September. In his report to the Council, the secretary-general proposed certain procedures, including a possible meeting between President Ayub of Pakistan and Prime Minister Shastri of India, to resolve the problem and restore the peace. The Council, on 20 September, demanded a cease-fire and authorized the secretary-general to provide the necessary assistance to ensure supervision of the cease-fire and withdrawal of all armed personnel. For this purpose, U Thant strengthened the existing UN Military Observer Group in India and Pakistan (UNMOGIP), stationed in Kashmir, and established the UN India-Pakistan Observation Mission (UNIPOM) to supervise the cease-fire and withdrawal of troops along the border outside Kashmir. At a meeting organized by Soviet Premier Kosygin in January 1966 in Tashkent, USSR, the leaders of India and Pakistan agreed on the withdrawal of all troops; this

withdrawal was successfully implemented under the supervision of the two UN military observer missions in the area. UNIPOM was disbanded in March 1966, having completed its work. Following the outbreak of civil strife in East Pakistan in March 1971 and the deterioration of the situation in the subcontinent that summer, U. Thant offered his good offices to India and Pakistan and kept the Security Council informed under the broad terms of Article-99 of the Charter. When overt warfare broke out in December, the Security Council appealed to all parties to spare the lives of innocent civilians. Pursuant to a decision by the Council, U. Thant appointed a special representative to lend his good offices for the solution of humanitarian problems after the cease-fire of 18 December 1971, which was followed by the independence of Bangladesh.

The Vietnam War:- Since U. Thant was deeply concerned with the question of Vietnam, he did his efforts to persuade the parties in the conflict to initiate negotiations on their own. He put forward a three-stage proposal to create the conditions necessary for discussion in 1966 which was ignored by the US.

Civil War in Nigeria (1967-70):- . During the civil war in Nigeria (1967-70), the Secretary General sent a personal representative to Nigeria to help facilitate the distribution of food and medicine.

The Soviet Invasion of Czechoslovakia:- U. Thant was among the first world figures to denounce the Soviet invasion of Czechoslovakia publicly. At a press briefing on 21 August, 1968 at UN headquarters, Thant expressed unequivocal dismay, characterizing the Soviet invasion as another serious blow to the concepts of international order and morality which form the basis of the Charter of the United Nations. He argued that it a grave setback to the East-West détente which seemed to be re-emerging in recent months.

4. Kurt Waldheim as the Fourth UNSG: In December 1971, the General Assembly appointed Kurt Waldheim of Austria for a five-year term beginning on 1 January 1972. He did the following things during his tenure:-

Concern for the Preservation of the Peace:- (i) Kurt Waldheim visited Cyprus in 1972 and 1973,. After the hostilities in 1974, he was able to bring Greek and Turkish leaders together for negotiations. He presided over the Geneva talks regarding Cyprus; (ii) He tried to end the Vietnam war through action by the Security Council; (iii) He visited

the two Yemens to try to mediate a border dispute in 1972; (iv) He tried to mediate between India and Pakistan in 1972; (v) In the long-standing Arab-Israeli dispute, Waldheim made many efforts toward a satisfactory settlement of Arab-Israel dispute and organized the UN Emergency Force as a buffer between the armies of Egypt and Israel at the request of the Security Council in October 1973; (vi) Criticised the Soviet Invasion of Afghanistan in 1979; (vii) When the US diplomatic personnel were made as hostages in Iran, he tried to free the hostages and settling relations between Iran and the US. For this purpose, he went to Tehran himself as did a UN commission of inquiry; and (viii) Waldheim tried to prevent a war between Iran and Iraq, which began in September 1980.

Concern for the Evolution of World Economic Arrangements:- The Sixth Special Session of the General Assembly, in the spring of 1974, and the Seventh Special Session, in September 1975, resulted in a number of decisions and proposals for bridging the gap between the rich and the poor nations and building a new international economic order. These were the results of the efforts made by UN Secretary General.

Financial Position of the UN: - Waldheim acted both to reduce the costs of running the UN and to bring in contributions from member nations. The US contribution to the UN, in the early 1970s was 31.5 per cent of total UN budget. The US Congress reduced the US share to 25 per cent of the UN budget in October 1973. The116 other nations also had their contributions reduced by the UN. The difference was made up by increasing the assessments of Japan, China, and 10 other members and by admitting to membership the two Germanys. Waldheim helped to bring these changes about, fostering the notion that any country paying more than 25 per cent of the UN's expenses could wield excessive influence.

Terrorism:- Incidents of terrorism had increased in the early 1970s. In September 1972, during the 20th Olympiad in Munich, 11 Israeli athletes were killed by Palestinians of the Black September group. Waldheim expressed himself strongly about the event. He further put the question of terrorism on the agenda of the 1972 General Assembly against the wishes of many member states. It was the first time a Secretary General had ever placed a substantive item on the Assembly's agenda. A number of Arab and African countries took exception to his initiative arguing that attention should be focused on the causes of terrorism. After OPEC officials were attacked by terrorists in 1975, the sentiment for more ample UN action against terrorism grew among third world countries.

5. Javier Pérez de Cuéllar as the Fifth Secretary General:- Javier Pérez de Cuéllar of Peru, was appointed as the UNSG in December 1981. He served in the same capacity till 1991. He presided over the United Nations during one of the most remarkable decades in the political history of the world. During his tenure, the stalemate imposed on the United Nations by the rivalries of the Cold War came to an end. The political map of Europe was completely redrawn when the Soviet Union collapsed in 1989. East and West Germany were united. Historic achievements in bilateral arms control and disarmament negotiations lowered the level of confrontation between the West and the East. A new atmosphere of consensus enabled the Security Council to begin providing the kind of leadership envisioned for it by the founders of the organization, as enshrined in the UN Charter. Long-standing political problems in Namibia, Cambodia, and Latin America were resolved with success by United Nations peace-keeping missions, and the evolution of the organization's activities in helping organize and monitor free and fair elections in new democracies began. The winds of change were also blowing strongly in South Africa, where the apartheid system was beginning to crumble after more than 30 years of condemnation by the United Nations. In these positive developments, Cuellar played an active role. He tried to resolve the Falkland Islands crisis (1982). He also noticed the invasion of Lebanon by Israel (1982) and made efforts to use the mechanisms of diplomacy to prevent international conflict. In the context of Iran-Iraq war(1980-1988), he considered it to be his overriding responsibility under the Charter not only to seek an end to the conflict but also to try under international humanitarian rules to mitigate its effects in such areas as attacks on civilian population centres, use of chemical weapons, treatment of prisoners of war, and safety of navigation and civil aviation. On four occasions between 1984 and 1986, he dispatched specialists to investigate charges of the use of chemical weapons, initially against Iranian forces but later injuring Iranian civilians and Iraqi forces as well. In 1984 and 1985, two UN teams investigated allegations of violations of promises by the two countries to cease deliberate attacks on purely civilian population centres. In January 1985, he dispatched a mission to Iran and Iraq to investigate the treatment of prisoners of war and civilian detainees. He himself visited Tehran and Baghdad in April 1985 to discuss proposals he had drawn up to initiate movement toward a comprehensive settlement of the war, and he continued to search for new approaches to this goal. In July 1987, as per the Security Council Resolution, he sent UN observers to verify and supervise a cease-fire between Iran and Iraq and withdrawal to internationally recognized boundaries. After the ceasefire, in 1988, he continued to work for a lasting peace in the region. The Secretary General acted as

mediator until early 1988 in discussions and consultations aimed at negotiating a settlement of the situation in Afghanistan that had been brought about by Soviet military intervention in that country in late 1979 and had affected neighbouring countries, particularly Pakistan, to which many Afghan refugees had fled. The negotiations revolved around four points: agreement on non-interference and non-intervention; the voluntary return of refugees; international guarantees on the settlement, to be given by the US and the USSR; and the withdrawal of foreign troops. The negotiation efforts met with success in early April 1988, when agreement was reached on a treaty under which the USSR decided to withdraw its troops from Afghanistan.

6. Boutros Boutros-Ghali as the Sixth UNSG:- Secretary-General Boutros Boutros-Ghali took office in the post-Cold War era, yet he witnessed the proliferation of intractable and appalling regional conflicts in Haiti, Somalia, the former Yugoslavia and Rwanda, among others. The multiplicity and savagery of these conflicts cast a pall on the much hoped-for new world order which the end of the Cold War had inspired. In 1992, Ghali submitted "An Agenda for Peace" with respect to international peace and security. This document is more fully explained in the chapter on International Peace and Security. Boutros-Ghali responded to request of the General Assembly to submit a report on development under the agenda item "Development and International Economic Cooperation in May 1994. He declared that development was not only a fundamental human right, but also the most secure basis for peace. Although the UN had accomplished remarkable achievements in many areas, it was undeniable that after decades of efforts to assist the developing world, the poorest nations were falling even further behind, strangled by debt and social upheaval. He posited that development could not proceed without a fundamental basis in peace, and went on to describe the ideal evolution of a peacekeeping/humanitarian aid operation into a situation of sustainable development.

Boutros-Ghali further maintained that protection of the environment was another fundamental concept for development. In the developing world, ecological pressure threatens to undermine long-term development. He observed that among many countries in transition, decades of disregard for the environment have left large areas poisoned and unable to sustain economic activity in the long term. Among the wealthiest nations, consumption patterns are depleting world resources in ways that jeopardize the future of world development. The concept of sustainable development had to be strengthened as a

guiding principle of development.

7. Kofi Annan as the Seventh UNSG:- Kofi Annan of Ghana was appointed as UNSG in January 1997. Kofi Annan came to power at a time of differences between the UN and the US government concerning financial matters. At the end of 1996, the US was US$ 376.8 million in arrears, but the government was reluctant to pay the debt because of the belief that the UN had not been thrifty with its budget. The US held the position that the UN should be reduced in size, but Annan took a strong stand against further budget and staff cuts. Nevertheless, Annan took action to reform the UN. The Annan-led reform efforts helped strengthen relations between the UN and the United States. US President Clinton praised the reform and issued strong statements of support for the new Secretary General. However, relations between the US and the UN were strained over US military action including the Clinton administration's attacks on suspected terrorist bases in Afghanistan in August 1998, and US-British bombings of Iraqi targets in May 2000.

The Global Compact: In an address to the World Economic Forum on 31st January 1999, Kofi Annan proposed an international initiative called the "Global Compact", that would bring companies together with UN agencies, labour, non-governmental organizations and other actors to pursue good corporate citizenship or responsibility. The focus of the initiative is to allow companies to develop and promote values-based management, rooted in internationally accepted principles. The Global Compact was launched at a meeting in New York on 26th July 2000. Hundreds of companies and organizations have participated in the initiative, and the private-sector participants represent virtually all industry sectors on every continent. The Global Compact is supported by four UN agencies: the United Nations Environment Programme (UNEP); the Office of the High Commissioner for Human Rights (OHCHR); the International Labour Organization (ILO); and the United Nations Development Programme (UNDP).

Millennium Declaration:- In September 2000, at the UN Millennium Summit, world laders, led by the Secretary General, agreed to set a timetable for achieving eight major goals by 2015. The first is to eradicate extreme poverty and hunger, by reducing by half the proportion of people living on less than one dollar a day, and by reducing by half the proportion of people who suffer from hunger. The second goal is to ensure that all boys and girls complete a full course of primary education. The third goal is to promote gender

equality and empower women, by eliminating gender disparity in primary and secondary education. The fourth goal is to reduce the child mortality rate by 2/3 for children under five. The fifth goal is to reduce by 3/4 the maternal mortality ratio. The sixth goal is to stop and reduce the spread of HIV/AIDS, and to stop and reverse the incidence of malaria and other major diseases. The seventh goal is to ensure the sustainability of the environment, by reducing the loss of environmental resources, by reducing by half the proportion of people without sustainable access to safe drinking water, and to achieve significant improvement in the lives of at least 100 million slum dwellers, by 2020. The eighth and final goal is to develop a global partnership for development, by first developing a rule-based and non-discriminatory open trading and financial system; by addressing the least developed countries' special needs, including tariff- and quota-free access for their exports, enhanced debt-relief for heavily indebted poor countries, the cancellation of bilateral debt, and more generous assistance for countries committed to poverty reduction; by addressing the special needs of landlocked and small island developing states; by developing decent and productive work for youth; by providing access to affordable essential drugs in developing countries, in cooperation with pharmaceutical companies; and by making available, with the cooperation of the private sector, the benefits of new technologies, especially information and communications technologies. Kofi Annan's report on the project was entitled "We the Peoples: The Role of the United Nations in the 21st Century."

Peace and Security:- Annan supported Nigeria's peaceful transition from military rule under General Sani Abacha to a democratic government in 1999. President Olusegun Obasanjo was elected president of Nigeria in February 1999 as the first civilian leader in 15 years. In March 2002, Secretary-General Kofi Annan criticized Israel for its actions in Palestine. He sent a letter to Ariel Sharon, Israeli Prime Minister stating that Israeli forces had been waging what appeared to be an all-out conventional war on Palestinian civilians. He wrote that Israel is fully entitled to defend itself against terror," Annan wrote. "But this right does not discharge it of its obligation to respect the fundamental principles and rules of international humanitarian law and the law of armed conflict with respect to the treatment and protection of civilians in occupied territories.

8. Ban Ki-Moon as the Eighth UNSG: He became UNSG in 2007. His priorities have been to mobilize world leaders around a set of new global challenges, from climate change and economic upheaval to pandemics and increasing pressures involving food,

energy and water. He has sought to be a bridge-builder, to give voice to the world's poorest and most vulnerable people, and to strengthen the Organization itself. Highlights of his tenure include:

Promoting Sustainable Development:- His first major initiative was the Climate Change Summit, 2007. Subsequent efforts to focus on the world's main anti-poverty targets, the Millennium Development Goals, have generated more than $60 billion in pledges, with a special emphasis on Africa and the new Global Strategy on Women's and Children's Health. At the height of the food, energy and economic crises in 2008, he successfully appealed to the G20 for a $1 trillion financing package for developing countries and took other steps to guide the international response and protect the vulnerable and poor.

Empowering Women:- The Secretary General pressed successfully for the creation of UN Women, a major new agency that consolidates the UN's work in this area. His advocacy for women's rights and gender equality has also included the "Unite to End Violence against Women" campaign, the "Stop Rape Now" initiative, the creation of a "Network of Men Leaders" and the establishment of a new Special Representative on Sexual Violence in Conflict. Within the UN itself, the Secretary General has increased the number of women in senior management positions by more than 40 per cent, reaching the highest level in the Organization's history.

Supporting Countries Facing Crisis or Instability:- The UNSG has sought to strengthen UN peace efforts. Accountability for violations of human rights has received high-level attention through inquiries related to Gaza, Guinea, Pakistan and Sri Lanka. The new United Nations norms aimed at prevent and halt genocide and other grave crimes. Ban Ki Moon has also sought to strengthen humanitarian response in the aftermath of mega-disasters in Myanmar (2008), Haiti (2010) and Pakistan (2010), and mobilized UN support for the democratic transitions in North Africa and the Middle East.

Disarmament, Arms Control and Non-Proliferation:- The Secretary-General has sought to rejuvenate the disarmament agenda through a five-point plan, efforts to break the deadlock at the Conference on Disarmament and renewed attention to nuclear safety and security in the aftermath of the tragedy at the Fukushima Daiichi Nuclear Power Plant.

Strengthening the UN:- The Secretary-General has introduced new measures aimed at making the United Nations more transparent, effective and efficient. These include heightened financial disclosure requirements, compacts with senior managers, harmonization of business practices and conditions of service, the adoption of International Public Sector Accounting Standards, and continued investments in information technology and staff development.

2.1.7 REFORMS

The UN Charter provides little in terms of details regarding the selection process, and no provisions at all on criteria or qualifications of the UN Secretary General. Thus, a coalition of NGOs, UN associations and former UN officials argue that the "secret deals and horse trading" govern the selection of its Secretary General. The appointment process is rather opaque and non-transparent, with purported candidates encouraged to remain unknown to the public and the final selection made very shortly before the individual takes office. The eventual nominees are often compromise candidates chosen through protracted, politicized and largely secretive bargaining among Security Council members. Therefore, it must be replaced with a fair and transparent process that ensures the best candidate gets the job.

The existing procedure for choosing a Secretary General was adopted in 1946. Hence it is significantly outdated and incompatible with selecting the best candidate. Under the existing rules, the members of the UN Security Council debate the candidates before nominating one and recommending them for appointment by the UN general assembly. However, the process allows any of the five permanent members of the Security Council – China, France, Russia, the UK and the US – to veto any candidate. Convention also decrees that there cannot be two consecutive Secretary Generals from the same region. Organizations like Amnesty International, Avaaz, Civicus and the World Federation of United Nations Associations demands that

All UN members to be involved in the search for, and appointment Secretary General.

- The UN should come up with an official shortlist, and to hold open sessions in which all states can question the nominees.
- Nomination of a single candidate, usually from a middle power and with little prior

fame. Concerns from developing nations on the selection of the next UNSG has been voiced most vocally by India, which has suggested the Security Council present the General Assembly with three nominees rather than the traditional single nominee. The proposal met with unanimous opposition by the permanent members, and was rejected other members including Canada for its potential of splitting the membership and weakening the next UNSG's base of support. The proposal also was reportedly opposed by many in the Asian group, who foresaw the possibility of multiple Asian nationals being nominated and dividing the Asian governments as well.

- India, Canada and other middle-power states demanded a stronger role for the General Assembly in proposing and vetting candidates under consideration.

In 1997, Resolution 51/241 reaffirmed the General Assembly's key role of appointment in the selection process. This included the right of the President of the General Assembly to consult with UN member states on potential candidates and to forward recommendations to the Security Council for consideration during the nomination phase. It also codified for the first time the practice of regional rotation, called for greater gender equality in identifying potential candidates, and urged that the nominee be appointed no later than one month before needing to assume office to provide for a smooth and efficient transition.

2.1.8 LET US SUM UP

To conclude, the UN General Assembly is the chief deliberative organ of the United Nations. It is considered as the "parliament of the nations" which provides a unique forum for multilateral discussion and debates on the various issues and problems such as peace and security, human rights, terrorism and climate change. It takes decisions on the questions of peace and security, admission of new members and budgetary matters. On the other hand, the UN Secretary General has also played an important role to settle crises that troubled community of nations. In practice, the role has gone far beyond what might be anticipated from a reading of the terse Charter provisions for the office. The role has been developed precisely through a skilful exploitation of the potentialities inherent in those provisions. The deliberative organs of the UN are political bodies which are intended to function as forums where the interests of governments can be represented and reconciled. The Secretary General and the Secretariat embody the other aspect of the UN. The

Secretary General is consistently working to promote the peace and security.

2.1.9 EXERCISE

1. Write a short note on voting and decision-making process of the General Assembly?
2. "General Assembly is the parliament of nations." Make a critical analysis of this statement ?
3. Describe the composition, powers and functions of the General Assembly ?
4. How the UNGA can be made more powerful and effective ?
5. Discuss the appointment procedure of the UN Secretary General ?
6. What are powers and functions of the Secretary General?
7. Discuss the role of UN Secretary General ?
8. Discuss the role of UN Security Council ?

2.2 ECONOMIC AND SOCIAL MANDATE : ECOSOC, SPECIALIZED AGENCIES (ILO AND UNESCO)

- A. Lalitha

STRUCTURE

2.2.6 Let us Sum up

2.2.7 Exercise

2.2.0 OBJECTIVES

In this lesson you will study the role of United Nations in socio-economic development in general and the functions of ECOSOC, UNESCO and ILO in particular. After going through this lesson, you should be able to know:

- the role United Nations Organization plays in the promotion of Economic and Social Development;
- the contributions of Economic and Social Council, UNESCOand the International Labour Organizations in the promotion of Economic and Social Development
- The problems faced by these organs on the practical ground.

2.2.1 INTRODUCTION

The United Nations (UN) has been assigned by its Charter, the general task of promoting progress and international cooperation in economic, social, health, cultural, educational and related matters. Article 55 of the Charter, on international economic and social cooperation, calls on the UN to promote higher standards of living, full employment, and conditions of economic and social progress and development. The fostering of economic and social development, however, was only one of several objectives specified in the charter, and no special emphasis was accorded to it. Toward the middle of 20th century, however, the concept took root as a major objective of international cooperation, and the primary goal of the UN and the specialized agencies in the economic and social fields came to be promoting the development of the less developed countries. Today, many of the most outstanding accomplishments of the UN to date are in the economic and social fields.

Much of the economic and social transformation that took place globally since 1945 is significantly affected both in its direction and shape by the work of United Nations. UN works as a centre for consensus-building at global level and it has set priorities and goals for international cooperation to assist countries in their development efforts and to foster

a supportive global economic environment. The global consensus emerged in the United Nations found its expression in a series of international development decades, the first one beginning in the year 1961. The broad statements of policy and goals, while emphasizing certain issues of particular concern in each decade, consistently stressed the need for progress on all aspects of development, social as well as economic and the importance of narrowing the disparities between the industrialized and developing countries.

Beginning from 1990s the UN has also provided a platform for formulating and promoting key new developmental objectives on the international agenda, through a series of global conferences. Time and again it articulated the need for incorporating issues such as the advancement of Women, Human Rights, Sustainable Development, Environmental protection and Good Governance into the development paradigm. As the twentieth century came to an end, the focus of the UN is shifted towards implementing its commitments in an integrated and coordinated manner.

2.2.2 SOCIAL AND ECONOMIC DEVELOPMENT GOALS OF UNO

As a system the UN works in a variety of ways to promote its economic and social goals like, the formulation of policies, advising governments on their development plans, setting international norms and standards, and mobilizing funds for development programmes.

Under Article 55 of the charter, the organization is committed to promote the following goals:

(a) Higher standards of living, full employment, and conditions of economic and social progress and development;

(b) Solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and

(c) Universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

2.2.2.1 Co-ordination and Management of Social and Economic Development

The responsibility for UN activities aimed at the achievement of these goals is vested essentially in the General Assembly and, under its authority, the Economic and Social

Council (ECOSOC). The ECOSOC, being the principal body for coordinating the economic and social work of the United Nations also acts as a forum for discussing international economic and social issues and formulates policy recommendations. The United Nations Development Group, comprised of Secretariat bodies as well as the development funds and programmes, assists in the management and coordination of development work within the Organization. The Executive Committee on Economic and Social Affairs, comprised of Secretariat bodies and the regional commissions, is an instrument for policy development and management. It also works to enhance cooperation between policy-making entities and the distinct operational programmes.

Within the UN Secretariat, the Department of Economic and Social Affairs (DESA) gathers and analyses the economic and social data; carries out policy analysis and coordination, and provides sustentative and technical support to member states in the social economic sphere. Its substantive support to intergovernmental processes facilitates member states' role in setting norms and standards and in agreeing on common courses of action in response to global challenges. DESA provides a crucial interface between global policies and national action. While several of the specialized agencies of the UN provide support and assistance for countries' development efforts, its programmes and funds deal with the operational activities for development in programme countries.

As a part of it, the following sections will explain Economic and Social Council (ECOSOC), United Nations Development Programme (UNDP) and the International Labour Organization (ILO).

2.2.3 ECONOMIC AND SOCIAL COUNCIL (ECOSOC) AND ITS COMPOSITION

The framers of the UN felt that without improving the social and economic conditions of the people of the world there cannot be peace in the world. Thus in Art.1 and 13 of the Charter one finds the mention about economic and social co-operation and the protection of human rights. The ECOSOC originally consisted of 18 members. As the membership of UN increased with many former colonial territories getting independence, the ECOSOC's strength was increased to 54. Members of ECOSOC are elected by General Assembly. Each year 1/3rd of the members vacates the office and their places are filled

through fresh elections. ECOSOC reaches its decisions by a vote of simple majority. The Human Rights commission is also an important subsidiary organ established by ECOSOC.

2.2.3.1 ECOSOC's Functions and Powers

Under the Charter, the council is authorized to make or initiate studies, reports, and recommendations on economic, social, cultural, educational, health, and related matters; to make recommendations to promote respect for, and observance of, human rights; to prepare draft conventions for submission to the General Assembly on matters within its competence; to call international conferences on matters within its competence and in accordance with rules prescribed by the UN; to enter into agreements, subject to the approval of the General Assembly, with specialized agencies; to coordinate the activities of the specialized agencies and obtain regular reports from them; to perform, with the approval of the General Assembly, services at the request of member nations or the specialized agencies; to consult with nongovernmental agencies whose work is related to matters dealt with by the council; to set up subsidiary organs to assist its work; and to perform any other functions that may be assigned to it by the General Assembly.

2.2.3.2. ECOSOC's Fields of Activity

The activities of the Economic and Social Council, carried out through its subsidiary bodies in cooperation with the specialized agencies, have touched on all aspects of human well-being and affected the lives of people everywhere. A list of the major spheres of activity supervised by the council is given below; the chapters on Economic and Social Development, Technical Cooperation Programmes, Social and Humanitarian Assistance, and Human Rights contain further information on matters directly under its purview.

Economic Development: Although this field encompasses both developed and developing nations, emphasis is on the problems of the latter group. The activities of the Council include evaluating long-term projections for the world economy; fostering international trade, particularly in commodities, between industrialized and non-industrialized countries; improving the international flow of private and public capital; promoting industrialization and the development of natural resources; resolving related political and legal issues, such as permanent sovereignty over natural resources and land reform; developing programmes of technical cooperation for developing nations; and applying the latest innovations of

science and technology to improve the industrialization of developing countries.

Social Development: Among the social problems handled under the aegis of the council are housing, population, international traffic in narcotic drugs, the welfare of children in the developing countries, and the status of the world's refugees, the aging, and the disabled. Particular attention is paid to the role of women in development.

Human Rights: The Council and its subsidiary organs have elaborated a series of important principles for the promotion of fundamental freedoms. Measures include the Universal Declaration of Human Rights and a number of declarations and recommendations on specific rights – for example, the rights of women, freedom of information and the press, and racial equality. The most recent declaration was adopted in Vienna in June 1993, namely, the "Vienna Declaration and Programme of Action."

Related Special Problems: An example of a special problem of interest to the council is the improvement of statistical techniques, since efficient statistics are essential to economic and social development. Work in this field includes techniques to improve world statistics in specific economic branches, such as industry and finance; standards of national statistical services; and methods of comparing statistics from different countries.

Problems Dealt with by the UN Related Agencies. The specialized agencies, the World Trade Organization (WTO), and the International Atomic Energy Agency (IAEA) undertake a wide range of activities in the economic and social fields. It is a function of the Council to coordinate these activities. Accounts of each of the related agencies are given in the separate chapters devoted to them.

2.2.3.3 ECOSOC's Functioning

ECOSOC functions through various regional commissions and councils to deal with economic and social problems in the different geographical areas of the world, and the functional commissions, to handle social, human rights, and environmental questions.

Regional Commissions

There are five regional commissions:

a. Economic Commission for Europe (ECE)

b. Economic Commission for Africa (ECA)

c. Economic Commission for Asia and Far East (ECAFE)

d. Economic Commission for Latin America (ECLA)

e. Economic Commission for Western Asia (ECWA)

Further, to carry out its special activities five special functional commissions too were constituted.

Functional Commissions

Since 1946, the council established functional commissions and sub commissions to advise and assist it in its work.

· The *Statistical Commission,* with 24 members, assists in developing international statistical services, promoting the development of national statistics and improving their comparability, coordinating the statistical work of the specialized agencies and the central statistical services of the UN Secretariat, and advising the UN organs on general questions relating to the collection, analysis, and dissemination of statistical information.

· The *Commission on Population and Development,* with 47 members, studies population changes, including migration, and their effect on economic and social conditions and advises on policies to influence the size and structure of populations and on any other demographic questions on which the UN or its specialized agencies may seek advice.

· The *Commission for Social Development,* with 46 members, advises the Council on social policies in general and on all matters in the social field not covered by the specialized agencies; it gives priority to the establishment of objectives and programs and to social research in areas affecting social and economic development.

· The *Commission on Human Rights,* with 53 members, makes recommendations and prepares reports to the council on human rights questions, including the status of women, the protection of minorities, the prevention of all forms of discrimination, and the implementation of international conventions on human rights. Its various working groups are composed of experts nominated by members to explore problems such as arbitrary detention, involuntary disappearances, and the rights of indigenous peoples.

· The *Commission on the Status of Women*, with 45 members, prepares reports on matters concerning the promotion of women's rights in the political, economic, social, and educational fields and makes recommendations to the Council on matters requiring immediate attention in the field of women's rights. The Commission has established a working group on communications concerning the status of women.

· The *Commission on Narcotic Drugs,* with 53 members, advises the Council and prepares draft international agreements on all matters relating to the control of narcotic drugs and the Commission carries its work through five sub committees across five regions of the world.

· The *Commission on Science and Technology for Development*. The United Nations has been concerned with the effects of advances in science and technology to world peace and social development since its inception. As a result of several of its efforts, the Commission on Science and Technology for Development has been created in 1993 with 33 members. It provides policy guidelines, expert advice and recommendations to member states, in particular developing countries for the utilization of science and technology for development.

· The *Commission on Crime Prevention and Criminal Justice* was established in December 1991. The Commission has 40 members. Priority areas of the commission include: national and transnational crime; organized crime; economic crime, including money laundering; the role of criminal law in the protection of the environment; crime prevention in urban areas; and juvenile and violent criminality.

· The *Commission on Sustainable Development*. As a result of the UN Conference on Environment and Development (UNCED) held in Rio de Janeiro in 1992, the Council established a new functional commission in 1993: the Commission on Sustainable Development. The 53-member commission's mandate includes: monitoring progress towards the UN target of providing 0.7 percent of gross national product of industrialized countries for official development assistance; considering information on the implementation of environmental conventions; and recommending action to the General Assembly.

· The *United Nations Forum on Forests*. At the 1992 UN Conference on Environment and Development (UNCED) the forest issue was among the most controversial, polarizing

developing and developed countries. At the meeting, the governments of UNCED came up with a set of principles regarding the management, conservation, and sustainable development of forests. Subsequently, a panel, forum, and further proposals for action were established, culminating in the creation of the Forum on Forests in 2000. The forum's goals are to combat deforestation and degradation of forests, to work for forest conservation and protection of unique types of forests and fragile ecosystems, working on rehabilitation and conservation strategies for countries with low forest cover, working for the promotion of natural and planted forests, and considering the economic, social, and cultural aspects of forests, among other items.

2.2.3.4 Other Subsidiary Organs

Further, under Article 68 of the UN Charter the ECOSOC has created various standing committees and expert bodies like Committee for Programme and Coordination, Commission on Human Settlements, Committee on Non-Governmental Organizations, Committee on Negotiations with intergovernmental Agencies, Ad hoc Open-ended Working Group on Informatics Committee for Development Policy, Meeting of Experts on the United Nations Programme in Public Administration and many such committees.

Several semi-autonomous bodies which generally report both to ECOSOC and to the General Assembly are created. Such bodies include United Nations Children's Fund (UNICEF), United Nations Conference on Trade and Development (UNCTAD), United Nations Development Fund for Women, United Nations Development Programme (UNDP), United Nations Environment Programme (UNEP), Office of the United Nations High Commissioner for Refugees (UNHCR), United Nations Population Fund (UNFPA), United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), and the World Food Programme (WFP).

As a part of its social development, the United Nations system has made poverty reduction a priority. A key player in this effort is the United Nations Development Programme (UNDP), as mentioned above a semiautonomous body, which has made poverty alleviation its chief priority. In the following section we will be discussing about the United Nations Development Programme (UNDP).

2.2.4 UNITED NATIONS DEVELOPMENT PROGRAMME (UNDP)

The United Nations Development Programme was founded in 1965 by means of General Assembly Resolution 2029 (XX) and began its operations in 1966 at the United Nations offices in New York. The programme is administered through the Economic and Social Council as a subsidiary body to the UN General Assembly. The UN Secretary-General appoints the UNDP Administrator, who has to date always been a citizen of the United States of America. UNDP was de facto a merger of two technical co-operation bodies that had been operating under the UN flag since 1949 and 1958 respectively: the Expanded Programme of Technical Assistance and the Special Fund. The new programme was originally expected to "facilitate over-all planning and needed co-ordination of the several types of technical co-operation programmes carried out within the United Nations system of organizations and to increase their effectiveness" (UNGA/Res. 2029 (XX), preamble). Today, despite still being a programme rather than a full-fledged specialized organization, UNDP has evolved into the major UN network for all kinds of developing activities, with 195 member states, field activities in more than 170 countries. This makes UNDP the largest multilateral organization for technical co-operation.

2.2.4.1 Structure of UNDP

The UNDP is directed by an Executive Board of representatives of 36 member states, who are elected by the UN Economic and Social Council (ECOSOC) on a triennial basis, with one third of members being replaced each year. Regional quotas of eight African, seven Asian, five Latin American and Caribbean, four East European and twelve 'West European and Others' members grants technically a voting majority to developing countries. In practice, however, decision-making by consensus is the rule. The board decides, among other things, upon UNDP's 'Country Co-operation Frameworks', which determine the agency's involvement with individual countries, and supervises disbursements from the United Nations Population Fund.

In general, however, the UNDP Administrator and the UNDP bureaucracy under its supervision run the day-to-day business of the organization. UNDP also chairs the United Nations Development Group, which was established under Kofi Annan's 1997 reform agenda to co-ordinate the system-wide UN development activities. In addition, the Programme is in charge of a number of other UN entities that directly relate to the

development sector, including the UN Capital Development Fund (UNCDF), the UN Development Fund for Women (UNIFEM), the UN Population Fund (UNFPA), the UN Sudano-Sahelian Office (UNSO) and the United Nations Volunteers (UNV).

Each country office is run by a Resident Representative, who in most cases also functions as highest UN representative in this country. The UNDP's representatives often act as de facto ambassadors of the United Nations. This is formally acknowledged in many cases by the UN Secretary-General, who often assigns additional responsibilities to UNDP representatives in declaring them United Nations Resident Coordinators as focal point for all UN agencies operating in this country. Thus, UNDP has de facto much more technical-administrative influence in the field than one would expect from a subordinate entity of the Economic and Social Council.

2.2.4.2 Funding and Spending

As a UN Programme, the budget of UNDP is essentially financed through voluntary contributions of governments. This practice complicates reliable long-term budgetary planning, since government pledges not always materialize. With regard to spending, 85-90% of UNDP grants flow into the poorest developing countries, which are defined through an annual per capita income of less than USD 750. Different from World Bank loans, UNDP grants do not need to be repaid, which makes them highly attractive to beneficiary countries. Apart from this material incentive, developing countries appreciate the comparatively high level of inclusion in the decision making procedures, for instance through round-table mechanisms or decentralized communication with country representatives, and 'good governance' conditionalities that are perceived as more agreeable and less patronizing than many 'structural adjustment' conditionalities of the World Bank and the International Monetary Fund.

2.2.4.3 Change in the nature of UNDP's Activities

Beginning from 1970s the nature of UNDP's technical activities underwent tremendous changes. In part, this has been in response to the evolving requirements and interests of the Programme countries. The changes also have reflected global concerns for particular development problems and issues and such a change in its activities has been discussed in the following paragraphs.

In the year 1970 the Governing Council of UNDP produced a consensus on the future of UNDP. It was endorsed by the General Assembly in the same year and resulted into organizational and procedural changes in 1971, and brought substantially into effect during the next few years. The pivotal change that was brought in the UNDPs activities was the introduction of "country programming." This involves the forward programming of UNDP assistance at the country level for periods of up to five years, identification of the role UNDP inputs would play in specified areas related to a country's development objectives, and the phasing of these inputs. Country programming, together with a similar approach to regional, interregional, and global activities, is designed to achieve the most rational and efficient utilization of resources.

A necessary counterpart to the introduction of UNDP country programming was administrative reform. The most important change involved decentralization—a substantial shift of power and responsibility for effective UNDP technical cooperation at all stages away from headquarters and into the Programme countries, where the UNDP Resident Representatives often play a lead role in UN development system activities within a country. Guidelines for the selection of these officials imply that, first and foremost, they should be effective managers, for it is they who cooperate directly with the governments to ensure the smooth functioning of development programmes. In addition, they must intervene to help ensure more efficient implementation and more effective use of the results of project assistance. Upon request, they must be ready to play a vital part in the coordination of assistance from other sources with that provided by UNDP. In fact, under the restructuring of the UN development system mandated by the General Assembly, most UNDP Resident Representatives also are designated by the UN Secretary-General as Resident Coordinators of all UN operational assistance for development.

In 1975, UNDP further revised its programming principles to include 'new dimensions' in technical cooperation, designed primarily to foster greater self-sufficiency among developing countries by relying more heavily on their own skills and expertise for development activities. Accordingly, UNDP redefined its role in technical cooperation to stress results achieved, rather than inputs required from the industrialized nations. Seen from this perspective, the purpose of technical cooperation is to promote increasing autonomy with regard to the managerial, technical, administrative, and research capabilities required to formulate and implement development plans in the light of options available.

In the 1990s, UNDP made other changes that had a substantial impact on its programming, as well as on development thinking in general. In 1990 the Governing Council directed UNDP to focus its activities on six themes: poverty eradication and grass roots participation; environment and natural resources management; technical cooperation among developing countries (TCDC); management development; transfer and adaptation of technology; and women in development. UNDP has also adopted a 'programme approach', whereby funding is provided for comprehensive programmes with integrated components rather than distinct, separate projects. This enables UNDP to deliver assistance that is more focused and has greater impact and sustainability.

Although poverty reduction had become one of the goals of UNDP its status within the set of goals was not equal: explicit priority was accorded to the goal of reducing poverty. In March 1995 the World Summit on Social Development too solidified the global priority of poverty elimination. Thus poverty reduction has become a part of UNDP's core mission which is the promotion of 'sustainable human development' and UNDP's efforts in poverty reduction will be discussed with a greater focus a little while later in this current section itself.

Another change has been UNDP's promotion of 'human development', which puts people at the centre of development, enlarging their choices and creating opportunities through which they can realize their potential and express their creativity. Human development does not measure a country's progress solely by its Gross National Product, but takes into account such factors as its people's access to health services, level of education, and purchasing power. Since 1990 UNDP has stimulated debate about this concept through the publication of an annual Human Development Report, written by an independent team of development specialists and published by Oxford University Press. Since then, a growing number of countries have received UNDP assistance in incorporating human development concerns into planning and the allocation of budgets.

Linking human development with its traditional emphasis on building self-reliance, UNDP has now embraced the concept of 'sustainable human development' as the guiding principle underlying all its work. As defined by UNDP's administrator, James Gustave Speth, who took office in July 1993: "Sustainable human development is development that not only generates economic growth but distributes its benefits equitably; that regenerates the

environment rather than destroying it; that empowers people rather than marginalizing them. It gives priority to the poor, enlarging their choices and opportunities and providing for their participation in decisions affecting them. It is development that is pro-poor, pro-nature, pro-jobs and pro-women. In sum, sustainable human development stresses growth, but growth with employment, environment, empowerment and equity." Within this framework, UNDP identified three priority goals:

- strengthening international cooperation for sustainable human development and serving as a substantive resource on how to achieve it;
- building developing countries' capacities for sustainable human development; and
- helping the United Nations become a powerful, unified force for sustainable human development.

With the creation of the Millennium Development Goals (MDGs) in 2000, the UNDP was guided by the UN Core Strategy on MDGs and focuses on:

- ***Campaigning and mobilization***: Supporting advocacy for the MDGs and working with partners to mobilize the commitments and capabilities of broad segments of society to build awareness on the MDGs;
- ***Analysis***: Researching and sharing best strategies for meeting the MDGs in terms of innovative practices, policy and institutional reforms, means of policy implementation, and evaluation of financing options;
- ***Monitoring***: Helping countries report advancement towards the MDGs and track progress;
- ***Operational activities***: Goal-driven assistance to support governments to tailor MDGs to local circumstances and challenges; address key constraints to progress on the MDGs.

Against this back ground now let us look at the UNDP's priority area of poverty reduction and its multi-pronged approach towards the goal of poverty reduction especially after the adoption of MDGs in the following section.

2.2.4.4 UNDP's Comprehensive approach for Poverty Reduction:

Despite the fact that the number of extreme poor has dropped by 650 million in the last four decades, human poverty still remains widespread in certain parts of the world. However, still there are more than a billion people living in extreme poverty. In the midst of globalized progress and development, human deprivations are still wide spread. In this context, poverty reduction is the overarching goal and at the core of UNDP's work to support transformational change which brings about real improvements in people's life.

In its action UNDP is guided by the following twin beliefs:

a) No economic growth will can produce jobs and cut poverty unless it is inclusive and equitable, and unless the needs of the poor and marginalized are at the centre of development priorities

b) When men and women have equal opportunities and freedoms, economic growth accelerates and poverty declines more rapidly.

UNDP, thus, strongly believes that poverty is a multifaceted reality. It is not simply a lack of adequate income; it is a cruel mix of human deprivation in knowledge, health, dignity and rights, obstacles to participation and lack of voice. Therefore, comprehensive transformational change is needed to address the root causes of poverty. UNDP's work on poverty reduction focuses on such change through public policy interventions that help to modify the social, cultural and economic conditions that created poverty in the first place. Gender equality and women's empowerment, democratic governance and support to transitions, prevention of crises and building back better, engagement in climate talks, adaptation and mitigation, and the elimination of stigma in HIV and AIDS are ways of fighting against poverty by another name. UNDP's work in poverty reduction is thus guided by this broad, comprehensive approach to achieve sustainable human development (SHD). As a trusted multilateral partner serving 177 developing countries and territories around the world, UNDP is uniquely positioned to help advocate for change, connect countries to the knowledge and resources they need, and coordinate the efforts of the UN at the country level.

2.2.4.5 Poverty Reduction Activities of UNDP

As you understand by this time, the major focus of UNDP is to reduce global poverty.

Since poverty is more prevalent in some part of the world, Africa and Asia, the UNDP activities are more concentrated in those areas. These activities are explained below.

Acceleration of MDG Goals

In the backdrop of the MDG deadline of 2015, MDG progress acceleration remained at the centre of UNDP's work in poverty reduction activities in the last 15 years. Through the MDG Acceleration Framework (MAF), rolled out through a UN-wide initiative, UNDP has supported and supporting poorest of the poor countries in systematically identifying and analyzing the bottlenecks that are slowing progress towards the MDGs, rolling-out proven interventions, and developing MDG action plans. In countries like Moldova, UNDP supported the Government in uncovering the challenges of addressing HIV and tuberculosis and developed high-impact action plans with feasible solutions to address these challenges. In countries like Cambodia, UNDP supported the first country MAF to focus on women's economic empowerment at a national level through training programmes, entrepreneurship initiatives and gender mainstreaming.

Developing capacity to Plan, Budget and Implement Pro-Poor Policies

In countries like Lao PDR, UNDP has helped the Governments identify and develop plans for the poorest districts, which has enabled the Government to align its provincial governance and rural Development efforts towards these priority districts. In Montenegro, UNDP was instrumental in supporting the Government to elaborate the *Development and Poverty Reduction Strategy* as its first comprehensive poverty profile, defining the multidimensional nature of poverty and its causes, and leading to formal recognition by the Government of a 'poverty' problem.

Building resilience and reducing vulnerabilities

UNDP supports the innovative design of social protection schemes in 18 countries including Timor-Leste, where UNDP supported the implementation of a scheme for women. UNDP also provides policy options on topics related to resilience and vulnerability, such as through a 2012 report that focused the attention of policy makers in developing countries on macroeconomic vulnerability and resilience to economic and financial shocks, and the organization of policy dialogues on microeconomic vulnerabilities and poor households' coping strategies.

Promoting employment through business and agricultural development

In Bolivia, UNDP provided more than 4,000 indigenous women with training and microloans to open up new, community-based businesses. In the occupied Palestinian Territory, UNDP's *Deprived Families Economic Empowerment Programme* created 12,000 permanent jobs through grants for microenterprises and has helped over 66,000 families to graduate from poverty. Through a collaborative project with the IKEA foundation, UNDP delivered training on financial literacy and business management in India, creating a strong cadre of over 12,000 financially literate women and 4,000 entrepreneurs.

Scaling up local development innovations

To enhance development impact through strengthening micro-macro linkages and building on successful pilots, UNDP has developed guidance on scaling up local development innovations and case studies from such countries as Bangladesh, China, Costa Rica, Mexico, Mongolia and Nepal. It supports the scaling-up of proven local innovations and successes in programme countries. In Colombia, UNDP supports the scaling-up of proven approaches to increasing employment and income generation opportunities for lowest income and vulnerable populations including women, indigenous populations and persons with disabilities.

Promoting the rights of persons with Disabilities

UNDP supported the establishment of the UN Partnership to Promote the Rights of Persons with Disabilities, mobilizing over US$2.9 million to facilitate full implementation of the Convention on the Rights of Persons with Disabilities. UNDP also hosts the technical secretariat for the partnership. In Costa Rica, the Fund is supporting the removal of barriers that prevent persons with disabilities from obtaining an adequate income through employment or entrepreneurship.

Promoting Inclusive Globalization

UNDP supports Least Developed Countries (LDCs) to benefit from the Enhanced Integrated Framework for trade-related technical assistance (EIF) programme, including review and diagnostics in Bhutan and South Sudan, capacity development in Chad, Lesotho and Sao Tome and Principe, and activities to integrate trade in national policies in Burkina Faso, Cambodia and Zambia.

Strengthening resource management for sustainable human development

UNDP organized a policy dialogue with the government of Guyana to provide policy options to policy makers on sustainable management of the extractive industries. UNDP conducted case studies on water provision and governance systems in informal urban settlements in Kenya, Tanzania and Uganda to help improve governance of this precious resource in these and other Sub-Saharan African countries.

Mobilizing new sources of financing for Development

UNDP provided support to the Government of Jamaica to establish a new climate change department with the capacity to access climate financing and implement policies effectively. It has developed knowledge products and built its organizational capacity on recognizing and addressing illicit outflows of financial resources.

Supporting global post-2015 Agenda-setting

UNDP, with other agencies in the United Nations Development Group (UNDG), supports the organization of wide-ranging public consultations with the global community to help inform the post-2015 agenda. For example, it recently partnered with ILO and the Government of Japan to coordinate global consultations on growth and employment to support UN member states when they engage in negotiations on the post-2015 development agenda.

2.2.4 INTERNATIONAL LABOUR ORGANIZATION (ILO)

Concerned with both the economic and social aspects of development, the International Labour Organization (ILO) is one of the specialized agencies that predates the United Nations, as it was established in 1919 Treaty of Versailles, as an autonomous institution associated with the League of Nations. An agreement establishing the relationship between the ILO and the United Nations was approved on 14 December 1946, and the organization became the first specialized agency associated with the United Nations. ILO is guided by the principle that social stability and integration can be sustained only if they are based on social justice — particularly the right to employment with fair compensation in a healthy workplace. Over the decades, ILO has helped to create such hallmarks as the eight-hour day, maternity protection, child-labour laws, and a whole range of policies that promote safety in the workplace and peaceful industrial relations. Its long and diverse work in the

setting and monitoring of labour standards in the workplace has provided a framework of international labour standards and guidelines which have been adopted in national legislation by virtually all countries.

2.2.5.1 Objectives and Focus of ILO

ILO works towards the achievement of the following objectives:

- Employment of workers in the occupations for which they are best suited and where they can make their greatest contribution to the common well-being;
- Facilities for training and the transfer of labour, including migration for employment and settlement;
- Policies in regard to wages and earnings, hours, and other conditions of work calculated to ensure a just share of the fruits of progress to all and a minimum living wage to all employed;
- Effective recognition of the right of collective bargaining, the cooperation of management and labour in the continuous improvement of productive efficiency, and the collaboration of workers and employers in the preparation and application of social and economic measures;
- Extension of social security measures to provide a basic income to all in need of such protection and comprehensive medical care;
- Adequate protection for the life and health of workers in all occupations;
- Child welfare and maternity protection;
- Adequate nutrition, housing, and facilities for recreation and culture; and
- Assurance of equality of educational and vocational opportunity.

To implement these objectives, ILO is focusing on such areas as the progressive abolition of child labour, safety and health at work; socio-economic security; promoting small and medium-sized enterprises; developing skills, knowledge and employability; eliminating discrimination and gender inequality; and promoting the *ILO Declaration on Fundamental Principles and Rights at Work*, adopted by the International Labour Conference in 1998.

2.2.5.2 Membership

Any nation that is a member of the UN can become a member of the ILO by unilaterally notifying the Director General that it accepts the obligations of the ILO constitution. Other nations may be admitted to ILO membership by a two thirds vote of the International Labour Conference. The ILO constitution originally made no provision for the expulsion of a member. However, two amendments adopted by the International Labour Conference in 1964 would have empowered the ILO membership, by a two-thirds vote, to expel or suspend any member that had been expelled or suspended by the UN or that had been found by the UN to be flagrantly and persistently pursuing by its legislation a policy of racial discrimination. A state may withdraw from the ILO by formal notification of its intent to do so, such withdrawal to be effective two years after the ILO receives the notification. Currently the ILO has 183 members.

2.2.5.3 Structure

The ILO has a tripartite structure unique in the United Nations, in which employers' and workers' representatives – the 'social partners' of the economy – have an equal voice with those of governments in shaping its policies and programmes. The three organs of the ILO are the International Labour Conference, the Governing Body, and the International Labour Office, headed by a Director General.

International Labour Conference

The International Labour Conference is the organization's policy-making and legislative body, in which every member state is represented. It holds one session a year at ILO headquarters in Geneva. Each member country sends to the International Labour Conference a national delegation consisting of four delegates: two represent the government, one represents the country's employers, and one represents the country's workers. Alternates and advisers may be sent as well. Each delegate has one independent vote. The government, employers', and workers' representatives to the conference act in many respects as three separate groups, functioning somewhat as political parties function in a national legislature: the three groups meet separately for informal discussions of strategy; they hold caucuses; and, voting separately, they elect the government, the employers', and the workers' delegates to the Governing Body and to tripartite committees.

The Governing Body

The Governing Body is the executive council of the ILO. It is composed of 56 titular members (14 representing employers, 14 representing workers, and 28 representing governments) and 66 deputy members (19 representing employers, 19 representing workers, and 28 representing governments).

Members of the Governing Body are elected by the corresponding groups in the International Labour Conference, except that 10 of the government representatives are appointed by countries that do not participate in the election of the other government representatives since these 10 countries are entitled to permanent seats as "states of chief industrial importance." The 10 governments permanently represented on the Governing Body are Brazil, China, France, Germany, India, Italy, Japan, the Russian Federation, the United Kingdom, and the United States of America. The remaining government members are elected for three years.

Meeting several times a year, the Governing Body coordinates and in many ways shapes the work of the organization. It draws up the agenda for each session of the International Labour Conference; while the conference is empowered to change this agenda, it rarely does. The Governing Body appoints the Director-General of the International Labour Office. It examines the proposed budget submitted to it each year by the Director-General and approves it for adoption by the conference. The Governing Body also is responsible for convening the scores of other conference and committee meetings held under ILO auspices every year in various parts of the world and decides what action ought to be taken on their resolutions and reports.

2.2.5.4 International Labour Office and Director-General

The International Labour Office in Geneva, headed by the Director- General, is the ILO's headquarters and its permanent secretariat. The International Labour Office services the sessions of the conference, the Governing Body, and the various subsidiary organs and committees. It prepares the documents for these meetings; publishes periodicals, studies, and reports; and collects and distributes information on all subjects within the ILO's competence. As directed by the conference and the Governing Body, it carries out ILO operational programs that have been decided on in various fields.

2.2.5.5 Activities of ILO

To realize its objectives the ILO mainly engages a) the formulation of international policies and programmes to promote basic human rights, improve working and living conditions and enhance employment opportunities, b) the creation of international labour standards — backed by a unique system to supervise their application — to serve as guidelines for national authorities in putting sound labour policies into practice; c) extensive programmes of technical cooperation, formulated and carried out in partnership with beneficiaries, to help countries make these policies effective; and d) training, education, research and information activities to help advance all these efforts.

Promotion of Human Rights through International Policies

In 1944, the International Labour Conference met in Philadelphia, USA, and adopted the Declaration of Philadelphia. This redefined the aims and purpose of the ILO by adopting the following principles:

- Labour is not a commodity.
- Freedom of expression and of association are essential to sustained progress.
- Poverty anywhere constitutes a danger to prosperity everywhere.
- All human beings, irrespective of race, creed, or sex, have the right to pursue both their material wellbeing and their spiritual development in conditions of freedom and dignity, of economic security, and of equal opportunity.

Once again in 1998, the International Labour Conference adopted the Declaration on Fundamental Principles and Rights at Work, which reaffirmed the commitment of the international community to "respect, to promote and to realize in good faith" the rights of workers and employers to freedom of association and the effective right to collective bargaining. It also commits member States to work towards the elimination of all forms of forced or compulsory labour, the effective abolition of child labour, and the elimination of discrimination in employment and occupation. The Declaration emphasizes that all member States have an obligation to respect the fundamental principles involved, whether or not they have ratified the relevant Conventions.

These two declarations remain to be the cornerstones for the work of ILO in the promotion

of basic human rights, improving the working and living conditions and enhancing the employment opportunities.

International Labour Standards

One of the ILO's original and most important functions is the adoption by the tripartite International Labour Conference (employers, workers and governments) of Conventions and Recommendations which set international standards. A convention is similar to an international treaty and is subject to ratification. They serve as guidelines for national policy. Through ratifications by member States, these Conventions create binding obligations to implement their provisions. Recommendations do not require ratification. The first international convention adopted was the 1919 Hours of Work Convention, establishing the eight-hour day and the six-day week in industry. By 2006, the various sessions of the International Labour Conference had built up the edifice of the international labor code through the adoption of 185 conventions and 195 recommendations. A few of such conventions are mentioned below.

Key ILO Conventions

The ILO established various conventions to universalise certain international labour standards, which serve as normative principles to guide the governments and companies to maintain a minimum set of standards. These are:

- **Forced Labour Convention (1930):** This convention emphasizes on the suppression of forced or compulsory labour in all its forms. Certain exceptions are permitted, such as military service, properly supervised convict labour, and emergencies such as wars, fires, earthquakes.

- **Freedom of Association and Protection of the Right to Organize Convention (1948):** This convention establishes the right of all workers and employers to form and join organizations of their own choosing without prior authorization, and lays down a series of guarantees for the free functioning of organizations without interference by public authorities.

- **Right to Organize and Collective Bargaining Convention (1949):** This convention provides for protection against anti-union discrimination, for protection of workers' and employers' organizations against acts of interference by each other, and for measures to promote collective bargaining.

- **Equal Remuneration Convention (1951):** This convention calls for equal pay and benefits for men and women for work of equal value.

- **Abolition of Forced Labour Convention (1957):** Prohibits the use of any form of forced or compulsory labour as a means of political coercion or education, punishment for the expression of political or ideological views, workforce mobilization, labour discipline, punishment for participation in strikes, or discrimination.

- **Discrimination (Employment and Occupation) Convention (1958):** This convention calls for a national policy to eliminate discrimination in access to employment, training, and working conditions, on grounds of race, colour, sex, religion, political opinion, national extraction or social origin, and to promote equality of opportunity and treatment.

- **Minimum Age Convention (1973):** This convention aims at the abolition of child labour, stipulating that the minimum age for admission to employment shall not be less than the age of completion of compulsory schooling.

- **Worst Forms of Child Labour Convention (1999):** This convention calls for immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour which include slavery and similar practices, forced recruitment for use in armed conflict, use in prostitution and pornography, any illicit activity, as well as work which is likely to harm the health, safety, and morals of children.

Technical Co-operation

Since the early 1950s, the ILO has been providing technical cooperation to countries on all continents and at all stages of economic development. In the last decade, an average of some US$130 million was spent annually on technical cooperation projects. The projects are implemented through close cooperation between recipient countries, donors, and the ILO, which maintains a network of area and regional offices worldwide. The overall purpose of ILO technical cooperation is the implementation of the Decent Work agenda at a national level, assisting constituents to make this concept a reality for all men and women. An extensive network of offices throughout Africa, Asia, Latin America, Central and Eastern Europe and the Middle East provides technical guidance on policy issues, and assistance in the design and implementation of development programmes.

There are wide range of programmes under technical cooperation. Such programmes

include, Training entrepreneurs in small business administration, strengthening social security systems, assisting in the reintegration of ex-combatants into the national economy, assisting trade unions in occupational safety and health, setting up cooperatives in rural areas, working with governments to revise labour laws. These are just a few examples of the ILO's vast range of technical cooperation programmes operating in more than 140 countries and territories.

The focus of these programmes is on the areas covered by the ILO's four strategic objectives: the promotion of fundamental principles and rights at work, employment, social protection, and the strengthening of tripartism and social dialogue. Within this framework, the major portion of ILO technical cooperation is in the areas of development policies and programmes for poverty alleviation through job creation, and enterprise and cooperative development. Particular attention is being paid to capacity-building and strengthening of the programmes' constituents, in particular of workers' and employers' organizations, and to the mainstreaming of gender. The protection of workers at the workplace and the development of social security systems are other areas of assistance.

With the ILO's adoption of the Declaration of Fundamental Principles and Rights at Work has given a new impetus to the technical cooperation programmes in standards-related areas such as the promotion of freedom of association, social dialogue and collective bargaining, and to activities leading to the eradication of child labour – especially in its worst forms.

2.2.5.6 International Institute of Labour Studies

The ILO International Institute for Labour Studies in Geneva promotes policy research and public discussion on emerging issues of concern to the ILO and its constituents – labour, business and government. The institute contributes mainly in the following three ways:

a) By acting as global forum on social policy, enabling governments, business and labour to interact informally with the academic community and other opinion-makers;

b) By conducting International research programmes and networks linking academics with business, labour, and government practitioners, to explore emerging policy issues of potential relevance for the ILO and contribute to policy formulation; and

c) By promoting educational programmes to assist trade unions, employers' organizations and labour administrations in developing their institutional capacities for research, analysis, and policy formulation in the economic and social fields.

2.2.5 UNESCO - UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

UNESCO is a Specialized Agency of the United Nations. Its constitution was adopted by the LONDON CONFERENCE in Nov, 1945 and entered into effect on 4th November, 1946 when 20 states had deposited the instruments of acceptance. It was founded on 16 November, 1945 as an IGO. UNESCO's Headquarters are located in Paris and the Organization has more than 50 field offices around the world. It has 194 Members and 12 Associate Members and is governed by the General Conference and the Executive Board.

The main objective of UNESCO is to contribute to peace and security in the world by promoting collaboration among nations through education, science, culture and communication in order to enhance universal respect for justice, for the rule of law and for the human rights and fundamental freedoms which are affirmed for the people of the world, without distinction of race, sex, language or religion, by the Charter of the UN. In support of this objective, UNESCO's principal functions are:

- To promote intellectual cooperation and mutual understanding among people through all means of mass communication.
- To give fresh impulse to popular education and to the spread of culture.
- To maintain, increase and diffuse knowledge.
- To encourage scientific research and training.
- To apply sciences to ensure human development and the rational management of natural resources.

The motto of the UNESCO is, "since war begins in the minds of men, it is in the minds of men that the foundations for peace should be sought." As a forum for global intellectual cooperation, UNESCO has the widest range of programmes of all UN specialised agencies. This includes education, science, culture, communication and information. The concrete

objectives in the individual programme areas are redefined every two years by the UNESCO General Conference. Medium Term Strategies set out overarching programme objectives. The Secretariat implements the UNESCO programmes operationally

STRUCTURE

UNESCO has three bodies according to its constitution:

1. The General Conference

2. The Executive Board

3. The Secretariat

The General Conference is the assembly of all Member States, which meets every two years. At the General Conference, each member state has one vote. It is the supreme decision-making and controlling body of UNESCO. It sets the objectives and general guidelines of UNESCO's work. It convenes state conferences and adopts recommendations or agreements. The General Conference elects the members of the Executive Board and its suggestion, appoints the Director General. The Executive Board consists of 58 member states and meets five times in the Biennium. It reviews UNESCO's work programme and makes recommendations to the General Conference. The Secretariat implements the UNESCO programmes operationally. The Secretariat is headquartered in Paris and has more than 50 field offices worldwide. UNESCO is a forum for international cooperation and exchange of information, experience and ideas. It is not a development aid organisation or agency for project funding. It builds model projects, advises governments through expert missions and ministerial conferences and promotes knowledge sharing through more than 250 larger and countless smaller expert networks. An important function of UNESCO is the development of normative instruments at intergovernmental level. It has passed numerous international conventions, recommendations and declarations, most notably the 1972 Convention on the protection of Cultural and Natural Heritage.

Areas of Specialization of UNESCO

- **Education Transforms Lives**

Education transforms lives and is at the heart of UNESCO's mission to build peace, eradicate poverty and drive sustainable development. The Organization is the only United

Nations agency with a mandate to cover all aspects of education. It has been entrusted to lead the Global Education 2030 Agenda through Sustainable Development Goal . 'Education 2030 Framework for Action' (Incheon Declaration) is the roadmap to achieve the global education 2030 agenda.. Its work encompasses educational development from pre-school to higher education and beyond. Themes include global citizenship and sustainable development, human rights and gender equality, health and HIV and AIDS, as well as technical and vocational skills development.

- **Protecting Our Heritage and Fostering Creativity**

It is becoming a fact that no development can be sustainable without a strong culture component. UNESCO has adopted a three-pronged approach to make culture takes it rightful place in development strategies and processes, Spearheads worldwide advocacy for culture and development. Engages with the international community to set clear policies and legal frameworks Works on the ground to support governments and local stakeholders to safeguard heritage, strengthen creative industries and encourage cultural pluralism. Some important conventions and International treaties of UNESCO to protect and safeguard the world's cultural and natural heritage:

- The Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005) The Convention for the Safeguarding of the Intangible Cultural Heritage (2003)
- The Universal Declaration on Cultural Diversity (2001)
- The Convention on the Protection of the Underwater Cultural Heritage (2001)
- The Convention for the Protection of the World Cultural and Natural Heritage (1972)
- The Convention on the Means of Prohibiting and Preventing the Illicit Traffic of Cultural Property (1970)

- **Science for a Sustainable Future**

Science equips us to find solutions to today's acute economic, social and environmental challenges and to achieving sustainable development and greener societies. UNESCO works to assist countries to invest in Science, Technology and Innovation (STI), to develop

national science policies, to reform their science systems and to build capacity to monitor and evaluate performance through STI indicators. Also, UNESCO works with its member states to foster informed decisions about the use of science and technology, in particular in the field of bioethics.

- **Social and Human Sciences**

UNESCO helps to enable people to create and use knowledge for just and inclusive societies, support them in understanding each other and working together to build lasting peace. It promotes mutual understanding among member states through its intergovernmental Programme like Management of Social Transformations (MOST), its Youth Programme and the Culture of Peace and Non-Violence Programme which include initiatives for democracy and global citizenship, intercultural dialogue, peace-building.

- **Communication and Information**

UNESCO advances freedom of expression and the safety of journalists, combats online hate speech, as well as disinformation and misinformation through awareness raising initiatives. It also supports universal access to information and knowledge through promoting Open Solutions, including Open Educational Resources, access for marginalized people, and multilingualism in Cyberspace.

- **Global Priorities Of UNESCO - 'Africa' and 'Gender Equality'**
- **Africa**

UNESCO is attentive to 54 African countries with a stronger and better-targeted strategy. The adoption of the African Union Agenda 2063 and the 2030 Agenda for Sustainable Development paving the ground for the African Economic Community and the African Renaissance.

- **Gender Equality**

UNESCO holds that women and men must enjoy equal opportunities, choices, capabilities, power and knowledge as equal citizens. Equipping girls and boys, women and men with the knowledge, values, attitudes and skills to tackle gender disparities is a precondition to building a sustainable future for all. Some important initiatives to achieve the objective of Gender equality are: UNESCO Priority Gender Equality Action Plan Gender Equality Tools Gender Views Gender-related UNESCO Chairs and Networks UNESCO Prize

for Girls' and Women's Education UNESCO Youth Mobile

Some of the Important Initiatives of UNESCO

- **World Heritage Convention and List**

World Heritage Convention -1972 links together the concepts of nature conservation and the preservation of cultural properties. The Convention defines the kind of natural or cultural sites (World Heritage Sites) which can be considered for inscription on the World Heritage List. The States Parties of convention are encouraged to integrate the protection of the cultural and natural heritage into regional planning programmes, set up staff and services at their sites, undertake scientific and technical conservation research. It explains how the World Heritage Fund is to be used and managed. Globally there are 1121 World Heritage sites in the 167 countries. Meanwhile, India has 38 World Heritage Sites that include 30 Cultural properties, 7 Natural properties and 1 mixed site

- **Man and the Biosphere (MAB) Programme**

It is an intergovernmental scientific programme that aims to establish a scientific basis for enhancing the relationship between people and their environments. It promotes innovative approaches to economic development that are socially and culturally appropriate and environmentally sustainable. The World Network of Biosphere Reserves currently counts 701 sites in 124 countries all over the world, including 21 transboundary sites. India has 18 Biosphere reserves out of which 11 have been recognized internationally under Man and Biosphere (MAB) program:

- **International Geoscience and Global Geoparks Programme (IGGP)**

International Geoscience Programme (IGCP) harnesses the intellectual capacity of a worldwide network of geoscientists to lay the foundation for our planet's future, focusing on responsible resource extraction, natural hazard resilience and preparedness, and adaptability in the era of a changing climate. UNESCO Global Geo parks (UGGp) are laboratories for sustainable development which promote the recognition and management of Earth heritage, and the sustainability of local communities. As of April 2019, there are 147 UNESCO Global Geo parks within 41 Member States, covering a total area of 288,000 km^2

- **International Hydrological Programme (IHP)**

The Intergovernmental Hydrological Programme (IHP) is the only intergovernmental programme of the United Nations system devoted to water research and management, and related education and capacity development

World Water Assessment Programme (WWAP) The growing global water crisis threatens the security, stability and environmental sustainability of developing nations. The programme focuses on assessing the developing situation of freshwater throughout the world. It also coordinates the work of 31 UN-Water members and partners in the World Water Development Report (WWDR).

- **International Basic Sciences Programme (IBSP)**

It is an international multidisciplinary programme established by UNESCO Member States in order to reinforce intergovernmental cooperation in science to strengthen national capacities in the basic sciences and science education.

2.2.6 LET US SUM UP

So far you have studied, as a system, how the UN works in a variety of ways to promote its economic and social goals in terms of the formulation of policies, advising governments on their development plans, setting international norms and standards, and mobilizing funds for development programmes. As it has been discussed in this lesson, there is no doubt in saying that much of the economic and social transformation that took place globally since 1945 is significantly affected both in its direction and shape by the work of United Nations. UN by working as a centre for consensus-building at global level sets priorities and goals for international cooperation to assist countries in their development efforts and to foster a supportive global economic environment. In its endeavour of promoting higher standards of living and creating conditions of social and economic progress and development while its organs like ECOSOC provide overall direction and supervision, it has devised several technical programmes like UNDP to directly work for the poverty reduction at the country level. With a strong belief that social stability and integration can be sustained only if they are based on social justice — particularly the right to employment with fair compensation in a healthy workplace, it brought many specialized agency like ILO under its umbrella and by providing overall direction and close working, over the decades, UN has helped

to create such hallmarks as the eight-hour day, maternity protection, child-labour laws, and a whole range of policies that promote safety in the workplace and peaceful industrial relations. This way by promoting the economic and social development, UN strives to bring peaceful change in the world.

2.2.7 EXERCISE

1 Discuss on the role ECOSOC plays in the promotion of Economic and Social Development ?

2 While dealing with the changing nature of UNPD activities discuss in detail about its comprehensive approach for poverty alleviation ?

3 Discuss the objectives and functions of International Labour Organization. Throw some light on ECOSOC's functional commissions ?

4 Write a short note on the structure of the UNDP ?

5 Critically analyse the spending and funding of UNDP ?

6 Mention the key conventions signed under the leadership of ILO ?

7 Write a short note on the Technical Cooperation provided by ILO ?

8. Write a short note on UNESCO ?

9. Write a short note on the structure of UNESCO ?

10. Discuss the important initiatives taken by UNESCO ?

2.3 CONFLICT RESOLUTION: PACIFIC SETTLEMENT OF DISPUTES, COLLECTIVE SECURITY AND PEACEKEEPING: EVOLVING ISSUES

Harjit Singh

Structure

2.3.0 Objectives

After going through this lesson, you will be able to know :

- the United Nations conflict resolutions mechanism
- the method and techniques of Pacific Settlement of Disputes and agenda for peace.
- the Collective Security under UN charter provisions
- role of UN peace keeping forces practice

2.3.1 Introduction

The United Nations (UN) stands as the world's foremost intergovernmental organization, acutely aware of global power dynamics. Having tasked with maintaining peace, combating poverty, and advocating for human rights, it navigates complex relationships between nations to create equilibrium. It was awarded the 2012 Nobel Peace Prize, for its role in peacekeeping in post-World War II. It emphasizes its mission, to uphold international peace and security. It aims to foster friendly relations among nations, tackle international problems cooperatively, promote human rights, and harmonize national actions-all while navigating the intricate power dynamics that define global politics.

2.3.2 The United Nations and Conflict Resolution

The United Nations was founded in 1945 to prevent future wars and promote peace between countries. For the UN to facilitate peaceful conflict resolution around the world, it must first be able to identify conflicts and then develop solutions for them. One way they accomplish this task is by creating committees made up of member states, who have an

interest in resolving a particular issue. For example, suppose there is an ongoing conflict between two countries over territory or resources. In that case, those countries might be invited to send representatives to meet with delegates from other member states, who have experienced similar situations to discuss possible solutions.The UN has peacekeeping missions around the world that maintain peace and stability in conflict-affected areas, mandated by the UN Security Council and typically composed of military, police, and civilian personnel.

Another method these committees employ is mediation, where emotional intelligence is key. A member state serves as an intermediary between conflicting parties, facilitating an agreement beneficial to both sides, without resorting to violence or military action. This can happen in peace time or even post-hostility, provided there's potential for a peaceful resolution.While the United Nations was a concept describing the Allied forces combating the Axis powers during and, immediately after World War II, it evolved into a more encompassing or universal concept over time as the traumas of war healed. In the 1990s, internal conflicts and terrorism increased, UN missions took on an anti-terror role. Technological and structural changes and the phase of globalization have made UN- global governance more important. Now, there is more active global public opinion, and it has turned its attention towards the UN. Today, it is almost impossible for the UN to provide the expected services using the methods, tools, and practices from the Cold War era. This situation is eroding the legitimacy of the UN and so the UN has become in effective in solving global crises.

But, as part of conflict resolution, the UN is a peacekeeping force working on preserving democracy, prevent and resolve global conflicts, setting up peacekeeping missions, aiming to promote peace and security, counselling warring parties in many countries, facilitating peaceful conflict resolution worldwide by mediating conflicts, building strong economies, improving access to education and access to healthcare, setting up schools and clinics for refugee children, establishing legal codes to end gender discrimination and other social ills, providing humanitarian aid, human rights and development throughout the world.

2.3.3 Pacific Settlement of Disputes

Among countless other projects worldwide, the UN facilitates peaceful conflict resolution worldwide by providing a forum for countries to come together to resolve their

disputes.Whether it was the League of Nations or the United Nations, the development of international organisations was designed, to maintain international peace and to protect their members from the threat of war. No doubt, the United Nations is a multifunctional organisation, yet its chief function is the maintenance of world peace and security. The stipulation in the UN Charter that membership is open to all "peace loving" countries reaffirms this purpose, as does the charter's requirement that members should settle their international disputes by peaceful means, in such a manner that international peace and security, and justice, are not endangered. Members, moreover, are pledged to refrain in their international relations, from the threat or use of force against the territorial integrity or political independence of any state. In order to perform its significant and foremost role of maintaining peace and security the three major methods employed by the UN are pacific settlement, collective security and preventive diplomacy or peace-keeping. The first two are provided in the UN Charter whereas the third one was invented by its most active Secretary-General. Various provisions regarding Peaceful Settlement of Disputes are given in United Nations charter under various articles.

The goal of promoting peace and security is mentioned first in the UN Charter, and peaceful settlement of disputes is also foremost among the means for goal attainment.The means available for the processes of peaceful settlement; both outside and inside the UN are elaborated in the Charter. Chapter VI of the UN Charter is entitled "Pacific Settlement of Disputes" and consists of six articles--Article 33 to 38.

Article 33

The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.

Article 34

The Security Council may investigate any dispute, or any situation, which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute, or situation is likely to endanger the maintenance of international peace and security.

Article 35

Any Member of the United Nations may bring any dispute, or any situation of the nature referred to in Article 34, to the attention of the Security Council or of the General Assembly. A state which is not a member of the United Nations may bring to the attention of the Security Council or of the General Assembly, any dispute, to which it is a party if it accepts in advance, for the purposes of the dispute, the obligations of pacific settlement provided in the present Charter. The proceedings of the General Assembly in respect of matters brought to its attention under this Article, will be subject to the provisions of Articles 11 and 12.

Article 36

The Security Council may, at any stage of a dispute of the nature referred to in Article 33 or of a situation of like nature, recommend appropriate procedures or methods of adjustment. The Security Council should take into consideration any procedures for the settlement of the dispute, which have already been adopted by the parties. In making recommendations under this Article, the Security Council should also take into consideration, that legal disputes should, as a general rule, be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court.

Article 37

Should the parties to a dispute of the nature referred to in Article 33 fail to settle it by the means indicated in that Article, they shall refer it to the Security Council. If the Security Council deems that the continuance of the dispute is in fact likely to endanger the maintenance of international peace and security, it shall decide whether to take action under Article 36 or to recommend such terms of settlement as it may consider appropriate.

Article 38

Without prejudice to the provisions of Articles 33 to 37, the Security Council may, if all the parties to any dispute so request, make recommendations to the parties with a view to a pacific settlement of the dispute.

Article 33(1) leaves it to the parties concerned, 'to seek a solution by negotiation,inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agenciesor

arrangements, or other peaceful means of their own choice.' It will be pertinent to gothrough in brief some other important provisions in regard to pacific settlement. Forexample, Article 36(1) says: "The Security Council may, at any stage of a dispute of thenature, referred to in Article 33, or of a situation of a like manner, may recommendappropriate procedures or methods of adjustment." Article 36(3) enjoins upon theCouncil to see that legal disputes brought to its attention, are referred to the InternationalCourt of Justice, in accordance with the provisions of the Statute of the Court. Likewise,Article 37 lays down, that should the parties to a dispute, of the nature referred to Article 33, fail to settle it by means indicated in that Article, they are required to refer itto the Security Council. According to Article 38, without prejudice to the provisions under Article 37, the Security Council may, if all the parties to any dispute so request, make recommendations to the parties with a view to a pacific settlement of dispute.

Thus, the peaceful settlement endeavours to prevent war by the use of non-coercive or at least non-violent procedures.

2.3.4 Methods/ Techniques of Pacific Settlement of Disputes

The methods and techniques of amicable settlement of disputes specified in the Charter are:

Negotiation

It is the most common and the simplest method of pacific settlementofinternational disputes and differences. Negotiation is the process, by which governmentsconduct their relations with one another and discuss, adjust and settle their differencesand conflicts. It is a process in which explicit proposals are put forward for the purposeof reaching agreements. Usually, the negotiations are carried on through oral, face-to-face or written communications, by the heads of the State or their accredited agents and ambassadors. It involves direct discussion between the parties to the dispute with theobjective of reaching an agreement. No outside party is involved in the process. Sometime an international conference may be called, for this purpose where some agreement mightbe reached. Indo-Pak negotiation at Shimla (1972) and the CTBT negotiation at Geneva(1996) were outstanding examples of this method.

Good Offices

When a particular state alone or with other states, may act as a transmitting agency, and bring about a negotiation or conciliation between the disputant parties, it is called good offices. The term good offices imply, that a third state tries tobring the conflicting parties together and facilitate a settlement, without actively participatingin the negotiations, or without getting involved in the issues at stake. The third party, inadhering strictly to the limits of good offices, may offer only a channel of communicationsor facilities for the use of the parties, but may not offer any suggestions for terms ofsettlement. During the Indo-Pakistan war 1965, the Soviet Union offered her good offices,to bring the two countries on a conference table, which was accepted by both theparties and ultimately led to the Tashkent Declaration in January 1966.

Mediation

Under mediation the third party either at its own initiative, or at the request of the disputant parties assumes responsibility for the settlement of dispute The mediator assumes the role of a middle man, and tries to reconcile the opposite claims ofthe parties in disputes. Mediation is a procedure involving the suggestion ofsettlement by a third party. Thus, the mediator participates in the negotiations.However, the suggestions made by the mediator are not binding on the parties. To maintain his neutrality, an effective mediator may not impose his will upon the parties. In 1998, the US acted as a mediator between Britan, and the Republic of Ireland to resolve the ticklish Irish problem.

Inquiry and Conciliation

Inquiry is a process of fact-finding by a neutral team of investigators. Often the facts underlying a controversy are in dispute, and clarificationby an impartial commission may facilitate settlement. The report of the investigating Commission does not suggest terms of settlement, but may help to establish conditions conducive to settlement. Conciliation is like mediation, except for the legal distinction, that the third party is acommission or international body, whose aid has been sought in finding a solution, satisfactory to the disputants. The Commission investigates the facts of a dispute, and onthe basis of these fact suggest some solutions. These suggestions or recommendations are not binding on the disputants. Special commissions have often created by the United Nations to attempt conciliation.

Arbitration

It is a semi-judicial technique of settling a dispute. Under it, the partiesto a dispute refer the case to an individual or small group of individuals, to whom the parties state their respective cases. A panel of judges or arbitrators is created, either by special agreement of the parties, or by an existing arbitral treaty. In agreeing to submitthe dispute to arbitration, the disputants also agree in advance to be bound by thedecision. The method of arbitration was popular in the past from the ancient Greeks tothe nineteenth and early twentieth century's. But, since 1945, it is not in use except for the specific areas of trade disputes and investments.

Adjudication or Judicial Settlement

It is in a sense, a kind of arbitration; one in which a permanent court is the arbitral tribunal. The most elaborate permanent court for thejudicial settlement of disputes have been, of course, the Permanent Court of InternationalJustice, which functioned in the interwar period in loose association with the League ofNations and its successor, the International Court of Justice; which was brought into being in 1946 as one of the six organs of the United Nations. The latter is akin to former in composition, function and procedure. Unlike arbitration, the court is subject to no preliminary limitations upon its procedures, evidence to be considered, or legal principles to be applied, except those mentioned in the statute by which it was established . However, to protect their sovereignty, states have been hesitant to accord to international courts, any type of compulsory jurisdiction or to submit appropriate cases to existing courts. As a consequence, the International Court of Justice has very limited number ofcases to decide in comparison to its predecessor, the Permanent Court of International Justice. Like arbitration, once the parties have agreed to submit a case to adjudication, they are bound to abide by its decision, although adequate means of enforcement in instances of non compliance are lacking.

2.3.5 Pacific Settlement in Practice

It is quite difficult to evaluate the record of the United Nations in the important sphere of peaceful settlement of disputes. In the opinion of Couloumbis and Wolfe, "the League enjoyed a fine record of peaceful settlement of disputes during its first decade of operation. During this time, the league successfully sponsored techniques; such as goodoffices, mediation, conciliation, arbitration and adjudication. This record has not been matched by

cold-war torn United Nations. On the other hand, the United Nations has enjoyed, in comparison to the league, many more years without experiencing a global war.For the prevention of great wars in post-World War II period, the critics give credit to the balance of terror, rather than the United Nations. As international environments have changed considerably between the days of the League and those of the United Nations, it is quite difficult to compare the role and effectiveness of both these organisations. Frankel gives his assessment of UN's role in this regard. In his words, "In the field of pacific settlement of disputes, international institutions not onlyadded conciliation by their organs and judicial settlement by the World Court to the previously existing procedures, but also prodded and encouraged states to resort topacific settlement instead of fighting. The achievement was, however, largely procedural. Many procedures exist, but resorting to them, does not ensure that settlement will beachieved." International disputes have been solved by means of ambiguous standards.The maintenance of peace, without fair standards, degenerate to appeasement, to the satisfaction of aggressive and obstinate states, at the cost of the weaker ones.On the other hand, Bennett gives a very hopeful analysis of the UN's role. According to him, "In the light of its inherent weaknesses, the record of the United Nations in conflict resolution is surprisingly encouraging. Of more than 170 disputes considered by the Council and the Assembly, scarcely more than a dozen remain, as persistent long-range problems defying final solution. Some have been resolved by action of the parties after United Nations debate, but in others, the Security Council, the General Assembly, and the Secretariat have made positive contributions to the final settlement."

There are two reasons for this success. Firstly, pragmatic and flexible attitude of its principal organsin interpreting their authority as well as disputes. Secondly, a variety of means for conflict resolution were employed and adapted to the circumstances of each dispute. With every established method a few innovations and variations were introduced by UN organs to solve dispute. Devices like cease-fires and observer missions were quite effective inmany circumstances in lessening hostilities. In other prolonged disputes, the UN exertedits influence to prevent escalation, or to stabilise the situation at a minimum level of conflict. In this context, according to Bennett, 'the substantial number of disputes submitted to the United Nations reflects a need, that is fulfilled by the existence of such an organisation, and a willingness on the part of some of the parties, to rely on United Nations contributions to seeking solutions to the problems. Small states have been especially willing to

requestUnited Nations aid in conflict resolution.'

The United Nations treatment of a dispute is termed as extensive, where the question has been more or less continuously before a UN organ for a period of time extending into months or years, when one or more definitive resolutions has been adopted, to bring about peaceful solution, or when there has been a UN presence; in the form of a peace-keeping force, an observer group, fact finding or mediating mission has been dispatched to the site of the dispute. During this time, it successfully sponsored techniques such as good offices, mediation, conciliation, arbitration and adjudication.The UN's role could be described as extensive in the following cases like; Indonesian Independence, 1945-49; Palestine, 1945-49; Kashmir, 1947 to present; Korea, 1947-53; South Africa, 1948-1991; China, Taiwan and the UN, 1950-71; Indonesia and West Irian, 1950-62; Cyprus, 1954-59 and 1963 to present; Suez, 1956; Lebanon and Jordan, 1958; Congo, 1960-63; Morocco-Mauritania, 1958-69; Yemen, 1962-67; Gibraltar, 1963; Indonesia: Malaysia, 1963-66; Rhodesia, 1965-1980; Arab-Israeli Conflict, 1967 to present; United States hostages in Iran;the Soviet invasion of Afghanistan; war between Iran and Iraq; the situation in Kampuchea; the Israeli attack on the Iraqi reactor; Israel's annexation of the Golan Heights; the situation in Central America; the Falklands/Malvinas dispute; the Israeli invasion of Lebanon.

2.3.6 Agenda for Peace and Observer Missions

In the early nineties (June 1992), the then Secretary-General issued for submission tomember-states a report titled'An Agenda for Peace'. It contained an integrated programme of proposals for more effective United Nations activities, aimed at identifying potential conflicts, bringing about their short and long-term resolution, and building peace among former adversaries, during the post-conflict period. Keeping in view this Agenda, the UN pursued the process of peace-making with new thrust and vigour. Setting up of ObserverMissions, is an important component of peace-keeping and peace-making. Observer Missions usually consist of unarmed military and civilian personnel, who monitor the implementation of cease-fire agreements between warring groups, and report to the Secretary-General.

The first observer mission known as the United Nations Truce Supervision Organisation (UNTSO) was set up in Middle East in 1948.In the post-cold war period, in July 1991,

the United Nations Observation Mission in El Salvador (ONUSAL); a peace-building operation to monitor application of a series ofagreement between the Salvadoran Government and the FMLN at ending the civil warwas set up. The civil war in El Salvador ended on 15 December 1992 as result ofMission's efforts.The UN Transition Assistance Group (UNTAG) supervised the territory's first freeand fair elections, leading to independence in Namibia. The UNTAG's military tasks included monitoring the cease-fire and verifying the withdrawal of foreign troops and demobilisation of various security forces. The UN Transitional Authority in Cambodia (UNTAC) set up in March, 1992 undertookone of the most complex peace-making operations in the UN history. The UN organised free and fair elections and, in cooperation with various UN agencies and non-governmental organisations, did rehabilitation in the country. During post-cold years, significant results were achieved in the Middle-East peaceprocess, signalling the parties continued commitment to proceed on the road to peace. An outstanding achievement was the conclusion in October 1994 of the historic Treaty of Peace between the State of Israel and the Kingdom of Jordon, which ended a decade's long state of war.

2.3.7 Critical Evaluation of UN Pacific Settlement of Disputes

Some concluding observations can be made regarding UN's role in thepacific settlement of disputes:

- The UN record of resolving international disputes by peaceful means is 'promising but not perfect.'
- Where the UN reacted vigorously andquickly, its mediation commanded respect. Where it acted slowly, it usually failed.
- International commissions have been far less effective in resolving disputes, than individuals chosen directly by the UN for the job at hand.
- The bringing of international disputesin UN organs gives wide publicity to the same. This publicity and public debate in UNforums mould the world public opinion, that in turn helps in the rational solution of thedispute.
- Another problem in this regard is that most disputes are not legal; not about respective rights and duties of the parties, but political; aiming at the alteration of such rights and duties. The UN decisions are also mostly influenced by political

factors, which are brought to bear by the parties involved, their friends and by the interests of the principal members.

- Weak proposals for responding to threats to peace are also negative element in the UN record, and result from the absence of adequate means of enforcement and the necessity to compromise among national interest.
- Success depends upon the pragmatic and flexible approach of UN organs in employing traditional as well as innovative devices for peaceful settlement of disputes on the one hand and sovereign member states behaviour adjusting of stubborn (obstinate) on the other hand.

2.3.8 COLLECTIVE SECURITY

As pacific settlement can neither always succeed nor always feasible, coercive mechanism of collective security was devised, and made popular in the twentieth century. It is a device of collective military action, to maintain peace and order and to deter aggression. Itis a method usually employed, when disputes have deteriorated/aggravated to the extent of armed conflict or war. The concept of collective security is evolved as analternative to world government; which is hardly feasible in the near future. According toClaude, "Collective security has generally been regarded as a half-way house, between the terminal points of international anarchy and world government." Because, the former has become in tolerable and the latter remains unattainable. On the one hand, collective security assures the continuance of multi-state character of the international society and on the other, it guarantees peace and security of each individual nation, thus discouraging the isolationist policy of armaments or the collaborationist policy of alliances and military pacts. During the nineteenth century, nations sought to preserve peace by the balance ofpower policy. The goal of balance of power was usually achieved by defensive combinations against any nation threatening to upset the equilibrium. However, the policy of balance of power and counter balance degenerated with a system of opposing alliances, which finally divided Europe into two armed camps. The balance of power system ultimately failed to maintain peace and order for long time. Thus, after First World War, collective security was adopted and tried first through League of Nations and then through UNO. It is considered better than the balance of power formaintaining international peace, asthe latter involves alliances, counter-alliances, burden some armaments, shady territorial deals, rivalries and instability often resulting in war.

2.3.9 Collective Security: Theoretical Perspective

Though, the theory of collective security was the product of the twentieth century, yetit was not unknown in the past. According to some experts, certain aspects of the Amphictyonic Council of ancient Greece, of the Truce of God of the Middle Ages and Osnabruck Treaty of seventeenth century could be regarded as limited collective security systems. In the real sense, the concept was accepted at the international level in 1919; when League of Nations was created. The League called for successfully and effectively executing the idea. With the outbreak of second World Warthe League system collapsed. The formation of the UNO was once again based on the theory of collective security.

The concept of collective security according to Claude 'is the principle that, in the relations of states, everyone is his brother's keeper; ... it is the proposition, that aggressive and unlawful use of force by any nation against any nationwill be met by the combined force of all other nations.' Under this system, all nations agree to take collective military action against the aggressor, the defeat of the aggressor being sure, and the peace is certain, because no nation can take courage to defy thecollective might of all other nations. Morgenthau defines, "In a working system of collective security, the problem ofsecurity is no longer the concern of the individual nation ... Security becomes the concern of all nations, which will take care collectively of the security of each of them, asthough their own security were at stake. If A threatens B's security, C, D, E, F, G, H, I, Jand K will take measures on behalf of B and against A as though A threatened them aswell as B, and vice-versa. 'One for all and all for one' is the watchword of collective security."Thus, it is fundamentally a mutual insurance plan. The collective security may be defined in the words of Schwarzenberger "as a machinery for joint action inorder to prevent or counter any attack against an established international order'.In the opinion of Mehrish; scholar of international organisation: 'The collective security is the technique used by inter-governmental organisations, to restrain the use of force among the members. It provides the norms and procedures for dealing with acts of aggression.' Collective security also comprises the organisation's own ability to use force against a member if pacific settlement fails.Thus, in brief, security is the end; collective is the means and system are the institutional device to make the means serve the end. The collective security system is based on certain basic assumptions. These are:

- the collective system must have adequate and overwhelming power to deterany potential aggressor or coalition of aggressors, from disturbing the order defended by the collective system.
- there must be unanimity among nations on security and defence policies, andconsensus on the identification of aggressor state.
- Participating nations should be ready to give up their conflicting political interests for the success of collective security system.
- maintenance of status quo should be the national interest of all nations.
- possibility of aggression or war is always in the world, and the same ought tobeprevented.
- the aggressor state or states may be prevented by the deterrent effect of overwhelming power of the collective system.
- the ideal of international peace, security and order may be attained by reformation of international policy in the form of collective security without resorting to revolutionary changes in the structure of the international system, and
- the system is not for the elimination of power, but for the managing power in such a way to deter the prospective aggressors.

Features of the Collective Security System

- The collective security is not an alliance projected against any definite poweror a group of powers. It is much more open and universal in content than the traditional system of alliances. It always implies a general universal and all-embracing alliance. It eliminates the pattern of competitive alignments of the balance of power model. In this sense, the collective security system is distinguished from the alliance system of balance of power on the one handand regional collective-defence arrangements such as NATO on the other.
- The collective security does not involve the abolition of the independent existence of states. It demands from the participant's states, the surrender of national egotism and not sovereignty in formulating positive international policies. That is why it is

called a half-way house between international anarchy and world government.

- The collective security tends to patronize and maintain the status quo in international relations.
- It never abrogates the right of self-defence of the member-states.
- The success of the system depends on the existence of certain conditions, and fulfilment of certain requirements, such as all for one attitude, mutual confidence among members, and favourable distribution of power, overwhelmingstrength to deal with any combination of powers, consensus on security issues, disarmament and universal membership. The universality of membership is all the more essential, because more the committee members are, less the likelihood of challenge to the system.
- The idea of collective security is not at all a complex one, yet it assumes the complex character, as soon as it reaches the realm of enforcement.

2.3.10 Collective Security Under UN Charter Provisions

Article 1 of the UN Charter calls for effective collective measures for the preventionof aggression and removal of threats to the peace. Chapter VI (Article 38 to 51) are devoted to collective security. It is entitled "Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression." To understand these provisions,they can be divided into the following four parts:

Determination of Basis of Action

Article 39 has authorised the Security Council to determine the existence of any threat to the peace, breach of the peace, or act of aggression, and make recommendations or decide, what measures should be taken to maintain or restore international peace and security.

Provisional Measures

According to Article 40, the Security Council may, before making the recommendations or deciding upon the collective security measures, call upon the parties concerned, to comply with such provisional measures, as it may deem necessary or desirable. Its most

frequently employed step in this direction has been a 'cease-fire', when hostilities have actually occurred. For example, this step wastaken in Indonesia in 1947-1948, in the Palestine fighting in 1948 and at the outbreak ofthe Korean War on June 25, 1950.

Enforcement Measures

The Charter (Article 41-42) authorises the Security Council to take both non-forcible and forcible measures, to maintain or restore international peace and security. As per the Article 41, the Security Council can call upon the membersof the UN, to apply measures like complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio and other means of communication, and the severance of diplomatic relations. Article 42 stipulates that if the above measures are considered inadequate, the SecurityCouncil can take such action by air, sea, or land forces; as may be necessary to maintainor restore international peace and security. Such action may include demonstration, blockade, and other military operations by forces of UN members.

Armed Forces and Military Staff Committee

It is also provided in the Charter(Articles 43 to 50) for the making of armed forces available by the member-states to the United Nations, for use in an emergency, and for their unified direction or command under a Military Staff committee; consisting of the Chiefs of Staff of the permanent members of the Security Council or their representatives.

Article 51

It provides, "Nothing in the present Charter shall impair the inherent right of individual or collective self-defence, if an armed attack occurs against a member of theUnited Nations, until the Security Council has taken the measures, necessary to maintain international peace and security. Measures taken by members, in the exercise of this right of self-defence shall be immediately reported to the Security Council, and shall not in any way affect the authority and responsibility of the Security Council under the present Charter.

2.3.11 The Collective Security in Practice

United Nations has under a good number of occasions had put into practice, the various provisions of collective security. It played a very important role during the cold war era. We will be discussing the major occasions regarding the working of collective security

system under UNO as follows:

Korean War

The collective security system ofUN was put into practice in 1950, when the North Korea invaded South Korea. It was during the Korean crisis that the UN took collective military action for the first time and so far the last time. In all subsequent breaches of peace or aggressions, the UN could never take collective security measures in toto.The Security Council in the absence of the Soviet Union, decided on June 25 and 27, 1950 to take enforcement action against North Korea. It called for an immediate cessation of hostilities and withdrawal of North Korean forces to the 38th parallel. However, North Korea's non-compliance with these directives paved the way for UN police action, to repel the attack and restore international peace and security in the area. Sixteen member-States offered armed forces-land, naval or air which were placed under the unified Command of the United States, pursuant to the UN assistance to the Republic of Korea (South), in repelling armed attack against North Korea. The UN command with headquarters at Tokyo, successfully completed its mission of pushing back North Korean-Chinese forces to the 38th parallel under the leadership of General Mac Arthur of the USA."The early phase of the collective military action in Korea under the banner of theUnited Nations produced among its participants and supporters a sense of involvement in an unprecedented effort, to give effect to the principle of collective security"(Mehrish). But this spirit and sense of involvement was short-lived affair.The coming back of the Soviet representative to the Council on August 1, 1950 sealed the fate of any further agreement, on the basic issues in Korea. At the behest of theUnited States, the General Assembly enlarged its sphere of authority and action while adopting the Uniting for Peace Resolution (November 3, 1950). The most crucial provision of the resolution is the agreement for calling an emergency special session of the GeneralAssembly within twenty-four hours by any nine members of the Security Council, or by a majority of the UN members, whenever the Security Council is deadlocked, due to misuse of veto power; when it fails to exercise its primary responsibility for the maintenance of international peace and security in any case, where there appears to be a threat to the peace, breach of the peace, or act of aggression. According to the resolution, member states are expected to designate and train armed forces units for United Nations serviceon the call of either the Security Council or the General Assembly.

2.3.12 Critical Evaluation of Collective Security under UN

The collective security system of the United Nations is flawed and full of short comings and weaknesses. These are:

- Decisions of the United Nations are not binding upon members, as it is a voluntary organisation of sovereign states. As Kegley and Wittkop says'sovereignty reigns supreme. The United Nations was not designed to supersede them by placing supranational controls on national initiatives.'
- It is unworkable and unrealistic. The strength of nationalism and the safeguarding of sovereignty preclude automatic collective responses by states, whose interests are not directly promoted by stopping aggression, wherever it may occur. National rivalries and competitive alliance systems prevent universal responses to threats to international peace. Due to the lack of unanimity among the UN members the Chapter VI in general and its article 43 in particular have proved to be impracticable and unworkable,
- No permanent military force. The UN has no permanent military under its command in the barracks, that may be rapidly deployed or sent for thwarting the aggression, it is completely depends upon the wishes of sovereign member state.
- It is at the mercy of powerful states. The basic principle of collective security is that all the states should have equal say in arriving at collective decisions. In fact, the states should have more say in collective security, as they are more dependent on collective security, than on their individual action.The success or failure of collective security efforts is more dependent on the support of powerful states. They are usually hesitant to put their power behind an effort which is not in accordance with their national interests.
- UN machinery of collective security cannot be used against big powers, who are usually responsible for many breaches of peace. The adoption of the principle of great power unanimity in the Security Council clearly reflects a deliberate decision, not to attempt to institute a system of collective security applicable to the great powers; the very states which possess the greatest capacity to threaten the security of other states. By using veto power in the Security Council, any one of the Big

Five can unilaterally block measures taken in accordance with the provisions of Chapter VII. Military action in Korean war became possible, only due to the boycott of Security Council meetings by the Soviet Union on the issue of China's membership.

- The cold war belied the hopes of the proponents of collective security. Immediately after the formation of the United Nations in 1945, the world was divided into two opposing blocs led by the United States and the Soviet Union. In this bipolar world armed peace, balance of terror, cold war and nuclear deterrence became order of the day. The system of collective security could not grow properly as in the early days of its existence.The UN had to work in an atmosphere of suspicion, hatred and tension. Even after the end of the cold war in 1991, the prospects of collective security were not very effective.
- It being lengthy procedure, assometimes it becomes very difficult to decide, who is 'aggressor', and if it is decided, then enforcement measures take much time. Defining aggression, pinpointing specific aggressors, and devising ways to execute collective economic andmilitary sanctions have proved to be lengthy and time-consuming exercises.

2.3.13 United Nations: Peace Keeping

For about 76 years, UN Peacekeeping has been one of the most important tools for mitigating conflict and promoting peace and security around the globe. Helping countries to navigate the difficult path from conflict to peace, peacekeeping has unique strengths, including legitimacy, burden sharing, and an ability to deploy and sustain troops and police from around the globe, integrating them with civilian peacekeepers, to advance multidimensional mandates. Today's peacekeepers are called upon, not only to maintain peace and security, but also to facilitate the political process, protect civilians, assist in the disarmament, demobilization and reintegration of former combatants. They also play a key role in supporting democratic efforts; such as organizing elections, protecting and promoting human rights, and assisting in the creation and restoration of rule of law.

In addition to peacekeeping operations, the UN operates special political missions (SPMs) engaged in conflict prevention, mediation, and post-conflict peace building around the

world. Authorized by the Security Council, SPMs are tasked with an array of responsibilities, including supporting political dialogue and reconciliation processes, facilitating free and fair elections, monitoring human rights violations, coordinating international development and humanitarian assistance, and encouraging the development of effective rule of law institutions. Funded by Member State dues, SPMs account for nearly one-quarter of the UN regular budget.

Peace-Keeping: Innovations and Operations

The General Assembly was unable to call for collective military action in pursuance of the Uniting for Peace Resolution, but innovated peace keeping technique in 1956, that was frequently used in a number of crises with a sufficient degree of success. The preventive diplomacy and United Nations presence were the other popular terms associated with the process of peace keeping. The principles of peace keeping are quite different from the principles of collectivesecurity.In the words of Bennett, 'Peace keeping may be compared with collective security, only in the sense, that each may involve the deployment of military forces and all other attributes in the two processes are different.'

The difference between collective security and peace keeping is that, the collective security emphasised on checking aggression through collective enforcement, the peace keeping, on the other hand, emphasized non-coercive activities, aimed at re-establishing and maintaining peaceful international inter course; the peace keeping was especially designed to forestall the competitive aspectof the super powers into a potential explosive situation, whereas, collective security measures cannot be undertaken without support of one or more superpowers; in peace keeping operations, the purpose isto fight or defeat an aggressor, but not on pretext of fighting, but to act as a buffer, keep order and maintain a cease-fire; unlike collective security's enforcement measures and military action.The mission is to keep the peace using measures short of armed force, a role moreclosely resembling that of police, than of military;the peacekeeping forces maintainan attitude of neutrality and impartiality regarding the adversaries which is not possible under collective security measures; furthermore, in the words of Bennett, "the peacekeepers must be present with the consent of the disputing parties, or at least the consent of one of them and the toleration of the other, one or all disputants must have invited the peace keeping force, since there is no international territory, on which they canbe stationed, and sovereignty requires consent

for their presence on national soil. This consent indicates a desire by the disputants to avoid conflict."

2.3.14 Peace Keeping in Practice

In reality, peacekeeping operations have been of two types: armed-forces type operations and observer operations. In the first category, operations involving multinational armed forces were:

- The United Nations Emergency Force (UNEF) in Egypt from 1956-1967 in thewake of Suez crisis.
- The United Nations Congo Operation (ONUC) to avoid clashes between Congo and Belgium (1960-64).
- The United Nations Force in Cyprus (UNFICYP) in 1964.
- The UNEF-II dispatched to the Middle East in 1973 and terminated in 1979.
- The United Nations Interim Force in Lebanon (UNIFIL).
- A United Nations Security Force (UNSF) composed primarily of Pakistan troops also served as the military arm of the United Nations Temporary Executive Authority (UNTEA) in West Irian in 1962-63.
- The United Nations Disengagement Observer Force (UNDOF) was placed on the Golan Heights as a buffer between Israel and Syria.

Some of the observer type missions were:

- The United Nations Special Committee on the Balkans (UNSCOM), established in 1947 to investigate the Greek border situation.
- The United Nations Truce Supervision Organisation (UNTSO), operating since 1949 to report on cease-fire and armistice violations by Israel and its neighbours.
- The United Nations Commission for Indonesia (UNC), charged with observing cease-fires and with aiding negotiations for Indonesian independence in1949.
- The United Nations Military Observer Group in India and Pakistan(UNMOGIP),

responsible since 1949, for patrolling the cease-fire line in Kashmir.

- The United Nations Group in Lebanon (UNOGIL), dispatched to Lebanon in1958 to check allegations of infiltration across Lebanese borders.
- The United Nations Yemen Observation Mission (UNYOM), charged with supervising the disengagement of military forces during 1962-64 in the civil war in Yemen.
- The United Nations India-Pakistan Observation Mission (UNIPOM), established to patrol the border between India and Pakistan during and immediately after the 1965 war between those countries.
- The UNTSO-Suez Canal observer group under the UNTSO direction but stationed in the Suez Canal area after the June 1967 war. Between 1967 and 1987, the UN had to respond to conflicts between Israel and its Arab-Palestinian neighbours, fighting between India and Pakistan, between Iraq and Iran, and civil wars in Afghanistan, El Salvador, Namibia, Cambodia, Mozambique, Somalia, Lebanon, Kuwait and Bosnia.

In the post-cold war period, the United Nations has assumed new and important responsibilities. The traditional UN role of peace-keeping has broadened, with emphasis on peace-making and peace-building to sustain peace and long-term economic development. In 1988, a total of seven peace missions were underway, while in 1994, the UN has deployed a record number of 17 peace keeping operations involving some 70,000 personnel worldwide. Bitter experiences in Somalia, Rwanda and the former Yugoslavia have led to ageneral reluctance by the Security Council to authorize new peace keeping operations, despite situations of compelling need. Development of a rapid troop deployment capacity,provided by certain member States, coupled with a clear-strategy for the withdrawal offorces is among the measures. Mr. Kofi Annan promoted to raise the effectiveness of peacekeeping efforts, and rebuilding confidence in this vital instrument for maintaining peace.

The Secretary-General undertook initiatives in 1997, to revive the peace process in anumber of intractable conflicts, including Western Sahara; where the Secretary-General's Special Envoy, former United States Secretary of State James Baker, succeeded in breaking new

ground-East Timor, Cyprus, Tajikistan, Afghanistan and Angola. UN peace keeping operations successfully monitored elections in Liberia and in theEastern Slavonia region of Croatia also.

2.3.15 Peace Keeping: A Critical Analysis

By and large the UN peacekeeping has played a highly constructive role in maintaining international peace and security. It is evident by the award in 1988 of the Noble Peace Prize to UN peace keeping forces. Apart from the above achievements it is criticized on certain grounds as Sorabjee says, "It is difficult to subscribe to this assessment, especially after its failure in Bosnia Herzegovina, Somalia and Rwanda. Besides, certain problems have dogged the UN peacekeepers; one of them being the fundamental disagreement over the allocation of authority. Under the Charter for peace keeping among the Security Council, the General Assembly, and the Secretariat, represented by the Secretary-General". The lack of any clear and coherent policy is another problem in the way of peace keeping operations. Any proposed UN peace keeping mission should have clear objectives, identity and ensure who will participate in the mission, and present a realistic assessment, of what it will cost, and who will be asked to pay for it. The delays by members of theUnited Nations, to pay their dues are very long. The problem is that demands made upon the United Nations are not being matched by the resources to do the job.

Preventive Diplomacy

One of the most vital roles played by the Secretary-General is the use of his "good offices"-drawing upon the Secretary-General's stature and impartiality-in the interest of `preventive diplomacy'. It refers to steps taken by the Secretary-General, publicly and in private, to prevent international disputes from arising, escalating or spreading.The second Secretary-General Dag Hammarskjold (1953-1961) propounded the principles of preventive diplomacy, a term that has since become virtually synonymous with UN peace keeping. The term 'United Nations Presence'refers to all the peace keeping operations, but in addition, refers to the use of personal representatives of the Secretary-General in the settling of controversies; such as the border disputes between Cambodia and Thailand in 1958-59 and in 1962-64. The term United Nations presence has also been applied to United Nations mediators and their staff, commissions of good offices or conciliation, smaller groups of military observers such as the one sent to the Dominican Republic in

1965, and other similar groups dispatched to the scene of a conflict by the authority of either the Security Council or the General Assembly.

Preventive diplomacy encompasses all aspects of peace keeping and the related activities stated above. The technique of preventive diplomacy is based upon the assumption that it is better to forestall conflict than to allow it to spread. All peace keeping and related techniques serve the same purpose. The device of preventive diplomacy owes its invention to the following factors:

- the cold war competition between the United States and the Soviet Union.
- the threat, that competition posed for the entire world, because of the destructiveness of modern weapons,
- the increase in the number of non-aligned developing nations, whose interests and objectives were not necessarily the same as those of the super powers, and
- secretary-general Hammarskjold's frustration with the UN's legal structure, especially the inability of the Security Council to perform adequately, its major function of maintaining peace. As a result, he expanded the role of the executive organ of the United Nations byusing his 'good offices' to moderate international disputes, before they escalated into war, by mediating conflicts between contending parties, and by enlisting the UN's administrative support for peace keeping operations. The UNEF-I (1956) and the Congo operation (1960) were the most spectacular endeavours under Hammarskjold's preventive diplomacy. The third secretary general U-Thant of Burma, adopted a low profile on security issues and followed a less active role. The seventh Secretary-General, Kofi Annan made dynamic use of his 'Good Offices' to revive the peace process in a number of long-standing disputes, including Afghanistan, Angola, Cyprus, East Timor, Tajikistan and Western Sahara. Preventive diplomacy was defusing the dangerous stalemate with Iran weapons inspection in 1997-98. In February, 1998 Kofi Annan went to Baghdad amidst and-off between the Security Council and Iraq over weapons inspections, and returned with an arrangement, that prevented a conflict at that time.

2.3.16 Let Us Sum Up

In the end it can be said that the UN machinery for maintaining international peace and security is flawed and weak. Despite its shortcomings, it has played significant role in

managing global conflicts and in preventing breaches of peace. Bernett rightly says,"In the face of collective security stalemate, the United Nations has devised new methods for dealing with a limited range of threatening situations." These new devices are preventive diplomacy, peace keeping, United Nations presence and back door approach etc.The United Nations peacekeeping record is more promising and spectacular than its peacemaking and collective security achievements. Moreover, it could not improveits effectiveness even after the end of the cold war. On the other hand, it has an impressive success story in functional spheres-social, economic, cultural, scientific technical etc.

2.3.17 Exercise

1. Describe the meachanism of conflict resolution and pacific settlement of disputes under UN ?
2. Define the concept of Collective Security ?
3. Explain the provisions of Collective Security under UN charter ?
4. Discuss in detail the UN peace keeping operation in practice ?

2.4 CHALLENGES TO UN IN 21st CENTURY: NEED FOR REFORMS

- A. Lalitha

STRUCTURE

2.4.0 OBJECTIVES

This lesson provides an understanding about how the UN is adopting to the changing world order and how it is responding to the demands for reforms. After going through this lesson, you should be able to:

- understand about the increasing challenges and dilemmas for UN in the 21st century;
- appreciate the need for reforms in tune with the changing order and challenges
- learn about the structural and non-structural reforms recommended in general.

2.4.1 INTRODUCTION

As you have studied in the previous three lessons, UN did a lot of things which are right which one can be proud of like its peacekeeping operations, formation of the Universal Declaration of Human Rights, the International Criminal Court and the Kyoto Protocol and so on. Since its establishment on the ruins after two deadliest conflicts in human history, the United Nations, with its unique legitimacy and universality, has been regarded as the centrality of global multilateral governance, which member states would turn to in time of crisis. Decades of experience has proved the relevance and indispensable role of the United Nations in maintaining peace and security and promoting prosperity and welfare

of the populations, as it has been the case with the most recent natural disasters in Haiti and Pakistan.

Alongside the long list of the achievements of the UN, it also experienced the moments of powerlessness when it became dysfunctional, crippled and could not resolve situations as in Darfur, the war in Afghanistan and conflict in Middle East and people began questioning its effectiveness in fulfilling its duties, especially when they witnessed the breakout of the Iraq war, slow anti-poverty progress, and the worst global financial and economic crisis in decades, failure at climate talks and stalled negotiations over trade and disarmament.

2.4.2 UN FUNCTIONING IN 20TH CENTURY: A CRITIQUE

As Chandrakant Yatnoor in *Challenges to the United Nations in the New World Order* rightly observes, despite the noble aims and objectives mentioned in the United Nations Charter, the role of the UN today is viewed with scepticism. While it set itself Disarmament and Arms Control and the establishment of a New International Economic Order as the two main objectives, its track record in respect of both these objectives, shows that the United Nations has been a failure. In respect of disarmament, even though the UN General Assembly has passed several resolutions, not a single weapon has been destroyed over the years.

The world has seen the Security Council and the General Assembly passing resolution after resolution, and when it comes to taking action based on those resolutions, the United Nations is severely constrained by the denial of necessary funds by some member states including those who voted for these resolutions in the first instance. Several specialized agencies like UNESCO, FAO, WHO, have been formed to serve various ends; they have not yielded the desired result due to the financial crunch. Lack of funds puts a limit to what UN can do and should attempt to do. As Yatnoor puts it, today it is widely perceived that the United Nations is an association of 'divided nations' who have little commitment for the UN aims and objectives. The member-states and various groups of such states are primarily interested in their national or group interests which are often in conflict with the interests of the global community. The UN has been dominated by rich and powerful nations who many a times ignore or violate the letter or spirit of the UN Charter. The five permanent members regard themselves as the guardian of peace and security in the world

and they are not prepared to accept other UN members as their equals. When a great power is involved in a conflict, it wants to keep the conflict outside the UN jurisdiction. But it would insist on applying UN laws to a conflict between smaller nations. Over the years, the United Nations appears to have become a mere peace-keeping machine and the General Assembly an unwieldy debating society. A plethora of UN agencies spread over different continents have become overlapping in their operations, thus calling for better streamlining and coordination.

In spite of all these failures it would be wrong to say that UN has been a complete failure. In many areas, notably social development and humanitarian causes, the organization has shown the way. In the past century, its activities have been rewarded with Nobel Prizes for five times and this prize has also gone to six individuals for their work in the organization. The UN has been active in relief, rehabilitation and development works all over the world. The UN aided the birth of 100 newly independent states, encouraged development through economic cooperation, and campaigned against racial and other forms of discrimination. It has promoted respects for human rights and in 1948 established the Universal Declaration of Human Rights. Through declarations and conventions, it has given rights to women and children. It has also codified and enlarged international law of the sea and protection of global commons. It has initiated joint action on supranational issues like ozone depletion, environmental protection, and terrorism. Poor countries no doubt have benefited from developmental assistance provided by the UN.

2.4.3 INCREASING DEMANDS AND DILEMMAS FOR U.N.

Notwithstanding its track record, the UN being the only Universal Organization, developments like the end of Cold War, collapse of Soviet Union, the breaking of the Berlin wall, together with the globalization process, kept increasing the demands on UN. Such demands include; requests for increase in its peacekeeping and peace building operations, regulation of international environmental issues, promotion of gender equality, protection of human rights, providing organizational structures to manage trans-boundary and interdependence problems that states acting alone cannot solve. As former UN Secretary General Kofi Annan frequently spoke of these are the "problems without passports". Today, most intractable challenges facing humankind are transnational – acid rain does not require a visa to move from one side of a border to another. Effectively

addressing any of these threats requires policies and vigorous actions whose scope is not unilateral, bilateral, or even multilateral, but rather global. At the same time as Weiss in his article, "A Pipe Dream? Reforming the United Nations" observes, ironically, the policy authority and resources for tackling global problems remain vested individually in the 197 UN member states rather than in the collective body. Thus this kind of problems not only test the willingness of the states to commit themselves to international cooperation but also naturally pose challenges to the effectiveness of the organization in dealing with such questions.

This kind of increase in demands questioned effectiveness of the Organization in the past adds some dilemmas to the UN. Such dilemmas include: is it possible to meet the new demands without taking up any new initiatives? How those initiatives are financed? Can the UN be more effective in coordinating the related activities of various institutions, states, and NGOs? Can it improve its own management and personnel practices? Can it adapt to deal with the changing nature of conflicts and persistent poverty and inequality?

The dilemmas UN faces are caused by certain facts like: a) the most important issues concerning the global economy are often discussed and dedicated outside the UN system; b) while the UN Charter's provisions are designed for interstate conflicts, yet most post-Cold War conflicts have been intrastate civil wars by their nature; and c) the UN's membership has grown almost four times, yet the Security Council is structured to reflect power realities of 1945, not the twenty-first century.

This way, the new challenges and demands the UN faces today together with its own dilemmas force the Organization to adopt certain reforms and remodel it to be able to play a vital role by appropriately reflecting the changing distribution of power and authority in the 21st century. As Hanna Newcombe in her write up *Remodelling the United Nations for the 21st Century* observes, with the great changes at the end of the Cold War, the kind of changes usually associated in history with a great war, we stand in great need of a more advanced, and more evolved, and better working world organization.

In the current lesson we will discuss about the exact nature of challenges the UN faces in the 21st century and the necessary reforms that it needs to embark to meet such challenges in order to remain central to the international relations of the present century.

2.4.4 CHALLENGES TO THE U.N. IN 21ST CENTURY

The tensions and turbulence that began in the previous century continue to disturb peace in several regions in the form of armed conflicts, terrorism, religious fundamentalism, and ethnic wars together with soft threats like hunger, disease, and poverty still exist seeking attention from the United Nations in the 21st century. Ironically, many of these problems affect some countries (especially in the developing world) more than others. But none of these problems require any visa to cross the borders. None can be tackled at national level by a single state. The range of problems that the humankind faces today and the subsequent challenges for UN are not considered being of temporary consequence. Rather, they have serious implications for the future of the mankind. We look at these challenges one after the other under the following heads.

2.4.4.1 Changing Nature of Conflict

The nature of conflict has changed from global to regional, inter-state to intra-state and regular to irregular. Many research studies have pointed out that there is a reduction in inter-state conflicts in the post-Cold War period but intra-state conflicts are on the rise, challenging state security from within. These include civil wars, ethnic disputes, insurgencies and forms of diffuse violence, militia proliferation, criminalization of politics, terrorism, genocide, the proliferation of sophisticated light arms and weaponisation of society has a lot to do with this trend. As Shashi Shukla points, these intra-state conflicts, especially terrorist strikes, have resulted in two developments. Firstly, the distinction between state and individual which was so vital to the conduct of international relations has been eradicated today. Secondly, the distinction between external and internal security has also been removed. The second dimension of the problem is that scattered violence is subject to no rules and also throws up the dilemma of respecting national sovereignty and ensuring respect for human rights. The international community, especially the US-led western alliance has shown extraordinary willingness to intervene in the name of protection of human rights in countries like Haiti, Cambodia, Somalia, Rwanda, Bosnia and Kosovo. However, the contradiction between national sovereignty and international intervention is yet to be resolved and UN experience of humanitarian intervention in the recent past has brought into focus many operational and conceptual difficulties of intervention in intra-state conflict situations. The US-led NATO's unilateral intervention in Kosovo has set not

only a precedent for intervention in the internal affairs of other states but also reduced the UN to a residual peacekeeping force. Another aspect of the issue is gender perspective on political, humanitarian and human rights dimensions of intra-state conflicts. Women and children make up approximately 90 per cent of those killed, wounded, abused or displaced. Therefore UN security operations for their success have to focus more into these issues.

2.4.4.2 Increased Human Insecurity

As it has been discussed in the previous lesson, the developments like the end of Cold War and the end of bipolar world intensified human insecurity. Understanding the concept of human security involves seeing the world through a different lens from that used in the decades of the Cold War. The concept of human security focuses on the protection of the people as compared to an exclusive focus on the protection of the State. In some countries of the world in the 20th and the 21st century, the sources of insecurity have become largely internal and while in others areas, the State itself became the source of that insecurity instead of being a provider of security. This view is synonymous to the findings of the Human Security Commission that the State remains the fundamental purveyor of security. Yet it often fails to fulfil its security obligations—and at times has even become a source of threat to its own people. Therefore, human security is about the shift that must be made by not assuming that the existence of the State means the protection of its citizens. It is a shift that challenges the view that acquiring a strong army with state-of-the-art military hardware would simultaneously mean security for the people of a State. Thus, human security must be seen as complementing State security, enhance human rights and consolidate human development. As a result of the growth and development of this kind of understanding, human security anywhere in the world remains to be a challenge and the prime concern for UN in the current century.

2.4.4.3 The Bypass of U.N. by Big Powers

A severe blow to the UN, as an institution, came from the intended slight of it by big powers and their venture to usurp its authority and role and act as judges of peace and security. It may be noted that until 1990s, on issues pertaining to conflict management or in undertaking peace-keeping missions, the UN acted only under chapters VI and VII of the UN Charter when a state or a group of states drew the attention of the Security

Council to a pertinent situation. The UN did not involve in it automatically or unilaterally, and the quest of its intervention was decided by the Security Council. It never intervened on such situations on the prodding of any single power, which had decided outside the UN mechanism, to intervene. As Yatnoor mentions, that position was altered at the behest of the United States when, in 1998, it unilaterally launched missile attack on Afghanistan and Sudan, without the authorization of the Security Council. Besides, a new pattern of unilateral intervention was set in motion after the US-led NATO forces unilaterally used force in Yugoslavia in 1999 without the approval of the Security Council. It is said that the US and other NATO powers did not even approach the UN Security Council in the matter on the apprehension that Russia and China might veto the move if they approached the Council for approval. It has in way, given credence to the unilateral use of force by powerful countries and has expanded the scope of illegal intervention. The slight of the UN by America and Britain had reached its high point during the US-led invasion of Iraq in April 2003, making it a turning point for the United Nations. Indeed, in the Iraq war, the Security Council was deprived of its legitimate right to apply the rules governing the use of force. When Washington found that on Iraq the UN was not playing second fiddle to US plans, President George Bush had openly belittled the UN and scorned of its role and importance. He denounced the UN as a basket case, ignored the Security Council and unilaterally took military action against Iraq.

2.4.4.4 US and its Unilateralism

The biggest single challenge to the UN today is the emergence of the US as the lone super power with a readiness to act alone, or in the company of willing partners, outside the UN system and international law. Washington's display of arrogance of power has threatened UN's credibility, and its unilateralism has constantly reduced the space for the UN. As US displayed scant respect for the UN, the latter could hardly moderate the US unilateralism. A citadel of democracy, and a champion of freedom, liberty and the rule of low at home, the US, especially under George W. Bush, has gone militaristic and imperialistic in its tone and tenor. In the circumstances, even London was free only to agree with Washington and not to disagree. The Iraq war has shown that the international rules governing the use of force have broken down completely in the full glare of an open debate in the UN and outside. However, the fact remains that the UN has failed to prevent unnecessary wars the big powers have, time and again, unilaterally imposed on small countries on some

pretext. The way the lone super power acted on its own, individually or in group but without the UN authorization, on major international peace and security issues, raised serious question marks on the survival of the UN as a credible organization.

2.4.4.5 Loss of U.N. Autonomy

Further, the progressive replacement of funding through the assessed budget by funding through voluntary contributions is causing a lot of distortion in the priorities of the UN and resulting in the loss of autonomy of the UN. The major powers have used this device to impose their priorities on the UN organizations, and to take full control of its budgeting, accounting and administrative apparatus. Most of the changes that have had the effect of weakening the UN have been carried out in the name of reforms. These reforms have been essentially of an administrative, budgetary and financial character. They have been well targeted and have had major negative impacts on the work, performance and direction of the UN. On the other hand, reforms of a substantive and structural nature warranted by the changes in the world situation and suggested by various commissions and High-level Expert Groups that deliberated on the subject and reported in the early and mid 1990s, have not been allowed to surface in the deliberations of the UN system.

2.4.4.6 The Make-up of Security Council

Additionally, the make-up of the Security Council has been controversial and there have been proposals to expand its membership to take into account the increased UN membership resulting from the post-Second World War decolonization. It can no longer reflect the conditions of the period when it was formed. It must become more democratic and more effective, and must belong to all inhabitants of the globe. In other words, it must not simply be a club of powerful in which one state, through its Security Council veto, can override the will of the rest of the world.

The obvious implication of these challenges is that the United Nations must undergo substantial reforms to remain effectively central to the international relations in the 21st Century.

2.4.5 CHANGING CONTEXT AND NEED FOR U.N. REFORM

The need to reform the United Nations to adapt to the new power configurations in the world has been widely recognized. Yet reforms have been hampered by a lack of global

consensus on their details and how they should be implemented. The UN 'reform agenda' touches upon virtually all areas of its activities, including peace support, development and human rights. Reform proposals also concern institutional issues, including budgetary and management reforms of the UN system. The trajectory of the UN reforms reflects the moment in which they were proposed as well as concrete events that highlighted the need for action. For example, the debate on reforming the UN Security Council was most intense in the early stages of UN operations (the 1950s and 1960s), subsequently reaching a plateau and then losing momentum (due to well-known differences amongst UN Members). In contrast, institutional reforms to make the UN more effective, responsive and transparent have accelerated since the 1990s.

However, for our convenience, we follow Aneek Chatterjee's classification in his work, *The UN at Sixty Three: Problems and Prospects of Reforming a Veteran.* As he categorizes, there are certain reforms that do not require the amendment of the Charter and there are certain reforms that require the amendment of the Charter and there are some reforms that are necessary to keep UN relevant in the 21st Century.

2.4.6 NON-STRUCTURAL REFORMS

Reforms of this nature can be brought easily and immediately without making any amendments to the Charter. Some of them are given below.

2.4.6.1 Financial Reforms

As it has been discussed in the previous sections, UN runs on the financial pledges made by the member states and over a period data indicates that at any point of time more than 60 per cent of the member are need to pay their arrears. As a result, the UN often encounters severe financial problems. It is often said that such crisis goes in favour of the member states as the UN's hands are tied citing the financial crisis. It is up to the member states to give it money, and often the rich countries, like the United States (US) in use their contribution for leverage. As Chatterjee puts it, in fact the US has abetted the financial crisis of the UN. The Reagan administration (1981-89) was the most anti-UN administration in the US history. It withdrew from the UNESCO, slashed its contributions to other specialized agencies, and was lethargic in paying its dues to the central UN budget. Soviet Union during the Gorbachev era paid back its accumulated arrears but at present, Russia

is in arrears once again due to its own financial problems. The US and former Soviet Union, the giants of the Cold War period, have set a very poor example of not clearing UN contributions on time. If they could get away with paying their subscriptions late, others thought that they too had the same option. In the absence of member commitments, the UN resorted to cuts in staffing and budget in the new millennium In December 2013, the General Assembly approved the UN's core budget for 2014-2015, cutting spending from the UN's previous two-year budget, following the budget reduction trend seen in the previous two-year span. The new budget also included a two percent staffing cut, translating to approximately 221 posts, and a one-year freeze in UN staff compensation.

This financial crisis of the UN can be averted and towards that Aniket Chatterjee suggests the following reforms:

- Members must be compelled to pay their dues on time. For late payment, appropriate interests could be levied.
- Member-states in arrears should face unequivocal condemnation in the General Assembly, the largest UN body.
- An alternative proposal could be that all aspiring members of the Security Council must clear their contributions to the UN, otherwise their claims would not be recognized.
- All members must press, and be ready to accept, internal financial reforms with regard to budget ceilings, voting, allocation to programs, costs of administration and staffing.
- Unorthodox means of raising finance must be explored. These may include consultancy and service charges to be levied by ECOSOC and its specialized agencies for any help to the Non Government Organizations and Multi National Corporations.
- Costs might also be shared with regional Associations benefiting from UN peace-keeping operations.

2.4.6.2 Reforms to Peace Keeping Operations

The end of the Cold War has further increased the number of the peacekeeping and peace building operations. Notwithstanding the fact, the participation level of UN Member in peace support operations has been rather uneven. While the nations of the 'global south' have provided most peacekeeping operations personnel, the 'global north' countries

have reduced their personnel contributions, while continuing to provide generous financial support. Besides, the UN has also experienced some gaps in core military and civilian capabilities (both in terms of properly trained staff and high-quality equipment) known as the 'strategic enablers' and those elements are necessary for conducting missions, including crucial transport and communication capabilities.

Further, with the changing nature of conflict and threats the UN peacekeeping missions have been given increasingly broad mandates. But its force generating procedures are in need of reform. As it lacks dedicated and specialized personnel, high-tech equipment and other enablers like transport and communication equipment to ensure proper surveillance, intelligence, protection, medical evacuation equipment etc, it resulted in its consistent slowed down in missions' deployment. Towards this the former UN Secretary General Boutros Boutros Ghali proposed for the creation of a standing force to be drawn from the defence forces of nations around the world, to be ready for instant deployment. However the creation of a standing force would require amendments of the Charter and would be a complicated affair. An alternative, dependent upon the political will of the member-states, would be the creation of a rapid action force of nearly one lakh soldiers on, say, a five-year term.

Another problems associated with peace keeping missions is its budget. The Member States' compulsory contributions (known as the 'assessments') are often late or fail to arrive at all. The level of non-payment to the peacekeeping budget is even greater than that to the UN general budget, making it difficult to pay troop contributing countries on time. At present (2015), Member States owe the UN around USD 3.5 billion (there are no EU Member States in this group). On the other hand, some UN Member States top up the rate of their annual compulsory 'assessments' with additional financial resources to fill the existing gaps as needs arise. As on today the three top countries contributing to the UN peacekeeping budget are the United States (28 %), Japan (10 %) and France (7 %). The problem of financing peace keeping operations could be solved if the governments paid for UN operations from their heavy defence budget rather than the more skimpy foreign affairs one.

In the past several initiatives were taken and committees were commissioned towards the reform of peace support operations, nothing happened in this regard in practice. Recently

on 31 October 2014, Secretary-General Ban established the 'High-Level Independent Panel on Peace Operations, nominating former President of Timor Leste José Ramos-Horta to lead it. The Panel considered a broad range of issues facing peace operations, including the changing nature of conflict, evolving mandates, good offices and peace building challenges, managerial and administrative arrangements, planning, partnerships, human rights and protection of civilians. The review encompasses both UN peacekeeping operations as well as special political missions, which are referred to collectively as UN peace operations. The Secretary-General received the Panel's report on 16 June 2015. Currently the recommendations are under consideration.

2.4.6.3 Reforms to the Secretariat

Some rejuvenation of the Secretariat could be done without amending the Charter. One tenable proposal is to appoint the Secretary-General for only one, seven year term (Urquhart and Childers, 1990). The present arrangement is for two five-year terms. It encourages the temptation to use the end of the first term as an election campaign to get reappointed. One single term in office would remove that temptation and make the office-holder more independent and responsive. The staff of the Secretariat should be minimized, and the Secretariat must be made a truly international civil service. Recruitment should be on merit, and not on the whims of the national governments who use the UN as a charitable ground to distribute favours to retired politicians or relatives of the ruling elite. Recruitment should be preferably made at the lower levels. More women should be inducted in to the UN Secretariat. The Staff must be made faithful to the promise they make at the time of joining the Secretariat, to avoid taking instructions from their national governments. The neutrality of the UN bureaucracy is absolutely necessary to make it a truly responsive international civil service.

2.4.6.4 Reforms to International Court of Justice (ICJ)

The ICJ is the main legal body of the world. But attendance at the ICJ is not mandatory for the member-states of the UN. Moreover, only about one-third of the UN's members accept its jurisdiction. The obvious reforms would be that attendance at the ICJ must be made compulsory, all members must accept its jurisdiction, and make greater use of it in the settlement of their disputes.

2.4.7 STRUCTURAL REFORMS

Major reforms of the UN call for the reorganization of the principal organs, and require amendment of the Charter. These reforms, though not easy to achieve, have generated a lot of debate and curiosity.

2.4.7.1 Reforms to the General Assembly

The UN's General Assembly is the world's main political forum, the 'talking shop' of the UN. Currently, this body is unnecessarily big and a cumbersome one with five representatives per nation. An important reform proposal of the General Assembly is that representation should be based on national population, instead of the current five per nation. An alternative proposal is to make representation to the General Assembly at a uniform two per nation. The second proposal is more tenable, because representation on the basis of population might foster a sense of inequality in the General Assembly leading to its further ineffectiveness. Two representatives per nation would reduce the size of the Assembly and make it more effective. Another significant reform proposal is to make the resolutions of the Assembly binding. This would give teeth to this largest UN body, enabling it to share some power with the Security Council. The Assembly must sit frequently, preferably once in two months. It would be easier for a smaller General Assembly to sit frequently.

2.4.7.2 Reforms to the Economic and Social Council (ECOSOC)

The Charter assigns to the United Nations the central role for global macro-economic policy and strategy formulation and guidance. However, as Shashi Shukla rightly points, the UN has played a marginal role in global economic management as the rich industrialized countries have preferred the Bretton Woods institutions as key economic decision-making centres, for they enjoy weighted voting in these institutions and hold them accountable to themselves and not to the ECOSOC or General Assembly, which are representative and democratic bodies. It is being argued that economic governance must be centred in the United Nations as globalization has accentuated the problems of poverty, inequality and instability. The proposal is to revitalize the ECOSOC by way of being Economic Security Council highlighting the importance of economic security in the post-Cold War world. In order to have more democratic and development friendly economic governance, it is

proposed that ECOSOC should coordinate global economic policies, deal with the development issues, facilitate cooperation between socialized Agencies and NGOs, involve the private sector to fight poverty, and convene emergency sessions to respond to urgent economic and social problems.

On the other front, like the General Assembly this body is also unnecessarily large and complex. Due to its complex organizational structure, the ECOSOC suffers from lack of coordination between headquarters and field teams leading to imprecise mandates and uneven results. One obvious choice for reform would be to go for some kind of centralization, with a streamlined authority, Commissioner or Administrator (to be appointed by the Secretary General), to guarantee accountability. Further, slimmer ECOSOC is also the need of the hour. For dealing with some portion of its financial crisis, the ECOSOC can take nominal charges from NGOs and MNCs for its services in the social, economic, and cultural areas.

2.4.7.3 Strengthening of the Office of the Secretary General

The Secretary-General's role both as chief administrative officer of the UN, and as a catalyst and moderator in conflict situations has won high praise. The role and leadership of the UN Secretary-General is critical in the twenty-first century. He or she is expected to be an honest broker, a respected world leader who can propose new ideas and bold action for the rapidly changing international system and at the same time work – sometimes publicly, sometimes behind the scenes—towards finding solutions to unprecedented problems that humankind will face in the coming years and decades. Thus, The UN system needs a strong, imaginative and independent leadership, meaning thereby an expanded role for the Secretary General to anticipate, denouncing, and to alert. To enable him to play a much more effective role, it is proposed that a Strategic Planning Unit be attached with his office to identify and analyse the emerging global issues.

2.4.7.4 Reforms to the Security Council

The continuing expansion of the UN Security Council's role makes its reforms desirable. It is being emphasised that this supreme organ of the UN must be democratised both in its structure and functioning. It should be redesigned to reflect the realities of today's world. The existing pattern of representation in the Security Council has become extremely lopsided

in view of the radical political changes and the coming together of the East and West of Europe. Besides, the general membership of the UN stands at 197 today and therefore increase in the membership of the Security Council should be considered in order to enhance its representative character. Japan and Germany who are now among the top four contributors to the UN budget, would like to find a place among the permanent members of the Security Council. India, Brazil and Nigeria seek entry into the 'inclusive club', as representatives of the Third World and as largest countries of their respective regions. What exactly should be the criteria for permanent membership, population or economic power? There is no consensus on this issue. It is clear that the final acceptance of the proposal will depend on the will of P-5 led by the US. There is intense rivalry and bickering among member-states over the reform of the Security Council reflects a new power struggle in international politics. They also bring out the fact that reform of the Council would not be an easy affair.

2.4.8 LET US SUM UP

In this lesson, so far we have discussed about various challenges the UN faces as a result of the developments like the end of Cold War, globalization and the unilateralism of the US. Any organization of UN's size and importance can be expected to have flaws and failures, including some serious ones. As any organization is as good as its members, when changes are needed to keep the organization effective and vital, its members should remain in forefront of working to bring them about. As the UN redefines itself to deal with the new challenges to human security, the member states should play the constructive role rather than withdrawing, walking away or refusing to pay the dues. Secretary General Annan has repeatedly stated that reform is an ongoing process, not a single event. Any progress in reforms should be achieved through active membership to keep United Nations Organization central to international relations.

2.4.9 EXERCISE

1. Provide a brief critique of UN functioning in the 20th Century ?
2. Throw some light on the increasing demands and dilemmas for UN ?
3. Give a detail of various challenges the UN is facing in 21st Century ?

4. Discuss in detail about both the structural and non-structural reforms needed for the UN along with the difficulties involved in bringing those reforms ?
5. Provide a brief note on the Changing Nature of Conflict ?
6. Discuss briefly on the increased importance for Human Insecurity in contrast to State Security ?
7. Briefly discuss on the Economic Reforms ?
8. Discuss on the reforms to the Security Council ?

3.1 MEANING, NATURE AND BASES

- A. Lalitha

STRUCTURE

3.1.0 OBJECTIVES

In this lesson you will study the conceptual issues related to International Law. After going through this lesson, you should be able to:

- comprehend the meaning, nature and bases of International Law;
- understand the evolution of International Law over the period; and
- know the UN's Role in developing the International Law.

3.1.1 INTRODUCTION

Law is that element which binds the members of the community together in their adherence to recognized values and standards. The idea of Law has played a crucial role in the extensive journey embarked by the mankind from caves to the modern digitized world. Law consists of a series of rules regulating behaviour, and reflecting, to some extent, the ideas and preoccupations of the society within which it functions. It is both permissive in allowing individuals to establish their own legal relations with rights and duties, as in the creation of contracts, and coercive, as it punishes those who infringe its regulations. And so is the case with international law with the important difference that the principal subjects of international law are nation-states, not individual citizens.

3.1.2 HISTORICAL DEVELOPMENT OF INTERNATIONAL LAW

When we look at the historical account of International legal system, even in the period of antiquity rules of conduct to regulate the relations between independent communities were felt necessary and emerged from the usages observed by these communities in their mutual relations. Treaties, the immunities of ambassadors, and certain laws and usages of war could be found many centuries before the dawn of Christianity, for example in ancient Egypt and India, while there were historical cases of recourse to arbitration and mediations in ancient China and in the early Islamic world. It would be wrong to regard these early instances as representing any serious contribution towards the evolution of the modern system of international law.

As Hiller notes, the modern system of international law by and large is a product of only the last four hundred years. It grew to some extent out of the usages and practices of

modern European states in their intercourse and communications, while it still bears witness to the influence of writers and jurists of the sixteenth, seventeenth, and eighteenth centuries, who first formulated some of its most fundamental tenets. Moreover, it remains tinged with concepts such as national and territorial sovereignty and the perfect equality and independence of states, that owe their force to political theories underlying the modern European state system, although, curiously enough, some of these concepts have commanded the support of newly emerged non-European states.

The sixteenth and seventeenth centuries thus constituted 'the classical age' of public international law. The major scholar of that era was Hugo Grotius whose main work was 'On the Law of War and Peace', published in 1625, and in which he further developed the just-war theory and argued that the law of nations was distinct from the law of nature. The purpose of the law of nations was to regulate the external conduct of rulers. Up to the nineteenth century, international law had developed over centuries, with its flowering in the classical age. Although Grotius might be known as the chief architect of our modern international legal philosophy, the roots of his scholarship are in the ancient natural law texts and developments of mercantile law in the Middle Ages.

In the eighteenth and nineteenth centuries another philosophical tradition developed in contrast to Grotius' natural law theory which has also influenced modern international law: positivism. Positivism's influence peaked during the expansionist and industrial 19th century, when the notion of state sovereignty was buttressed by the ideas of exclusive domestic jurisdiction and nonintervention in the affairs of other states—ideas that had been spread throughout the world by the European imperial powers. In the 20th century, however, positivism's dominance in international law was undermined by the impact of two World Wars, the resulting growth of international organizations—e.g., the League of Nations, founded in 1919, and the UN, founded in 1945—and the increasing importance of human rights. Having become geographically international through the colonial expansion of the European powers, international law became truly international in the first decades after World War II, when decolonization resulted in the establishment of scores of newly independent states. The varying political and economic interests and needs of these states, along with their diverse cultural backgrounds, infused the hitherto European-dominated principles and practices of international law with new influences.

The development of international law—both its rules and its institutions—is inevitably shaped by international political events. From the end of World War II until the 1990s, most events that threatened international peace and security were connected to the Cold War between the Soviet Union and its allies and the U.S.-led Western alliance. The UN Security Council was unable to function as intended, because resolutions proposed by one side were likely to be vetoed by the other. The bipolar system of alliances prompted the development of regional organizations—e.g., the Warsaw Pact organized by the Soviet Union and the North Atlantic Treaty Organization (NATO) established by the United States—and encouraged the proliferation of conflicts on the peripheries of the two blocs, including in Korea, Vietnam, and Berlin. Furthermore, the development of norms for protecting human rights proceeded unevenly, slowed by sharp ideological divisions.

The Cold War also gave rise to the coalescence of a group of nonaligned and often newly decolonized states, the so-called "Third World," whose support was eagerly sought by both the United States and the Soviet Union. The developing world's increased prominence focused attention upon the interests of those states, particularly as they related to decolonization, racial discrimination, and economic aid. It also fostered greater universalism in international politics and international law. The ICJ's statute, for example, declared that the organization of the court must reflect the main forms of civilization and the principal legal systems of the world. Similarly, an informal agreement among members of the UN requires that non-permanent seats on the Security Council be apportioned to ensure equitable regional representation; 5 of the 10 seats have regularly gone to Africa or Asia, two to Latin America, and the remainder to Europe or other states. Other UN organs are structured in a similar fashion.

The collapse of the Soviet Union and the end of the Cold War in the early 1990s increased political cooperation between the United States and Russia and their allies across the Northern Hemisphere, but tensions also increased between states of the north and those of the south, especially on issues such as trade, human rights, and the law of the sea. Technology and globalization—the rapidly escalating growth in the international movement in goods, services, currency, information, and persons—also became significant forces, spurring international cooperation and somewhat reducing the ideological barriers that divided the world, though globalization also led to increasing trade tensions between allies such as the United States and the European Union (EU). In the late-twentieth and early

twenty-first centuries, we have also witnessed the staggering developments in international legal instruments (multilateral law-making conventions) and international institutions like World Trade Organization (WTO) and International Criminal Court.

3.1.3 MEANING AND DEFINITION OF INTERNATIONAL LAW

International law (which is also referred as public international law) is a distinctive part of the general structure of international relations and it can be understood as an independent system of law existing outside the legal orders of particular states and it differs from domestic legal systems in a number of respects. Various scholars attempted to provide definition and meaning to international law and in this section we make an attempt to understand how the meaning of international law evolved over the period of time.

Bentham (1748-1832) who coined the word international law defines, international law as "a collection of rules governing relations between states". Thus, in its narrowest sense, "international law" refers to laws applicable between "states" – a word that in international law writings typically refers to a country, or sovereign nation-state, and not to a country's constituent elements.

Under the traditional and narrow definition of international law, to qualify as a subject a state had to be sovereign: It needed a territory, a population, a government, and the ability to engage in diplomatic or foreign relations. States within the States, provinces, and cantons were not considered subjects of international law, because they lacked the legal authority to engage in foreign relations. In addition, individuals did not fall within the definition of subjects that enjoyed rights and obligations under international law.

While the kind of definitions given and the meaning provided traditionally, often omitted individuals and international organizations—two of the most dynamic and vital elements of modern international law, the more contemporary definitions expand the traditional notions of international law to confer rights and obligations on intergovernmental international organizations and even on individuals. The United Nations, for example, is an international organization that has the capacity to engage in treaty relations governed by and binding under international law with states and other international organizations. Individual responsibility under international law is particularly significant in the context of prosecuting war criminals and the development of international Human Rights. Further, in today's

world it is no longer accurate to view international law as simply a collection of rules; rather, it is a rapidly developing complex of rules and influential—though not directly binding—principles, practices, and assertions coupled with increasingly sophisticated structures and processes.

This way, in its modern and broadest sense, international law came to be understood as the law that provides normative guidelines as well as methods, mechanisms, and a common conceptual language to international actors—i.e., primarily sovereign states but also increasingly international organizations and some individuals. The range of subjects and actors directly concerned with international law too has widened considerably, moving beyond the classical questions of war, peace, and diplomacy to include human rights, economic and trade issues, space law, and international organizations. Besides, international law may be considered of three kinds: the universal, general, conventional or customary. The first is universal or established by the general consent of mankind, and binds all nations. The second is founded on express consent, and is not universal and only binds those nations that have assented to it and it can establish rules appropriate for universal application, has a tendency to become universal international law. The third is founded on tacit consent, and is obligatory on those nations who have adopted it.

A distinction is often made between hard and soft international law. Hard international law generally refers to agreements or principles that are directly enforceable by a national or international body. Soft international law refers to agreements or principles that are meant to influence individual nations to respect certain norms or incorporate them into national law. Soft international law by itself is not enforceable. It serves to articulate standards widely shared, or aspired to, by nations.

Before proceeding any further, to avoid any confusions and difficulties you might encounter in understanding meaning and the nature of the subject, it is also important to distinguish international law from other types of law and also non-law.

3.1.4 INTERNATIONAL LAW DISTINGUISHED

International law is sometimes referred to as 'public international law' to distinguish it from private international law. While the former governs the relations of states and other subjects of international law amongst themselves, the latter consists of the rules developed by

states as part of their domestic law to resolve the problems between private persons which involve a foreign element, arise over whether the court has jurisdiction and over the choice of the applicable law: in other terms, public international law arises from the juxtaposition of states, private international law from the juxtaposition of legal systems. Although the rules of private international law are part of the internal law of the state concerned, they may also have the character of public international law where they are embodied in treaties. Where this happens the failure of a state party to the treaty to observe the rule of private international law prescribed in it will lay it open to proceedings for breach of an international obligation owed to another party. Even where the rules of private international law cannot themselves be considered as rules of public international law, their application by a state as part of its internal law may directly involve the rights and obligations of the state as a matter of public international law, for example where the matter concerns the property of aliens, or the extent of the state's jurisdiction.

Further the international public law should also be distinguished from the 'Municipal law'. While international law can be said to apply only between those entities that can claim international personality, municipal law is the internal law of states and it regulates the conduct or individuals and other legal persons within the jurisdiction. It can be argued that the functions of international law are different from the functions of municipal law. In the main, international law is not concerned with the rights and duties of individuals, except where states have agreed that this should be so. International law plays a major role in facilitating international relations. It is clearly of considerable importance in the drafting of diplomatic documents and treaties, as well as, in appropriate instances, in the drafting and application of internal legislation. It should also be remembered that law can never be totally separated from questions of political reality. In international law, the political and the legal are extremely closely intertwined. International law cannot exist in isolation from the political factors operating in the sphere of international relations.

Further, at another level, international law must also be distinguished from international non-law or sometimes referred as international comity to indicate those norms of behaviour that are outside the rules of law. Practices such as saluting the flags of foreign warships at sea, which are implemented solely through courtesy and are not regarded as legally binding.

This way, international law has become distinctive part of the general structure of international

relations. The basic task of international law is to contribute to a normal functioning of the international system and to ensure peace and a resolution of international problems through legal means, on the basis of agreements among sovereign and equal states. In contemplating responses to a particular international situation, states usually consider relevant international laws. In the following section, in detail we try to understand the exact nature of International Law.

3.1.5 IS INTERNATIONAL LAW A LAW?

After understanding the meaning of International Law and how it is different from private or municipal types of law, you would have developed some vague idea about its nature too in terms of how it is often created, where from it originates, what all shapes it can take, how it is enforced and what kind of consequences will be there for its violation. Grasping all that, it is obvious for you to reach to the question, Is International Law really a Law? As Henderson mentions, this question is an enduring one for many scholars and leaders. Ever since its existence, scholars have questioned, first, the existence of any set of rules governing inter-state relations; second, its entitlement to be called 'law'; and, third, its effectiveness in controlling states and other international actors in 'real life' situations.

Normally, one proceeds to read about the International Law, having understood something about the main characteristics and nature of the domestic or municipal law. Under the municipal law, one would come across a designated body to make laws and a hierarchy of courts with compulsory jurisdiction to settle disputes over such laws and an accepted system to enforce those laws. Thus without a legislature, judiciary and executive one cannot imagine the legal order.

International law has no legislature. The General Assembly of the United Nations comprising delegates from all the member states exists, but its resolutions are not legally binding except for certain of the organs of the United Nations for certain purposes. There is no system of courts. Even though the International Court of Justice exists at The Hague, it can only decide cases when both sides agree, at the same time it cannot ensure that its decisions are complied with. Above all there is no executive or governing body. The Security Council of the United Nations, which was intended to have such a role in a sense, has at times been effectively constrained by the veto power of the five permanent members.

When there is no identifiable institution either to establish rules, or to clarify them or see that those who break them are punished, how can International Law be a law remains to be a much contested question. The basis for this line of argument is the comparison of domestic law with international law, and the assumption of an analogy between the national system and the international order. On the other hand a contrary opinion exists saying, it is not at all clear why any form of national law should be regarded as the appropriate standard for judging international law, especially when the rationale of International Law is fundamentally different from that of the domestic Law. Without focusing much on the question whether it is a law or not, it is important for us throw some light on to its nature in the subsequent section.

3.1.6 NATURE OF INTERNATIONAL LAW

The fact that states and other non-state actors are the main subjects of international legal system itself constitutes the rationale and nature of international law is to be different and you will study the same under the following heads.

3.1.6.1 International Law Facilitates the Interaction of Legal Equals

International law, at least as originally conceived, is different as it is concerned with the rights and duties of the states themselves. In their relations with each other, it is neither likely nor desirable that a relationship of legal superiority exists. States are legal equals and the legal system which regulates their actions between themselves must reflect this. Such a legal system must facilitate the interaction of these legal equals rather than control or compel them in a poor imitation of the control and compulsion that national law exerts over its subjects. Of course, as international law develops and matures it may come to encompass the legal relations of non-state entities, such as peoples, territories, international organizations (governmental and non-governmental), individuals or transnational companies, and it must then develop institutions and procedures which imitate in part the functions of the institutions of national legal systems. Indeed, the re-casting of international law as a system based less on state sovereignty and more on individual liberty is an aim of many contemporary international lawyers and there is no doubt that very great strides have been made in this direction in recent years. The establishment of the International Criminal Court is perhaps the most powerful evidence of this development. However,

whatever we might hope for in the future for international law it is crucial to remember that at the very heart of the system lies a set of rules designed to regulate states' conduct with each other, and it is this central fact that makes detailed analogies with national law misleading and inappropriate.

3.1.6.2 International Law is the Vital Mechanism for Conducting International Relations

In simple terms, international law comprises a system of rules and principles that govern the international relations between sovereign states and other institutional subjects of international law such as the United Nations, the Arab League and the African Union (formerly the Organisation of African Unity). As we shall see, that is not to say that international law is unconcerned with the rights and obligations of the individual or non-governmental organisation and, indeed, it may be becoming more concerned with them. Rather, the rules of international law are created primarily by states, either for their own purposes or as a means of facilitating and controlling the activities of other actors on the international plane. Rules of international law cover almost every facet of inter-state and international activity. There are laws regulating the use of the sea, outer space and Antarctica. There are rules governing international telecommunications, postal services, and the carriage of goods and passengers by air and the transfer of money. International law is a primary tool for the conduct of international trade. It is concerned with nationality, extradition, the use of armed force, human rights, protection of the environment, the dignity of the individual and the security of nations. In short, there is very little that is done in the international arena that is not regulated by international law and it can now govern some aspects of relations between distinct units within a sovereign state, such as the territories of federal Canada or the devolved regions of the UK.

International law is the vital mechanism without which an interdependent world could not function. In this sense, international law facilitates the functioning of the international community, of which we are all a part and on which we all depend. However, that is not all. Modern international law also seeks to control states by inhibiting or directing their conduct both in their relations with other states (e.g. the law prohibiting the use of armed force to settle disputes) and in relation to individuals, both individuals of other states (e.g. issues concerning the exercise of criminal jurisdiction) and its own nationals (e.g. the law

of human rights). It is the evolution of international law from a system that was concerned primarily with facilitating international cooperation among its subjects (states), to a system that is now much more engaged in the control of its subjects that is the pre-eminent feature of the history of international law in the last seventy-five years.

3.1.6.3 International Law is built into the Order of International Relations

Any appreciation of the nature of international law is possible only by recognizing that it is built into the order of international relations. An order is an enduring pattern of values and behaviours which structures the relationships of actors over time, usually decades or even centuries. Today's order includes democratic human rights, and capitalist values rising to primacy with the major states striving to get along and trying to persuade lesser states to accept more fully the same order, with its decidedly Western character. The rules of international law help to establish and perpetuate a particular world order. States vary greatly in size and power, but all try to shape the international order by influencing the content of international law. Since the end of the Second World War, the United States, with its power growing to hegemon status, or the world's most powerful state, has tried to secure its vision of world order through international organizations and international law. The creation of the UN, the World Bank, the World Trade Organization (WTO), the promotion of human rights treaties, and much else of the post-Second World War structure have come about in large part due to US influence. In the past, some observers claimed that the world order had begun to resemble not just a Western but a *Pax Americana*, an American designed peace in particular. Any lasting American imprint on the global order may be in question since the United States has become hesitant to support important treaties, and its vaunted military and economic prowess are undermined by the seemingly endless Afghanistan and Iraq wars plus the sharp downward turn in the US economy in 2008–9.

3.1.6.4 International Law is Positive in Nature

The energy propelling nature of international law is positive, not negative. Of course, the degree of cultural consensus, shared material interests, and the growing sense of global interdependence says a lot about how well this relatively non-coercive, non- centralized, legal system can work. Most diplomatic and economic exchanges move along smoothly,

and to mutual advantage, although general world public opinion might have a hard time realizing the everyday usefulness of international law. However, the regular practice of international law by most actors results in a more orderly and predictable world.

3.1.7 BASES OF INTERNATIONAL LAW

International Law is based on certain presumptions, which are rooted in the values and norms the human civilization enriched from the times immemorial. The following will analysed issues related to these aspects.

3.1.7.1 Voluntary Compliance

International law is not based on commands backed by sanctions but instead rests on *voluntary compliance*. As Henderson reiterates, if a national government had to force every citizen to obey every law, that government would need to hire mercenary police officers equal in number to that country's citizens. Although there are enough law-breakers in every country to justify a prison system, people usually obey the law because they believe it is in their enlightened self-interest to do so. Drivers halt at stop signs because they do not want to die in a car wreck or, less severe, receive a *chalan*. Paying taxes, serving on juries and respecting the rights of other citizens is fairly natural to most citizens because they understand this kind of behaviour creates a more wholesome society for everyone. Consequently, law does not succeed or fail depending on enforcement alone. This observation applies equally well to a horizontal authority system in which the "citizens" (primarily the states) are sovereign, meaning they are legal equals and free of any central authority operating over their heads. States obey the law because it is usually in their interests to do so, and a legal structure makes international life less dangerous and costly. Because of international law, states have confidence that they can safely send their ambassadors to foreign soil; they can ship goods across borders and expect payment; their ships on the high seas will not be interfered with; or, in the case of a breakdown in relations that leads to war, refugees and POWs will be repatriated. The reason this decentralized legal system is able to work does not depend on the few risky sanctions available to states, such as war or retaliation including breaking off trade or diplomatic contact.

3.1.7.2 Ethical Basis and Reciprocity

Although international law is a legal order and not an ethical one, it has been influenced significantly by ethical principles and concerns, particularly in the sphere of human rights. Although considerable attention is invariably focused on violations of international law, states generally are careful to ensure that their actions conform to the rules and principles of international law, because acting otherwise would be regarded negatively by the international community. The rules of international law are rarely enforced by military means or even by the use of economic sanctions. Instead, the system is sustained by reciprocity or a sense of enlightened self-interest. States hang together within a legal system due to a relationship of reciprocity. This relationship is one of give and take, with states returning the privileges and services they receive from other states. States that breach international rules suffer a decline in credibility that may prejudice them in future relations with other states. Thus, a violation of a treaty by one state to its advantage may induce other states to breach other treaties and thereby cause harm to the original violator. Furthermore, it is generally realized that consistent rule violations would jeopardize the value that the system brings to the community of states, international organizations, and other actors. This value consists in the certainty, predictability, and sense of common purpose in international affairs that derives from the existence of a set of rules accepted by all international actors. International law also provides a framework and a set of procedures for international interaction, as well as a common set of concepts for understanding it.

The development of International Law in the last 60 years owes much to the efforts made by the United Nations. Hence the efforts of the U.N too deserve a mention in the current lesson.

3.1.8 UN'S ROLE IN THE DEVELOPMENT OF INTERNATIONAL LAW

The United Nations has played a major role in defining, codifying, and expanding the realm of international law. The International Law Commission, established by the General Assembly in 1947, is the primary institution responsible for these activities. The Legal Committee of the General Assembly receives the commission's reports and debates its recommendations; it may then either convene an international conference to draw up formal conventions based on the draft or merely recommend the draft to states. The

International Court of Justice reinforces legal norms through its judgments. The commission and the committee have influenced international law in several important domains, including the laws of war, the law of the sea, human rights, and international terrorism.

The work of the UN on developing and codifying laws of war was built on the previous accomplishments of the Hague Conventions (1899–1907), the League of Nations, and the Kellog-Briand Pact (1928). The organization's first concern after World War II was the punishment of suspected Nazi war criminals. The General Assembly directed the International Law Commission to formulate the principles of international law recognized at the Nürnberg trials, in which German war criminals were prosecuted, and to prepare a draft code of offenses against the peace and security of mankind. In 1950 the commission submitted its formulation of the Nürnberg principles, which covered crimes against peace, war crimes, and crimes against humanity. In the following year the commission presented to the General Assembly its draft articles, which enumerated crimes against international law, including any act or threat of aggression, annexation of territory, and genocide. Although the General Assembly did not adopt these reports, the Commission's work in formulating the Nürnberg principles influenced the development of human rights law.

The UN also took up the problem of defining aggression, a task attempted unsuccessfully by the League of Nations. Both the International Law Commission and the General Assembly undertook prolonged efforts that eventually resulted in agreement in 1974. The definition of aggression, which passed without dissent, included launching military attacks, sending armed mercenaries against another state, and allowing one's territory to be used for perpetrating an act of aggression against another state. In 1987 the General Assembly adopted a series of resolutions to strengthen legal norms in favour of the peaceful resolution of disputes and against the use of force.

The UN has made considerable progress in developing and codifying the law of the sea as well. The International Law Commission took up the law of the sea as one of its earliest concerns, and in 1958 and 1960, respectively, the General Assembly convened the First and the Second United Nations Conferences on the Law of the Sea (UNCLOS). The initial conference approved conventions on the continental shelf, fishing, the high seas, and territorial waters and contiguous zones, all of which were ratified by the mid-1960s. During the 1970s it came to be accepted that the deep seabed is the "common heritage of mankind"

and should be administered by an international authority. In 1973 the General Assembly called UNCLOS III to discuss the conflicting positions on this issue as well as on issues relating to navigation, pollution, and the breadth of territorial waters. The resulting Law of the Sea Treaty (1982) has been ratified by some 140 countries. The original treaty was not signed by the United States, which objected to the treaty's restrictions on seabed mining. The United States signed a revised treaty after a compromise was reached in 1994, though the agreement has yet to be ratified by the U.S. Senate.

The UN has worked to advance the law of treaties and the laws regulating relations between states. In 1989 the General Assembly passed a resolution declaring 1990–99 the UN Decade of International Law, to be dedicated to promoting acceptance and respect for the principles and institutions of international law. In 1992 the General Assembly directed the International Law Commission to prepare a draft statute for an International Criminal Court. The Rome Statute of the International Criminal Court (ICC) was adopted in July 1998 and later signed by more than 120 countries. The ICC, which is to be located at The Hague upon the ratification of the statute by at least 60 signatory countries, has jurisdiction over crimes against humanity, crimes of genocide, war crimes, and crimes of aggression, pending an acceptable definition of that term. Under the terms of the convention, no person age 18 years or older is immune from prosecution, including presidents or heads of state.

Since 1963 the United Nations has been active in developing a legal framework for combating international terrorism. The General Assembly and specialized agencies such as the International Civil Aviation Organization and the International Atomic Energy Agency established conventions on issues such as offenses committed on aircraft, acts jeopardizing the safety of civil aviation, the unlawful taking of hostages, and the theft or illegal transfer of nuclear weapons technology. In 2001, in the wake of devastating terrorist attacks that killed thousands in the United States, the General Assembly's Ad Hoc Committee on Terrorism continued work on a comprehensive convention for the suppression of terrorism.

3.1.9 LET US SUM UP

In this introductory lesson on International Law, we have discussed about the historical development of International Law, its meaning and how it can be distinguished from other

laws as well as its Nature and Basis. After looking at the nature and basis of international law, you would have noticed that International Law is mainly prescriptive and facilitative. However, in the current century, looking at the nature of unlawful activities or violence of the states, groups and individuals coupled with the remotest possibility of checking such behaviour under the existing legal system, the perception has been that international law is failing in one of its primary purposes – the maintenance of an ordered community where the weak are protected from arbitrary action by the strong.

Some commentators have even suggested that the twenty first century needs to accept a new reality where international law is accepted as a political and moral force, but not a legal discipline. Others would argue that the content of international law should change in order to be less prescriptive and more permissive, especially as the world faces challenges unexpected of when international law first began to be regarded by some as genuinely 'legal' in quality. The theoretical rejection of the prescriptive nature of International law has been on increase.

This way the development of International law amidst of undreamt challenges, posed by its subjects is a mixture of achievement and disappointment and any transformation in its nature is highly dependent on the willingness and transcendent behaviour or its subjects and their genuine concerns.

3.1.10 EXERCISE

1. Trace the Evolution of International law in the History ?
2. Briefly discuss the definition and meaning of International Law ?
3. Define International Law and discuss its Nature in detail ?
4. Is international Law a Law? Briefly discuss ?
5. How is International Law Distinguished from other Law ?
6. Critically analyze the Nature and Basis of International Law ?
7. Write a short note on the contributions of U.N in the development of International Law ?

3.2 SOURCES OF INTERNATIONAL LAW, RELATION WITH MUNICIPAL LAW

- A. Lalitha

STRUCTURE

3.2.0 OBJECTIVES

This lesson deals with the major sources that constitute International Law and the distinction between International Law and Municipal Law. After going through this lesson, you should be able to:

- understand various sources that constitute International law;
- comprehend the relationship as well as differences between the International and Municipal Law; and
- know the role played by International Law Commission in the codification of International Law.

3.2.1 INTRODUCTION

Whether democratic or authoritarian, a hierarchical legal system is in place and the identification of legal rules and their sources is a more or less straightforward process in a national legal system. While people living in the world's democracies are accustomed to legislative bodies generating a steady flow of laws to serve the needs and wants of their populations, many authoritarian governments that continue to exist impose rules by whim and often enforce these rules through repression. Unlike this legal system at the national level, an entirely different situation exists at the international level, and given the experiences most people have had with law at the domestic level, comprehending the method of creating law at the international level can be somewhat baffling.

Contrary to the legal system at National level, International law has no Parliament and nothing that can really be described as legislation. It is rather a horizontal legal system with no world parliament available to produce rules or a global dictator to provide enforcement. It must be remembered that, while a large number of diverse, sovereign states create their own laws for their common needs, there is an International Court of Justice and a range of specialized international courts and tribunals. However, these international courts and tribunals lack what can properly be described as a compulsory jurisdiction of the kind possessed by national legal system. As a result, the international law is made largely on a decentralized basis by the actions of the 192 States which make up the international community. The following section deals with several such sources of the International Law.

3.2.2 ESSENTIAL SOURCES OF INTERNATIONAL LAW

The term sources refer to methods or procedure by which international law is created. The Statute of the International Court of Justice (ICJ), Art 38 identifies the following five essential sources of international law. At the same time, it must be remembered that the range of sources is not limited only to these essential sources. These five sources include:

(a) Treaties between States;

(b) Customary international law derived from the practice of States;

(c) General principles of law recognized by civilized nations; and, as subsidiary means for the determination of rules of international law;

(d) Judicial decisions; and

(e) the writings of "the most highly qualified publicists".

3.2.2.1 Customary International Law

To understand the sources of international law, it is appropriate to begin with customary law as this is both the oldest source and the one which generates rules binding on all States. It must be remembered that the customary law is not a written source and the existence of customary rules can be deduced from the practice and behaviour of states and rules. The State claiming the existence of a rule of customary law also has the burden of proving its existence by showing a consistent and virtually uniform practice among States, including those States specially affected by the rule or having the greatest interest in the matter. For example, to examine the practice of States on military use of outer space, one would look in particular at the practice of States that have activities in the Space. Some undisputed examples of rules of customary law include : a) giving foreign diplomats criminal immunity; b)treating foreign diplomatic premises as inviolable; c) recognizing the right of innocent passage of foreign ships in the territorial sea; d) recognizing the exclusive jurisdiction of the flag State on the high seas; e) ordering military authorities to respect the territorial boundaries of neighbouring States f) protecting civilians and sick or wounded soldiers during international armed conflict, etc.

There are disagreements regarding value of this customary system in international law. Some writers deny that custom can be significant today as a source of law, noting that it is

too clumsy and slow-moving to accommodate the evolution of international law any more, while others declare that it is a dynamic process of law creation and more important than treaties since it is of universal application. Another view recognizes that custom is of value since it is activated by spontaneous behaviour and thus mirrors the contemporary concerns of society. However, since international law now has to contend with a massive increase in the pace and variety of state activities as well as having to come to terms with many different cultural and political traditions, the role of custom is perceived to be much diminished in comparison with the earlier times.

3.2.2.2 Treaties

In contrast to the process of creating law through the custom, treaties (or international conventions) are a more modern and more deliberate method. In the modern period international treaties are the most important source of international law. Article 38 of the statue of ICJ refers to 'international conventions, whether general or particular, establishing rules expressly recognized by the contracting states'. Treaties are known by a variety of differing names, ranging from Conventions, International Agreements, Pacts, General Acts, Charters, through to Statutes, Declarations and Covenants. All these terms refer to a similar transaction, the creation of written agreements whereby the states participating bind themselves legally to act in a particular way or to set up particular relations between themselves.

International treaties may be of two types: a) Law Making Treaties; and b) Treaty Contracts.

***a) Law Making Treaties*:** Law making treaties perform the same functions in the international field as legislation does in the state field and these are the direct source of international law and the development of these treaties was changing with the circumstances.

***b) Treaty Contracts*:** As compared to law making treaties treaty contracts are entered into by two or more States. This may happen when a similar rule is incorporated in a number of treaty contracts. This way Treaties are expressed agreements and are a form of substitute legislation undertaken by states. They bear a close resemblance to contracts in a superficial sense in that the parties create binding obligations for themselves, but they have a nature of their own which reflects the character of the international system. Treaties fulfil a vital role in international relations. As governmental controls increase and the

technological and communications revolutions affect international life, the number of issues which require some form of inter-state regulation multiplies. The number of treaties entered into has expanded over the last century.

Law Making treaties constitute the most important sources of international law as they require the expressed consent of the contracting parties. Treaties are thus seen as superior to custom, which is regarded in any event as a form of tacit agreement. As examples of important treaties one may mention the Charter of the United Nations, the Geneva Conventions on the treatment of prisoners and the protection of civilians and the Vienna Convention on Diplomatic Relations. All kinds of agreements exist, ranging from the regulation of outer space exploration to the control of drugs and the creation of international financial and development institutions.

Certain law making treaties also attempt to establish a 'regime' which will, of necessity, also extend to non-parties. The United Nations Charter, for example, in its creation of a definitive framework for the preservation of international peace and security, declares in article 2(6) that 'the organisation shall ensure that states which are not members of the United Nations act in accordance with these Principles [listed in article 2] so far as may be necessary for the maintenance of international peace and security. Treaty-contracts on the other hand are not law-making instruments in themselves since they are between only small numbers of states and on a limited topic, but may provide evidence of customary rules. For example, a series of bilateral treaties containing a similar rule may be evidence of the existence of that rule in customary law.

This way, through the adoption of numerous treaties on different areas of international law (war, terrorism, and diplomacy, treaty-making) international law has undergone its most important changes in the years since 1945.

3.2.2.3 General Principles of Law Recognized by Civilized Nations

While treaties and custom are the most important sources of international law, the other sources mentioned in Article 38 of the ICJ Statute of the ICJ cannot be overlooked. **Art.38 of ICJ** provides that the Statute of International Court of Justice lists general principles of law recognized by civilized States as the third source of international law. International tribunals have always borrowed concepts from domestic law if they can be

applied to relations between States, and by this means have developed international law by filling gaps and strengthening weak points. Such concepts are chiefly legal reasoning and analogies drawn from private law, such as *good faith* and *estoppels*.

Good faith: The obligation to act in good faith is a fundamental principle of international law, and it includes equity. Article 2(2) of the UN Charter requires all Members to fulfil their Charter obligations in good faith. Similarly, the Vienna Convention on the Law of Treaties 1969 requires parties to a treaty to perform the treaty (Article 26), and to interpret it (Article 31(1)), in good faith. The principle is not restricted to treaties but applies to all international law obligations.

Estoppels: Known as preclusion in civil law systems, Estoppels has two aspects. A State that has taken a particular position may be under an obligation to act consistently with it on another occasion. And when a State has acted to its detriment in relying on a formal declaration by another State, the latter may be estoppels from denying its responsibility for any adverse consequences.

These concepts are most often employed where the ICJ or another international tribunal wants to adopt a concept such as the legal personality of corporations which is widely accepted in national legal systems. And these general principles are seldom mentioned in judgments and International courts. Thus, General principles of law recognized by civilized nations become an important source of International Law and this source helps international law to adapt itself in accordance with the changing time and circumstances.

3.2.2.4 Judicial Decisions

Article 38(1)(d) refers to judicial decisions as a subsidiary means for the determination of rules of law. Article 38(1)(d) does not distinguish between decisions of international and national courts. The former are generally considered the more authoritative evidence of international law on most topics (though not those which are more commonly handled by national courts, such as the law on sovereign immunity). But decisions of a State's courts are a part of the practice of that State and can therefore contribute directly to the formation of customary international law.

In contrast to the position in common law countries, there is no doctrine of binding precedent in international law. Indeed, the Statute of the ICJ expressly provides that a decision of the

Court is not binding on anyone except the partiers to the case in which that decision is given and even then only in respect of that particular case (Article 59). Nevertheless, the ICJ refers frequently to its own past decisions and most international tribunals make use of past cases as a guide to the content of international law, so it would be a mistake to assume that "subsidiary" indicated a lack of importance.

Although, formally, judgments of courts and tribunals – international and domestic – are a subsidiary source of international law, in practice they may have considerable influence on the development of international law. This is because judgments result from careful consideration of particular facts and legal arguments and therefore usually carry authority. There are relatively few international courts and tribunals, but tens of thousands of domestic ones. Moreover, most cases involving international law come before domestic courts, often final courts of appeal. The cumulative effect of such decisions on a particular legal point can be the evidence of custom.

3.2.2.5 Writings

The role played by writers on international law is also subsidiary. The writings of international lawyers may also be a persuasive guide to the content of international law but they are not themselves creative of law and there is a danger in taking an isolated passage from a book or article and assuming without more that it accurately reflects the content of international law. In the formative days of international law, their views may have been more influential than they are today. Now their remain value depends on the extent to which the books and articles cited are works of scholarship, that is to say, based on thorough research into what the law is said to be rather than comparing the views of other writers as to what they think the law ought to be.

3.2.2.6 Other Sources

There are many other sources which influenced the evolution of contemporary International Law. Some of them are mentioned below.

Decisions of International and Regional Organizations

The above mentioned sources complete the list of sources included in Article 38 of the Statute and now the question arises have the sources are really exhausted? You may

observe that one source is conspicuously missing. The missing source is the decisions of International Organizations and Institutions. The reason for missing this source in the statue is that the list was drafted much before the international organizations became a prominent feature of international life. Hence, these decisions are a relatively new source of International law.

Today, several of UN Organs gained a great importance in shaping international law. For example, even though the United Nations General Assembly has no power to legislate for the international community, and its resolutions are not legally binding, many of those resolutions exercise an important effect on the law-making process. Some resolutions are part of the treaty-making process, attaching a treaty text negotiated in the framework of the United Nations and recommended to the Member States by the Assembly (this was the case with the Convention against Torture). Even though it is the treaty which creates the legal obligation that too only for the States which choose to become party to it, the importance of the United Nations in the process of creating such a treaty should not be underestimated.

On the other hand the position of the Security Council is somewhat different from the General Assembly. Decisions taken by the Council under Chapter VII of the Charter and framed in mandatory terms are legally binding on all States (Article 25 of the Charter). Moreover, under Article 103 of the Charter the duty to carry out a decision of the Council prevails over obligations under all other international agreements. In view of the strong reasons the decisions and determination of organs are now recognized as an important source of International Law. The resolutions of the organs may be binding on the members in regard to the internal matters. Organs of international institution can decide the limits of their competence.

At the same time, we should also be remembered that the decisions of the International Organizations like EU, Gulf Cooperation Council or any other such regional institution are extremely diverse in reality and defy any generalized description or analysis which is otherwise possible with UNO and its umbrella of specialized Organizations having membership across the continents.

3.2.3 INTERNATIONAL LAW COMMISSION AND CODIFICATION

In 1947, under the auspices of the UN, the International Law Commission was set up and charged with the task of progressively developing and codifying international law. The ILC is made up of 34 members from around the world who remain in office for five years each and who are appointed from lists supplied by national governments. The members of the ILC sit as individuals rather than as state representatives. Generally the Commission works on its own initiative. Draft articles are prepared and sent for comments, a conference may then be convened at which the draft articles are discussed with the aim of producing a finished convention which can then be opened for signature. Conferences can last for some time – the Third Law of the Sea Conference had its opening session in New York in 1973 and the Law of the Sea Convention was finally opened for signature in December 1982. Ratified conventions are clearly a source of law, while the drafts are often highly persuasive statements of present state practice in a particular area of law. Although the ILC is the most important international body engaged in the development and codification of international law, there do exist a number of other public organizations which are involved in the same mission. Such organizations generally specialize in particular areas of law – e.g. the UN Commission on International Trade Law (UNCITRAL); the International Labour Organization (ILO); the United Nations Educational, Scientific and Cultural Organization (UNESCO). Additionally there are also some private, independent bodies engaged in the development of the law; e.g. the International Law Association and the Institut de Droit International are two of the best known today, while various Harvard Research drafts produced before the Second World War are still of value today.

3.2.4 SOFT LAW

A recent development in the study of the sources of international law has been the claim that international law consists of norms of behaviour of varying degrees of density or force. On the one hand there are rules, usually contained in treaties, which constitute positive obligations binding on states objectively. On the other hand, there are international instruments which, while not binding on states in the manner of treaty provisions, nonetheless constitute normative claims and provide standards or aspirations of behaviour. Such instruments can have an enormous impact on international relations and the behaviour of states but would not be considered law in the positivist sense. A growing body of writers

has argued that both types of norms should be considered law and the distinction between the two is indicated by the terms 'hard law' and 'soft law'. The concept of soft law has been used significantly in the area of environmental protection. One particular benefit of soft law is that it allows states to participate in the formulation of standards of behaviour which they may not feel, at the time of formulation, ready to implement fully. For example, the Universal Declaration of Human Rights 1948 might be considered to be soft law since it was expressed to be non-binding and instead set down aims for achievement. Since that time it can be argued that most, if not all, its provisions have transformed into rules of hard law. Another example might be the Charter of Economic Rights and Duties of States 1974 which has already been mentioned. This has undoubtedly had an effect on the behaviour of states but is certainly a long way from hardening into a binding rule of law. It is clear that within soft law there will be varying degrees of hardness. Other examples of soft law would include the Final Act of the Conference on Security and Co-operation in Europe 1975 (the Helsinki Declaration) which was expressed to be non-binding, the OECD Guidelines for Multinational Enterprises and the Gleneagles Agreement on the Sporting Boycott of South Africa. All undoubtedly have some legal effects without being creating legally binding obligations.

3.2.5 INTERACTION OF SOURCES

Having understood the above discussed different sources of international law, it is now necessary to gain clarity on the relationship of these sources to each other. It would be quite incorrect to assume that they exist in isolation; that certain areas of international law are regulated by treaties, other areas by customary international law and yet other areas by the decisions of international organizations. In reality, these various sources interact closely and influence each other. Stated differently, international law is not a static system of rules but rather a decision making process. The rules of law that are identified, are abstractions derived from this process, but they are not its essence.

Even a treaty, which is an apparently clear set of written rules, is part of this process. It is usually the product of a long evolution that involves customary international law, prior treaties and often deliberations and decisions made by international organizations. After its conclusion, the treaty is implemented and interpreted by international and domestic courts, becomes part of state practice, sometimes leading to new customary international

law and may ultimately be amended or abrogated by another treaty.

This complex interaction of the different sources of international law has very practical consequences. When a specific legal question is being examined or a particular case is being decided, it is not enough to find the 'right' rule, by identifying the treaty that is applicable or the appropriate rule of customary international law. Rather it is crucial to take synoptic look at the various sources and analyze their relative relevance and authority.

3.2.6 RELATIONSHIP BETWEEN INTERNATIONAL LAW AND MUNICIPAL LAW

By now you have developed a fair understanding about the nature and sources of International law. In this section of the lesson you will study about its relationship with the Municipal Law which is also called as domestic or national law. However, an understanding of such a relationship would first begin with the basic difference between the two in order to provide better clarity and then we look at how the relationship between two exists both in theory and in practice.

To mention precisely, International Law is that law that refers to the body of legal decisions, rules, and customs that regulate the discourse between nations (e.g., human rights, military intervention, and global concerns such as climate change). Municipal law is the national, domestic, or internal law of a sovereign state defined in opposition to international law. Municipal law includes not only law at the national level, but law at the state, provincial, territorial, regional or local levels. While, as far as the law of the state is concerned, these may be distinct categories of law, international law is largely uninterested in this distinction and treats them all as one. Similarly, international law makes no distinction between the ordinary law of the state and its constitutional law. Thus in the realm of international law, municipal refers to any sovereign entity, including countries, states, counties, provinces, cities, and towns. In short, municipal refers to the internal law of a sovereign government.

There are two primary forms of municipal, or domestic, law. The first is civil law, composed of the statutory law and regulations to administer those laws. In general Statutes are passed either by the legislative bodies of the state or by popular vote (in some countries). Domestic law is also formed by the common law, which is law handed down by the lower and upper courts of the country. Common types of municipal law are criminal statutes, traffic laws,

and government regulations. Thus, basically municipal law regulates the relationship of citizens with the government.

When we try to understand the basic differences between the international and municipal law, we need to keep these things in mind.

Firstly, at a very basic level, international law and domestic law differ in magnitude. Domestic law governs the behaviour and actions of individuals within a country, whereas international law governs the behaviour and actions of bodies of government: states or countries.

Secondly, there is no supreme law-making body in international law. Treaties are negotiated between States on an ad hoc basis and only bind States which are parties to a treaty. The General Assembly of the United Nations is not a law-making body, and so its resolutions are not legally binding. However, UN Security Council resolutions to take action with respect to threats to peace, breaches of the peace, and acts of aggression, are binding on the 193 member States

Thirdly, the most important difference between international law and domestic law is how they are enforced. International law lacks a common executive, which means that there is no power which can make a state or nation accept a court decision. Thus, the states or countries operating under international law often have a weak sense of community, meaning that obeying the law will often come second to that which is seen necessary for survival. Domestic law, on the other hand, consists of all three branches of government – executive, judicial, and legislative. As you probably know, 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 international law, those who violate domestic law will receive a punishment deemed fit by a court executive, and this punishment will be enforced.

Notwithstanding the fact it is notionally accepted that the state municipal law controls the conduct of individuals within the state while International Law controls the relations of nations, both the laws have cohesion with each other and the relations between these two are more prominent. Further in today's world, the scope of International Law has increased and it not only determines and controls the relations of states but also the relations of members of international community.

In light of the increased significance of public international law since 1945, the proliferation of international treaties, and the basic obligation of all the states to perform their international legal obligations in good faith, states have good reason to seek a measure of congruence between their domestic legal orders and international law. Certain theories have been propounded to explain the relationship between International Law and Municipal Law.

3.2.6.1 Prominent Theories pertaining to the Relationship

The prominent theories that deal with the relationship between the international and national law include the Monistic Theory, Dualistic Theory, Transformation Theory and Delegation Theory and it is important to look at the main propositions of such theories.

Monistic Theory

Monists assume that the national and international legal systems form a unity. Both national legal rules and international rules that a state has accepted, for example by way of a treaty, determine whether actions are legal or illegal. In most monist states, a distinction between international law in the form of treaties, and other international law is made. International law does not need to be translated into national law. The act of ratifying the international law immediately incorporates the law into national law. International law can be directly applied by a national judge, and can be directly invoked by citizens, just as if it were national law. A judge can declare a national rule invalid if it contradicts international rules because, in some states, the latter have priority. In other states, like in Germany, treaties have the same effect as legislation, and they only take precedence over national legislation enacted prior to their ratification. In its most pure form, monism dictates that national law that contradicts international law is null and void, even if it predates international law, and even if it is the constitution. It maintains that the subject of the two systems of law namely, International Law and Municipal Law are essentially one in as much as the former regulates the conduct of States, while the latter of individuals. According to this view law is essentially a command binding upon the subjects of the law independent of their will which is one case is the States and in the other individuals. According to it International Law and Municipal Law are two phases of one and the same thing. The former although directly addressed to the States as corporate bodies is as well applicable to individuals for States are only groups of individuals.

Dualistic Theory

Dualists emphasize the difference between national and international law, and require the translation of the latter into the former. Without this translation, international law does not exist as law. International law has to be national law as well, or it is no law at all. If a state accepts a treaty but does not adapt its national law in order to conform to the treaty or does not create a national law explicitly incorporating the treaty, then it violates international law. But one cannot claim that the treaty has become part of national law. Citizens cannot rely on it and judges cannot apply it. National laws that contradict it remain in force. According to dualists, national judges never apply international law, only international law that has been translated into national law. According to the dualist view the systems of International Law and Municipal Law are separate and self contained to the extent to which rules of the one are not expressly or tacitly received into the other system. In the first place they differ as regards their sources. The sources of Municipal Law are customs grown up within the boundaries of the State concerned and statutes enacted therein while the sources of International Law are customs grown up within the Family of Nations and law making treaties concluded by its members. In the second place Municipal Laws regulates relations between the individuals under the sway of a State or between the individuals and the State while International Law regulates relations between the member States of the Family of Nations. Lastly there is a difference with regard to the substance of the law in as much as Municipal Law is a law of the sovereign over individuals while International Law is a law between sovereign State which is arrived at an agreement among them. The latter is therefore a weak law.

While the Monistic and Dualistic Theories are highly popular, besides the above two theories, Starke makes reference to two other theories namely, the Transformation Theory and Delegation Theory.

Transformation Theory

According to this theory it is the transformation of the treaty into national legislation which alone validates the extension to individuals of the rules set out in international agreements. The transformation is not merely a formal but a substantial requirement. International Law according to this theory cannot find place in the national or Municipal Law unless the latter allows its machinery to be used for that purpose.

This theory is fallacious in several respects. In the first place its premise that International Law and Municipal Law are two distinct systems is incorrect. In the second place the second premise that International Law binds States only whereas municipal law applies to individuals is also incorrect for International Law is the sum of the rules which have been accepted by civilized states as determining their conduct towards each other and towards each other's subjects. In the third place the theory regards the transformation of treaties into national law for their enforcement. This is not true in all cases for the practice of transforming treaties into national legislation is not uniform in all the countries. And this is certainly not true in the case of law making treaties.

Delegation Theory

According to this theory there is the delegation of a right to every State to decide for itself when the provisions of a treaty or convention are to come into effect and in what manner they are to be incorporated in the law of the land or municipal law. There is no need of transformation of a treaty into national law but the act is merely an extension of one single act. The delegation theory is incomplete for it does not satisfactorily meet the main argument of the transformation theory. It assumes the primacy of international legal order but fails to explain the relations existing between municipal and international laws.

3.2.6.2 International Law and Municipal Law Interface

An international treaty hardly stipulates how the States should implement its provisions, leaving it to each State to decide how that obligation will be executed on the domestic plane. There is no rule of general international law that all treaties must have effect in domestic law. Many treaties have no domestic legal consequences and do not require implementation through the national legal systems of the States Parties. One notable exception involves the right of access and to effective remedies guaranteed in human rights treaties. Art.2 of International Covenant on Civil and Political Rights, states "Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognised in the present Covenant". The covenant also stipulates four main methods for the implementation of international human rights instruments in domestic law:

a. Direct incorporation of rights recognised in the international instruments into *a bill of rights* in the national legal order;

b. Enactment of different legislative measures in the civil, criminal and administrative laws to give effect to the different rights recognised in human rights instruments;

c. Self-executing operation of international human rights instruments in the national legal order; and

d. Indirect incorporation as aids to interpret other law.

For States that are not Parties to the relevant human rights treaties, generally accepted standards of human rights are legally binding upon them according to customary international law.

The relationship of international law to municipal law rests on mainly the monistic and dualistic schools of law. As it has been discussed, the *dualists* regard international law and municipal law as separate and municipal law can apply international law only when it has been incorporated into municipal law. Incorporation can result from an act of parliament or other political act, or given effect by the courts. On the other hand, *monists* regard international law and municipal law as parts of a single legal system. According to this theory, municipal law is subservient to international law.

England is an example of the *dualist* model of international law. A treaty has no effect in English domestic law, unless it is made part of it. Once a treaty is incorporated into English Law, it is fully enforceable in the courts. But the fact that a treaty is part of the English Law will not necessarily mean that individuals have a cause of action arising from the treaty. There will only be incorporation if the treaty changes domestic law, or if it requires the raising of revenue or alteration of taxation. As in the case of many treaties in the field of foreign relations, ratification is a formality and incorporation is not required. An unincorporated treaty has no formal standing in English Law. If it conflicts with statute or common law, the latter will prevail. An incorporated treaty becomes part of the law of the land, but it has no special position. The relationship between incorporated treaties and other legislation is the same as the relationship of two statutes to each other. Parliament is supreme in the sense that it can pass legislation that is inconsistent with any international treaty obligations which, nevertheless binds the United Kingdom at the international level.

An example of a *monist* model is the Netherlands legal system. For the operation of treaties and the orders of international organizations within the legal system, no national order is required to convert international law into national law. International law operates automatically, as such, within the national legal system. Therefore, certain treaties are considered constitutional law where they limit or extend the powers of Dutch offices based on national constitutional law. Examples of this are the European Convention for the Protection of Human Rights and Fundamental Freedoms and the International Covenant on Civil and Political Rights.

In the United States, ratified human rights treaties and customary international law are both law of the land. The Supremacy Clause of the United States Constitution makes all Treaties made or which shall be made under the Authority of the United States a the Supreme Law of the Land. Under the Supremacy Clause, the law of the land is binding on the federal government as well as on state and local governments. According to the U.S. Supreme Court, the treaty power authorizes Congress to legislate under the Necessary and Proper Clause in areas beyond those specifically conferred on Congress.

In the U.S. not all treaties, by their terms, mandate domestic applications that affect private parties. Such treaties, therefore, are not self-executing, even though they are ratified and are part of the law of the land according to the Supremacy Clause. Since a private right is largely contingent on the existence of a right of action, additional legislation is needed to grant individuals private rights pursuant to such treaties.

Self-executing treaty doctrine stipulates that not even the few U.S. ratified human rights treaties would necessarily be binding on domestic courts. Unless a court deems a treaty to be self-executing, the treaty will bind domestic courts only if Congress has passed legislation for the specific purpose of implementing the treaty provisions domestically.

While the U.S. Constitution assigns the power to make and adopt treaties to the federal government, several state and local governments have adopted human rights treaties. For example, in the absence of federal ratification on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), San Francisco has incorporated principles of CEDAW into binding local law.

India too follows the dualist school of law in respect of implementation of international law

at domestic level. Therefore, in India, International treaties do not automatically form part of national law. They must, where appropriate, be incorporated into the legal system by a legislation made by the Parliament.

To sum up the above discussion, there are different sources of international law such as treaties, customary international law and general principles of law. In their actual application, however, these sources are closely inter-related. The often interact by supplementing and replacing each other. Often a rule created in one type of source later emerges in the form of another source. Thus these typical sources of international law ought never to be viewed in isolation.

The relationship between domestic and international law, properly understood, enables the two legal orders to complement one another as a unified and coherent set of legal rules and principles. This unity, flows from the idea that all law, domestic and international alike, establishes norms and standards to which public bodies and private parties can be held publicly accountable. The unity of domestic and international law, in other words, follows from a shared and overarching commitment to public accountability.

3.2.7 LET US SUM UP

In this lesson we have tried to understand various sources that constitute international law, how they make it a distinct one from the other laws, as well as the relationship, differences and interface between the international law and the municipal law in general. While some countries give primacy to international law over its municipal law some other countries give supremacy to the municipal law. The basic understanding on both the topics covered under this lesson will better help you in understanding nature of various international laws, enforceability and so on in the subsequent lessons you will be studying in the paper.

3.2.8 EXERCISES

1. Discuss various sources that constitute international law. What kind of influence those sources have on its nature ?

2. What is Municipal law and how it is different from Public International Law ?

3. Deal with the theories dealing with the relationship between Public International Law and Municipal law with their main propositions ?
4. Discuss the relationship and the interface between Public International Law and the Municipal Law ?
5. Provide a brief on Treaties as a source of International Law ?
6. Customs are the main source of International Law. Discuss ?
7. Briefly discuss how various sources of International Law interrelated with each other?

3.3 INDIVIDUALS AND STATE: NATIONALITY, EXTRADITION AND ASYLUM

- Sukhwinder Kour

STRUCTURE

3.3.0 OBJECTIVES

After going through this lesson, you will be proficient to comprehend

- The position of state and individual within international law
- Theories related to nationality, modes of acquiring nationality, loss of nationality along with various concepts related to nationality
- Concept of extradition, asylum, its types and laws inside India with respect to them

3.3.1 INTRODUCTION: STATE UNDER INTERNATIONAL LAW

The state as an area under discussion of International law, as a universal conception, is characterized all the way through its four fundamental features: Population, Territory, Government and Sovereignty. The whole populace existing inside a definite terrain which is subordinate to the administration, furthermore, have a recognized affiliation with the state through officially authorized connection is termed as population. The territory is a region unconnected from other regions by boundary where a definite inhabitants lives along with where an assured authority extends. State borders are end points till where the sovereignty of a state lengthens. The power by which a state regulates its associations within the state along with its relationships with the outside world is termed as sovereignty. The features of a modern state, the manner it is acknowledged these days are fashioned by Peace Treaty of Westphalia, according to which the country is comprised of three most important characteristics: territory, population and sovereignty.

3.3.2 CONCEPTUAL EXPLANATION OF SOVEREIGNTY

Sovereignty indicates absolute as well as sovereign influence above definite terrain along with its inhabitants. It, furthermore, signifies that no another country has right to enforce and put into practice laws on the land of an independent country. Sovereignty is, in general, separated into: Internal and External. Internal sovereignty is decided by the state organ with the power for putting into effect the authority whilst external sovereignty portray the responsibility of the country as a lone within the international commune along with the stance in the direction of the possessor of rights and responsibilities in relation to other countries within international law.

3.3.3 FIVE MODES TO ATTAIN SOVEREIGNTY

Sovereignty is usually attained in five ways, four of them are acknowledged by the international law. The first mode is through reconciling to terrain on which no one had formerly asserted rights for sovereignty. The second method is associated with the foremost and looks forward to accomplish sovereignty through the identical exercise for a longer epoch on the land exclusive of another country having difference of opinion with regard to right. Separation, the third approach, by which sovereignty can be accomplished, however, it necessitates on the way to be carried out in harmony with the country in which this broken up area has been fraction of. As a result, the relocate of the rights from one to another independent is completed by such means that the contemporary developments along with the arousal of the thought for self determination enforce the new-fangled autonomous to achieve the approval from the populace whose terrain desires sovereignty ahead of obtaining it. The next one out is not well thought-out as a officially authorized approach for accomplishing the sovereignty for the reason that it is relied for attaining what is pronounced as unlawful by the United Nations. The last category of attaining the right for sovereignty above definite terrain proviso it is recognized as a supplementary division of previously existing area through a mode of natural augmentation akin to sedimentation or else volcanic actions.

3.3.4 TERMS "DE JURE" AND "DE FACTO" RECOGNITION OF STATES

Taking into consideration that the international law is a dynamic subject for analysis, the states can be separated into two: de jure (existing in accordance with the law) and de facto (existing in actuality) based on the detail of the statehood characteristics they possess. De jure states are those that are satisfying a few stipulations of statehood except all three. For instance, a state has a terrain as well as populace except full sovereignty above them. De facto state is well thought-out to be the one that possesses a territory, population along with sovereignty nevertheless be short of a lawful acknowledgment by other countries. This frequently takes place if a de facto state has been fraction of another state formerly that is against its sovereignty. There are numerous cases in point of de facto states including the case of Taiwan and People's Republic of China along with Somaliland and Somalia amongst others.

3.3.5 RECOGNITION OF STATES WITHIN INTERNATIONAL LAW

Till now, there is not exact regulation according to which one country turned out to be globally acknowledged along with has the right of statehood as well as right to participate in the international affairs. Various endeavours has been made on the way to institute definite widespread decisive factor for attaining the abovementioned statuses, however, no criteria has become triumphant on the way to be avowed as appropriate by every country. In this regard, two theories need to be discussed here. The foremost one is the Declarative Theory of statehood that derived from the Montevideo conference which held that the political subsistence of one country is autonomous from its acknowledgment by other countries. This theory alleged that for attaining statehood, the subsequent four constituents required to be incorporated: territory, population, sovereign authority along with the capability to administer the preceding three. It can be said here that the most part of the characterization is derived from the Treaty of Westphalia which indicates that it is not a originality within international law, nevertheless, an existing criterion which though has been documented but not completely acknowledged and put into operation. On the other hand, International law embraces Constitutive Theory of statehood. It observes the acknowledgment of one country by other states as influential in obtaining statehood as well as position of a subject matter of international law in the direction of a new state. L. Oppenheim too stated that a country does not subsist until it is acknowledged by other country. It can be argued here that the attainment of sovereignty along with intercontinental lawful subjectivity of a country is officially relied on its global acknowledgment that is ultimately based on the determination of other states.

3.3.6 THE RULES OF INTERNATIONAL ORDER AND RECOGNITION OF STATES

With the classification of the states into two: de jure states and de facto states, both these subsist as modes of acknowledgment. De jure recognition point towards having an official lawful act - a diplomatic memo, law or else pronouncement time and again in the parliament, by the administration or else head of state after which a certified document is in print on a acknowledgment of one country over another. This means is uncertain, furthermore, is not open for analysis. The second technique de facto entails the institution of political, economic in addition to other sorts of associations. The differentiation amid both lies in the official

lawful document which ends with rights along with obligations, at hand in the foremost case, however, not in the subsequent one. De facto acknowledgment is frequently used in order to steer clear of interruption of two-pronged associations with a different country, however, as well on the way to put into practice authentic acknowledgment of the country. The approaches of relationships amid two countries that can be witnessed as strides in the direction of recognition are: the institution of diplomatic dealings, the visiting of head of state at the realm which necessitates acknowledgment, mutual accords amid both states along with the recognition of the passports of this state that is accepted by the existing country. Mexican Minister of Foreign Affairs, Genaro Estrada introduced a third set of guidelines, in the thirties of the twentieth century, in favour of recognition of states. The third principle demotes to be familiar with countries rather than governments. Consequently, if the foremost country has acknowledged the country where unconstitutional alteration of government has taken place, they will not re-examine the pronouncement for acknowledgment based exclusively on the transformation of the government. Nevertheless, there is dearth which left the space for manoeuvring if there is a genuine requirement to re-examine collaboration with the state in which the alteration has taken place. Furthermore, an exceptional form of acknowledgment known as "Collective recognition of states" can happen all the way through general recognition of membership of a state within the regional as well as global associations by means of universal approval of the affirmation at the worldwide forum or else through an official course of action within the bodies of the global organization. The acknowledgment of a country globally is portrayed through its partisanship in the United Nations. With the partisanship at this world association, each quandary concerning the sovereignty along with independence of any state is being eradicated.

3.3.7 INDIVIDUALS WITHIN INTERNATIONAL LAW

During the twentieth century, particularly subsequent to World War II, the evolutionary augmentation along with expansion of the International lawful arrangement has sourced a momentous augment into the significance of compassionate standards within the course of improvement of International laws. The largely indispensable purposes of the International commune are the safety of the independence as well as dignity of every one along with to bring to an end every kind of violent behaviour. The endeavour and purposes of the

Universal Declaration of Human Rights along with UN Charter have well thought-out admiration for Fundamental with Human rights as their main concern which is introspective beneath its variety of provisions and articles, furthermore, is a fundamental element of *jus cogens*.

Within international law, individuals take account of humans, foundations along with officially authorized commercial enterprises. Despite the fact that not each and every one individual have the identical rights, it is well thought-out in a broader nous. Prior to 1945, international law possibly will be on familiar terms with individuals as a subject however still didn't grant rights and duties. In an outline, for centuries, International law regards individuals in an abstract sense. Moreover the rationale was that international laws are commandments amid states, furthermore, individuals are the populace of states, for that reason, individuals were distinguished as objects. They were not measured proficient on the way to have rights along with duties beneath international law. nevertheless, subsequent to the first plus second World wars, the global community mulled over the necessitate as well as prospect of distinguishing the lawful accountability of an individual underneath international law, moreover, construct them subjects of international regulation. Even at present, individuals are perceived as merely partial subjects of international law because states still stay on as the overriding subject of international law.

3.3.8 LEGAL POSITIVISM WITH REGRAD TO INDIVIDUALS

Legal positivism has offered, for an elongated period, the common theory for understanding international law. The positivist characterization of international law is chiefly stranded characteristically on a subject-based demarcation amid international as well as municipal rules plus regulations. Positivism observed international laws as a set of regulations with states as subjects. Municipal law is, by and large, supposed as pertaining to individuals who are subjects of a particular country.

Earlier than positivism, there was no any kind of hypothetical perseverance that the set of laws of the international commandments pertained simply to states. William Blackstone has revealed the widespread opinion of the middle eighteenth century by considering both individuals along with states as appropriate subjects of international laws. He portrayed no separating line which afterwards appeared to be labelled public and private international law. Blackstone differentiated his law of nations from erstwhile types of rule on the basis

of its sources, moreover, not on the universal foundation of its subjects. He saw the regulations of the international laws or commandment of nations as widespread, originating either from natural righteousness or from the exercise of countries. Municipal set of laws, on the other hand, originated from a lone country.

Jeremy Bentham, in the year 1789, coined the word international law, furthermore, characterized the international laws which recount the reciprocated transactions amid self-governing countries, in addition, wrapped up that states are the one and only subject of the international regulations.

Joseph Story and John Austin, early nineteenth-century, positivists observed that the individual was an unacceptable subject of international law. Joseph Story produced private international law to correspond public international law of Bentham as Public international law thought to impinge on intercontinental affairs of countries whereas private international law contracted with global issues involving individuals. John Austin put emphasis on that for the reason that public international law declared on the road to standardize the affairs amid sovereign countries as sovereigns are self-determining, in addition, possibly will not be standardized by whichever exterior authority, further, international law was just a kind of affirmative morality and not actually a regulation.

Legal positivism had changed eighteenth-century law of states into public and private international law, a commandment widespread to individuals along with countries with former being believed on the way to be relevant towards states whilst the latter en route for individuals. The positivist description of international laws had a mammoth impact on the contemporary discernments with reference to both the individual along with international law. With barely a few exceptions, the presumption discards the concept that individuals are apt subjects of public international law.

3.3.9 VIEWS OF SCHOLARS

There are numerous observations on the scope as well as character of the arrangement of the individual within international law. Opinions show a discrepancy from entirely discarding the individual as the international subject in the direction of the acknowledgment of the individual as the merely subject of international law. The declaration of the individual as the subject of the international law appeared at the closing stages of the nineteenth century

and it put on considerable credence subsequent to World War II. There are countless grounds emphasizing the individual as the international persona which are primarily stood on deliberation akin to the pre-eminence of international law above indigenous commandments, undeviating directive by the international law above the rights as well as duties of the individual, progressive advancement of the international lawful command, character of international law, mounting amalgamation of compassionate values and ideas.

George Scelle, a French scholar, in his observation, well thought-out, a state as a fiction and individual as the just genuine subject of international law. Several scholars criticised this analysis. Wolfgang Friedmann remarked that it may perhaps be understood in a ethical and metaphorical manner rather than realistic and officially authorized manner. Humphrey Waldock, as well, condemned by saying that this observation dispose of the regulation meant for philosophy.

There is division of outlooks on the subject of the individual beneath international law. Hersch Lauterpacht correlated international law with the want as well as acknowledgment of individual lawful character within human rights along with compassionate facets. He declares that the conservative place of the individual has transformed by definite progress which end resulted in underpinning the individuals on the road to preserve their rights ahead of intercontinental tribunals along with commanding commitments unswervingly beneath international law. He, furthermore, argues that individuals are the object of international regulation does not indicate that they are not the direct subject.

Hans Kelsen is, in addition, concerned to individual character underneath international law. Despite the fact that he distinguishes the universal regulation concerning the state being the subject of international law, furthermore, he articulates with reference to wide-ranging exceptions that held individuals legally responsible beneath international law on behalf of a infringement of a regulation of conduct enforced by international rule itself.

On the subject of the recognition of the place of an individual beneath international law, Wolfgang Friedmann has made an assessment of the estimations of scholars. He alleged that Lauterpacht and Jesup are well conscious of the stringent lawful sense; the individual confines cannot be a subject matter of the law of nations with the exception of extremely explicit and specific restrictions along with for exceptional intentions. As a result, they have strained a division amid the individual as the focus of enforceable claims on the

intercontinental echelon in addition to the individual as the recipient of a structure of international law within which states are the subjects as well as only actors nevertheless they are focussed on the way to act on behalf of the human being.

These scholars believe in the monistic doctrine of international law, however, those scholars who don't consider it is additional cynical in relation to the individual as the subject matter of international laws. Oppenheim discards this proposition in view of the fact that the commandments of nations are the rules of states only; accordingly, states are the one and only subject of the international laws. Waldock and Friedmann, in addition, discarded the proposition subsequent to recognizing the progressive enlargement of individuals along with their rights within international law. Brownlie disapproves the individuals as the focus of the international laws by arguing that it would connote to recognize the rights which donot subsist.

Schwarzenberger, a non-monist articulates that the individual character is merely a subject of specifics, moreover, not of principle. He believes the establishment of regulations of every character amid permitted states by means of a concurrence neither public policy nor jus cogens, consequently, permitting the countries on the road to have unrestrained discretion. Myres McDougal alleges that most important authority approaches from nation-states, as a result, other members should take steps all the way through state along with state policies whilst Rosalyn Higgins intends to discard the conception of the subject matter of international law on the whole.

3.3.10 RESPONSIBILITY OF INDIVIDUALS

Conventionally, individual conscientiousness was not acknowledged underneath international law with the exception in restricted cases akin to piracy. It was merely in the Twentieth century, moreover, particularly subsequent to World War II, the evolutionary expansion as well as enlargement of the International officially authorized arrangement has caused a noteworthy augment in the significance of Humanitarian principles in the course of action of growth of International Laws.

The consultative judgment specified by the Permanent Court of International Justice in the case of Jurisdiction of the Courts of Danzig (Pecuniary Claims of Danzig Railway Officials who have Passed into the Polish Service, against the Polish Railways Administration),

Advisory Opinion,1928 P.C.I.J. (Ser. B) No. 15, (March 3, 1928) Permanent Court of International Justice where the court alleged that an exemption to the common customary regulation that individuals are not subjects of International Law can manage to survive barely where the objective of parties was to just take up an agreement which generates rights as well as obligations for the individuals which are competent sufficient of being imposed by municipal courts. The PCIJ, moreover, put emphasis that such intent be required to have been articulated and not inferred from the accord seeing that it is exclusion to a wide-ranging regulation. Abass held that the courageous stride taken by the PCIJ into the Danzig case has contributed towards the International Law orientated in the direction of distinguishing individuals underneath International Law, even if it underwent foremost in Criminal law prior to expanding it to human rights.

In the year 1946, United Nations General Assembly authorized them to turn out to be component of the International Law. Keeping in mind the individual accountability, the Assembly, in addition, assured that genocide was a misdemeanour beneath International Law which was, furthermore, regurgitated into the Genocide Convention, 1948. This arrangement was, as well, restated by the Draft Code of Crimes against Peace and Security of Mankind under article 3 which endow individual conscientiousness for offences along with chastisement according to the severity of the misdeed.

Subsequent to the Second World War, International law happened to, furthermore, concerned with individuals inside the subject of human rights along with the fundamental freedoms. The Charter of the UN commenced this trend in the year 1945 by entitling member states on the way to scrutinize human rights as well as fundamental freedoms for individuals along with populace. In the Reparation for Injuries Suffered in the Service of the United Nations, 1949 I.C.J. 174, the court alleged that intercontinental rights along with duties are an important component as well as foundation of being an worldwide persona. It was, furthermore, alleged that the United Nations Organization was the subject matter of international law, where it is proficient on the way to take legal action for the justification of its concerns. Subsequent to which, a number of conventions have ended up in the direction to characterize fundamental freedoms as well as human rights which persons and populace are permitted to in addition to guarantee their reverence and security. These conventions, moreover, take account of the International Covenant on Civil and Political

Rights (1966) along with the International Covenant on Economic, Social and Cultural Rights (1966).

Individual accountability was, in addition, aground with reference to the serious violations of the Four Geneva Conventions (1949) along with the Additional Protocols I and II (1977) which relates with armed variances. It, furthermore, escorted on the road to two definite intercontinental war misdemeanour tribunals being time-honoured. One for earlier Yugoslavia in the year 1993 along with a different in 1994 for Rwanda on the way to act against the individuals accountable for the severe and most important infringements of International Humanitarian Law perpetrated within the region of both these states. The Rome Statute of the International Criminal Court was accepted in the year 1998 at the United Nations Diplomatic Conference. The Statute giving way the some degree of authority of the Court to the mainly grave offences of apprehension of the worldwide commune as intact which are the wrong of genocide, the offence of antagonism, misdemeanours adjacent to humankind and battle misdeeds.

Even though, as a broad-spectrum rule, individuals are deficient in position to affirm infringements of the above treaties in the dearth of the objection by the nationalized state. Apart from the above, a broad variety of other treaties that have authorized the persons on the way to have undeviating entrée to international courts along with tribunals are American Convention on Human Rights (1969), the European Convention on Human Rights (1950), the International Convention on the Elimination of All Forms of Racial Discrimination (1966), as well as the Optional Protocol to the International Covenant on Civil and Political Rights (1966).

In summing up, it would not be erroneous to articulate that the responsibility of individuals has considerably augmented; moreover, they are being acknowledged as partakers and subjects of this commandment. This has happened largely all the way through the development of Humanitarian as well as Human rights regulations approaching mutually with the progression of the Traditional International Law. Persons at present have a type of officially authorized character beneath International Law as they are approved with assured rights along with definite obligations unswervingly below International commandment. International Law is currently relevant to associations of States with

individuals in addition to definite interrelations amid persons themselves where such relationships engross issues of intercontinental concern.

3.3.11 PRESENT POSITION OF INDIVIDUALS WITHIN INTERNATIONAL LAW

Subsequent to the general idea of these developments, various conclusions that can be drawn are. Foremost, it is, by and large, acknowledged that the capabilities of states as well as individuals are of a diverse nature and extent. Secondly, it is, moreover, agreed by the mainstream that a person's competence is relied on an agreement which necessitates the approval of states, also, it merely subsists for a few extraordinary and particular cases.

3.3.12 NATIONALITY

Nationality is the lawful standing which a person attains by his partisanship of an autonomous political commune, which agrees on his rights as well as commitments at international law. In law, nationality demotes to the partisanship of a nation or an independent country along with the political rights as well as other benefits escorted with it. E.g. American Indians were referred to as non-citizen nationals before the Native American Citizenship of 1924 was passed. Time and again, perplexed with citizenship, nationality is a dissimilar thought. Individual persons, corporations, ships in addition to aircrafts, every one of have a nationality, however merely intended for lawful reasons.

The United Nations Universal Declaration of Human Rights (1948) assured that nationality is an undeniable right of each human being, furthermore, no one shall be dispossessed of his/her citizenship. It is nationality which fetches every individual underneath the influence of international laws.

3.3.13 MAIN THEORIES RELATED TO NATIONALITY

3.3.13.1 ACTIVE NATIONALITY THEORY

Usually considered non-controversial, it declares that a country benefit from the right to employ its jurisdiction over its nationals, even while they are in an overseas country. When complying with private International commandments, the national regulations constantly has a propensity to pursue a person ahead of the confines as far as his personal position is concerned. Consequently, the court be obliged to necessarily pursue International laws,

at the equivalent instance, make definite that they are not infringing domestic police regulations or any civic order.

Whilst referring in the direction of criminal regulations, the principle point towards authority to adjudicate. Whether a country can adjudicate a misdemeanour perpetrated in a foreign country? This turned out to be even a higher matter whilst the criminal changes his/her nationality. An illicit may perhaps break away from alleges with the change of their nationality subsequent to the commitment of the misdeed.

An act may perhaps be an offence in one country whereas in another country, it is just another each day goings-on, consequently, making a person protected from any sentence. For instance, in Arkansas, a person cannot take part in more than 25 free sports event proviso he persists to be triumphant, but this possibly will not be the case somewhere else within the world.

It is, furthermore, an exceedingly disputed matter whether a country can pursue its own criminal jurisdiction resting on the base of the nationality of the charged. The Supreme Court of United States along with a number of authors has lifted up their apprehensions. It is a worry of international law on the subject of how the countries care for their nationals. Critics to this outlook articulate that it is the responsibility of the country underneath international laws.

3.3.13.2 PASSIVE NATIONALITY THEORY

A country, at times, presumes extraterritorial control over overseas nationals proviso the individual who has experienced harms is it's national. The proposal behind the implementation of passive nationality is on the way to accomplish the sense of duty of a country on the road to defend its nationals from the harm endured by them in case the foreign country not succeeded in the direction to castigate the criminal.

It is still an issue of incongruity whether the nationality of the sufferer along with the jurisdiction purview have to occur underneath the influence of international law. It is observed as the mainly antagonistic foundation of extraterritorial influence. Donnendieu de Vabres, a well-known French Jurist condemned the passive theory alleging that it is just a means of the influential countries on the way to gratify their power self-centredness over the weaker countries.

The prime negative aspect of this theory is that the defendant is unacquainted of what commandments will be taking place upon him; moreover, it may perhaps be a severe misdeed within some other country, as a consequence, reckoning this theory reasonably unreasonable for the defendant.

3.3.14 MODES OF ACQUISITION OF NATIONALITY

Every state along with the International Bodies has put down definite requirements on how someone can get hold of the nationality of any state. Nationality is attained, on the whole, generally on these bases:

1. **By Birth**: In the state in which an individual is born, he acquires the nationality of that state by birth or else at the instance of birth, an individual gets the similar nationality which his parents are encompassing. In other words, it can be said that each country endows with nationality by birth or else descent (being born to parents who are its nationals). Apart from the above, every individual whose birth takes place inside territorial confines of a country attain the nationality of that country **(Nationality by birth (jus soli).** This standard is pursued by USA, UK along with various Latin American states.

2. **Nationality acquired subsequently:** Within the majority of states, nationality is furthermore obtained through procedure of rule following definite alterations into the civil standing of a person akin to matrimony, adoption, legitimation, affiliation along with naturalization.

a. **Marriage:** Wife mechanically acquires the nationality of her husband's country through advantaged naturalization procedures. The Hague Convention on Conflict of Nationality Laws (1930) put down assured requirements concerning nationality by marriage. Chapter 3 encompassing articles 8, 9, 10 and 11 of the same discuss in relation to the Nationality of married women.

b. **Adoption:** This is also referred to as inter country or else transnational adoption. This is extremely analogous to any ordinary adoption process within an intercontinental milieu. By means of the virtue of this appraise, a person or a couple can be reckoned officially permitted parents of a child belonging to an overseas country.

c. **By Resumption**: At times, it, accordingly, takes place that an individual possibly will mislay his nationality because of definite grounds, afterwards, he may possibly recommence his nationality subsequent to gratifying assured stipulations. In other words, an individual, who has mislaid his nationality by naturalization or else other grounds, possibly will get hold of the nationality of the same country yet again. The acquirement of this sort is called reintegration or resumption.

d. **By Subjugation**: When a country is overpowered or else subjugated, every citizen obtains the nationality of the triumphant country. It, furthermore, held that an individual may perhaps attain nationality whilst a fraction of the terrain of a country or a country itself is dominated by a different country.

e. **Cession**: When a country has been ceded in another country, every one of the individuals of the terrain attains nationality of the country in which their area has been amalgamated. In other words, as soon as a fraction of the area is relinquished to a different country in that case every national of the earlier gets hold of the nationality of the latter country.

f. **Registration:** This course of action is different from one country to another country.

g. **By Naturalization**: - By naturalization too nationality can be acquired. Whilst an alien living within a state acquires the nationality of that state it is called naturalization. In Nottebohm case-1955, it was alleged that a country has no commitment in giving way nationality in the direction of a person through naturalization proviso that individual has no associations with that country. The court put forwarded the authentic as well as effectual nationality principle. If any human being gets hold of nationality of two countries, subsequently, in case of disagreement stuck between the two nationalities, the nationality of that country shall be acknowledged with which the individual primarily has genuine along with efficient affiliation. Putting it in other words, it can be alleged that whilst an individual subsists within another country for an elongated period afterwards he attains the citizenship of that country.

3.3.15 LOSS OF NATIONALITY

1. **By Release**: In several states, there are such lawful stipulations that are accessible by which they endow authorization on the way to liberate their nationals from its nationality. In favour of this kind of release, an application is indispensable. If the submission for release is acknowledged, subsequently, the claimant is unconfined from the nationality of that country.

2. **By Deprivation**: Time and again, in numerous countries such officially authorized conditions are accessible by which if a national of that country comes into service of another country exclusive of the authorization of home country, he would lose nationality.

3. **By long residence abroad**: The loss of nationality possibly will take place on the condition that the person stayed in a foreign country beyond an assured time limit. Many states have such type of legal provisions which terminates the nationality for the stay of beyond limit. In other words, it can be said that nationality ends if an individual inhabits inside a foreign terrain for an elongated epoch.

4. **By Renunciation**: It may possibly, furthermore, be the reason of loss of nationality, whilst an individual is having nationality of two or more countries; he has to decide the nationality of one along with has to relinquish the nationality of other country.

5. **By Substitution**:-In a few states, the nationality is ended by substitution. An individual gets nationality of one country in place of other country. In other words, an individual may possibly acquire the nationality of a country in place of the nationality of a different country.

3.3.16 THE CONCEPT OF DOUBLE NATIONALITY OR DUAL NATIONALITY

When more than one state considers a person as its national, it is known as dual citizenship. Dual citizenship takes place since diverse states have set-up wide-ranging means for conceding citizenship.

An individual who embraces dual citizenship, by and large, encompass the advantage of the privileges of citizenship of both states. These privileges can be:

- Right to hold passports.
- Right to vote.
- Right to residence.
- Right to work.
- Right to come into the country amongst others.

The individual is not only permitted on the way to have the benefit of the privileges, however, the person is obligated on the road to carry out definite duties akin to:

- Nationalized civil service.
- Subject to the taxation arrangement of the state apart from other duties.

An individual might, at times, hold double nationality owing to a variety of causes akin to matrimony, naturalization and many more. Largely, the states don't consent to double nationality.

3.3.17 STATELESSNESS

Statelessness is a predicament of international law. It possibly will result owing to the submission of conflicting commandments by countries. It associates to huge adversity towards a person.

3.3.18 RIGHTS AND DUTIES OF AN ALIEN

Aliens have got no rights within international law on the way to be divulged in the direction of a country. Admittance of aliens is subject to directive. On right of entry, the aliens subject themselves on the road to the neighbourhood regulations. Underneath the international law of accountability, an alien holds the right of shelter by his parent country, even though the latter is not obligated on the way to put into effect that right.

3.3.19 SIGNIFICANCE OF NATIONALITY

The right of security of diplomatic representatives are existing for the reason that of nationality. If any country does not hold back an individual of its nationality from such detrimental accomplishment which is disturbing other countries, in that case, the first country

shall be accountable to other countries for such deeds of its nationals. Generally, states do not repudiate to acknowledge its nationals in extradition. One of the consequences of the nationality is that the country has a right to turn down extradition of own national. Ø By means of its exercise by lots of States, at the instance of war, the adversary character is established on the basis of nationality.

3.3.20 NATIONALITY ALONG WITH DOMICILE

Nationality stands for the association of an individual with his state. On the other hand, domicile symbolizes the abode of the individual. A human being possibly will get hold of nationality through domicile.

3.3.21 DIFFERNCE AMID NATIONALITY AND CITIZENSHIP

A) NATIONALITY: The authorized connection which subsists amid the nation and individual. Through nationality, the civil and natural rights of an individual might appear. Every citizen possibly will hold the nationality of a particular country. An individual who possesses merely nationality within a particular country may perhaps not enjoy the entire political rights.

B) CITIZENSHIP: indicates the associations amid the individual and the state commandment. The rights of citizenship are the one and only apprehension of state law. It is not obligatory that each and every national may possibly be the citizens of that exacting country. Citizens are those individuals who have power over complete political rights inside the country.

3.3.22 EXTRADITION

Extradition is indispensable whilst a person stimulated with a misdemeanour in one country escapes in the direction of another. In this case, the requesting country asks for its inhabitant on the way to be dispatched back subsequently he/she can stand trial for their offences. On the other hand, Asylum is whilst an individual, who is frightened of being indicted in his domicile country, runs away to a different country for shelter. In the case of *Colombia vs. Peru (1950),* it was alleged by the court that they are exclusive. There is either extradition or else asylum.

Extradition is the procedure of bringing back an illicit to the state where he has perpetrated the offence and has run off to another country. Further, it became important to bring that criminal back to the country where one has committed the crime due to the existence of dissimilar lawful dealings within different countries. It might be possible that in the country where an individual has executed the wrong may possibly try in a different way. Furthermore, it possibly will be the case that criminal had fled away in the middle of lawful trial. Accordingly, it is indispensable to fetch the illicit back in order to conclude the trial. The substantiation along with the witnesses is also there in that country. In addition, this is to put a stop to the movement of intercontinental illicit. A number of criminals skip from one country to another country executing misdemeanours. As a result, through extraditions, fair dealing can be carried out by means of fetching them back to the countries in which they have executed the offence, furthermore, by penalizing them. It is, in addition, very important for that country on the way to do away with that assured person on behalf of security.

3.3.23 DIFFERENTIATION AMID EXPULSION AND EXTRADITION

After discussing the meaning of extradition, we will now put a light upon the difference between extradition and expulsion. Extradition and expulsion are two diverse course of action as stated by the case of *Hans Muller of Nuremberg vs. Superintendent Presidency jail Calcutta and others (1955)*. The courts, furthermore, alleged that the government has the right to discard an appeal for extradition. Besides, also have the right to select the less cumbrous procedure of expulsion on the way to do away with a foreign person from the country.

On the one hand, extradition takes place when a country appeals in favour of an escapee to come back. Further, Government is subject towards definite set of laws which includes treaties, rule of speciality along with double criminality. They, in addition, have the right on the way to rebuff a demand of extradition. As far as India is concerned, extradition is administered by the Extradition Act of 1962. On the other hand, *Expulsion or Deportation* occurs when a person infringes immigration regulations. As a result, the Government has the unobstructed right to exorcize. They don't necessitate giving out a show-cause notice to the foreign person. Expulsion is administrated by the Foreigners Act of 1946 in India.

3.3.24 NO TRANSPORTATION OF A POLITICAL CRIMINAL

The inclination of no extradition of political criminals took place at some point during the French revolution. Subsequent to that, other countries pursued the same. The word 'political crime' has defined neither underneath international law nor by any commission or organization. Nevertheless, we can say that if an individual carries out an offence with political intentions, in that case that misdeed can be held to be a political crime. Under this, we will highlight two cases contrary to each other.

Re Castioni case (1891)

A detainee was accused with the killing of Luigi Rossi. After murder, the criminal run away from Switzerland to England. The government of England discarded the appeal of Switzerland for extradition on the pretext that the accused murdered in order to root political commotion. As a result, it's a offence of political character and as he was a political illicit, England was not obligated to repatriate him.

Re Meunier 1894

However, on the opposite, under this case, an escapee who exploded a bomb, in Paris, in a public place escaped to England. Paris coveted him back but England turned down their demand to expatriation. The court lined that his objectives were not merely political, consequently, he had not perpetrated a political offence.

3.3.25 D'ATTENTAT CLAUSE

The d'attentat or the *clause Belge* argued that assassination of heads of governments along with states will not be well thought-out as a political offence, furthermore, they can be repatriated for such a misdemeanour.

3.3.26 RULE OF SPECIALITY

Beneath international law, the principle of speciality declares that an individual who is repatriated on the way to a country to stand trial for definite unlawful wrongdoings possibly will be tried merely for those misdemeanours and not for any other pre-extradition crimes. This rule was regurgitated in the case of *U.S. vs Rauscher (1886),* which held that he can simply be tried for crimes which have been criminalized by the pact as well as the misdemeanour for which transportation has been appealed for.

3.3.27 DOUBLE CRIMINALITY

The principle of double criminality declares that an illicit can barely be handed over to another country proviso the misdemeanour one has perpetrated is criminalized by the regulations of both the countries concerned. For illustration, if an executioner has lope away from Bangladesh and is secreting within India, then that person can be repatriated the same as the commandments of both the countries criminalize killer.

3.3.28 POSITION OF THE STATE WITHIN INTERNATIONAL LAW

It is required to be distinguished that the state has no responsibility on the way to repatriate a person. Nevertheless, there can be an agreement amid those countries that they will send back any illicit that run away in the direction of their realm plus vice versa. They can, in addition, willingly transfer an individual devoid of any agreement. States have to maintain in psyche that for the period of transportation, they must not infringe their personal municipal commandments i.e. the regulations of their own countries along with intercontinental conventions.

Nevertheless, countries do not have to bestow the escapee back proviso appropriate transportation course of action was not pursued. In this regard, we can illustrate the case of ***Sarvarkar (1911)***. Vinayak Donador Savarkar was beneath the guardianship of French navy. Subsequently, he was repatriated to England. However, England got hold of him all the way through erroneous expatriation measures. Owing to the infringement of course of action, the French would like him back. The court alleged that there is no stipulation underneath international law that states if transportation measures are not pursued, in that case, the country be required to send him back.

The country can, what's more, not repatriate citizens of their own state. Consequently, if a citizen of England arrives to India, furthermore, after perpetrating an offence returns back towards England, in that case, it became extremely complicated to obtain the citizen back. They, by and large, make certain that they will penalize the illicit in accordance with their own regulations.

In ***Regina vs Wilson (1878)***, an agreement turned out amid the two states that states will not repatriate individuals as well as the escapee that will be reprimanded according to their own commandments.

3.3.29 INDIA

By and large, every country has its own laws on the subject of the procedure of extradition. In India, **The Extradition Act of 1962** administers the course of action of extradition. It was amended in the year 1993 by the Act 66.

Section 2(d) of the Act discusses the treaties concerning expatriation, moreover, agreed to foreign states on the road to make such engagements with India. These treaties are generally bilateral in character i.e. they are stuck between not more than two countries. These treaties represent five principles-

- Expatriation of an escapee will take place for wrongdoings lay down by the agreement.
- The misdemeanour is required to be criminalized beneath the commandments of both countries, not just one.
- There have to be a prima facie case prepared
- The country should try the unlawful for barely the crime he was repatriated for.
- He has to be tried underneath a just trial.

As a rule, requests for extradition, on behalf of India, can simply be made by the Ministry of External Affairs and not anyone in the open.

Countries who have an agreement with India can appeal for transportation of somebody from India. A non-treaty state is required to pursue the measures laid down by **Section 3(4) of the Extradition Act of 1962**.

According to the folio of The Ministry of External Affairs, underneath are the subsequent limitations in the direction of extradition-

- India is not 'obligated' to repatriate someone unless there is an accord.
- India is not 'necessitated' to send back someone unless that wrongdoing amount to a misdeed beneath the settlement.
- Extradition possibly will be deprived for merely political along with martial wrongdoings.

- The misdemeanour is obliged to make up an offence both in India along with the state demanding extradition.
- Extradition may possibly be refuted when the course of action set down **by Section 3(4) of the Extradition Act of 1962** is not pursued.

3.3.30 ASYLUM

Asylum is whilst a state provide shelter to persons who are being indicted by a different independent authority. For the most part, it is their personal administration. Despite the fact that every person has the right to look for asylum, asylum searchers do not have the right to obtain it. It ought to be distinguished that asylum deals with immigrants. In other words, oone can say that with persons who are being put on trial by their own government.

3.3.31 ARTICLE 14 OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

Article 14 of the Universal Declaration of Human Rights is acquainted with the right of persons on the road to search for security from trials of the self-governing authorities. Each person can walk off to a different state in order to seek out asylum. This right is, furthermore, accessible for escapees who have perpetrated political misdemeanours. Nevertheless, this is subjected to the stipulation that if one's offence is not in favour of the doctrine of the United Nations, subsequently, one do not have the right to shelter. It, besides, be obliged to be illustrated that one has the right on the way to look for asylum excluding the right to obtain asylum.

3.3.32 TYPES OF ASYLUM

a) Territorial Asylum

Territorial asylum is approved inside the territorial confines of the country offering asylum. This is mainly frequently brought into play for individuals charged of crimes of political character including treachery as well as incitement to rebellion. It is required to be noted that executioners of heads of states, illicit indicted of definite terrorist deeds along with individuals charged of war misdeeds are several exemplars where one can not be presented asylum.

b) Extra-Territorial or Diplomatic Asylum

Extraterritorial asylum demotes to place of safety settled in embassies, legations, consulates, warships, along with merchant vessels in foreign country, furthermore, is accordingly arranged inside the terrain of the country from which shelter is wanted.

International law has not documented ambassadorial asylum as a right seeing that it can be regions for difference of opinion. For case in point, the asylum was approved towards József Cardinal Mindszenty throughout the rebellion in opposition to the communist administration in 1956. He turned down to Roman Catholic schools on the way to be secularized which impelled him to be in detention however he got security from the administration of the United States meant for 15 years. This sourced big disagreement.

c) Neutral Asylum

This category of asylum is revealed by neutral states during epoch of warfare. These countries possibly will be well thought-out asylum spaces meant for detainees of war. It presents asylum on the way to troops of states that are a part of the combat. This is underneath the circumstance that they are subject to confinement all through the point in time It is imperative to make a note that whilst troops may perhaps be authorized, air forces of such states cannot land within these regions moreover will be subjected to questioning.

3.3.33 ASYLUM IN INDIA

Diverse states have dissimilar commandments on the subject of asylum-seeking. India has regulations concerning immigration in addition to asylum-seeking. The contemporary ruling with asylum seeking that has sourced the major debate is the Citizen Amendment Act with regard to expatriates.

Organisations akin to the UNHCR facilitate persons list for asylum. Individuals who desire on the road to submit an application ought to approach for registration in the company of every one of your family members who are here within India. According to them, the subsequent documents are indispensable-

- Case figures of immediate family associates who have been indexed with UNHCR (in India or somewhere else),

- Passport/nationality document/identity certificate,
- Birth certificates/vaccination cards intended for children,
- Marriage/divorce/death certificates,
- Any other documents you possibly will have.

The applicant will be asked on the way to give explanation why you left your state along with why you cannot depart back on a form. On the same, they will be questioned by a Registration Officer.

3.3.34 LET US SUM UP

In the end, we can conclude that, it is reasonably apparent, at the present that International law be on familiar terms with the rights and duties of persons. It can be wrapped up that whilst states have appropriate international officially authorized character; individuals acquire a restricted locus standi within International law. Nevertheless, it is, as well, accurate that the human being has more than a decades advanced from an illicit kid to a well-accepted family affiliate within International law which demonstrates the degree of the alteration of the lawful order. It has considerably facilitated in elevating apprehension and standards of Humanitarian values.

More to the point, Nationality, underneath international law, is the officially authorized affiliation which survives amid the state and the human being. Citizenship, on the other hand, represents the relationships stuck between the individual and the state commandment. Citizens are the individuals who have power over complete political rights of a country.

Furthermore, we have talked with reference to the differentiation amid extradition and asylum, their course of action, the variety of regulations they are subjected to, along with how they are implemented within India. These courses of action occupy a large component into intercontinental associations.

3.3.35 Exercise

1. Discuss various theories related to nationality ?
2. Discuss various modes to acquire nationality ?

3. Explain the conditions that lead to loss of nationality ?

4. Briefly explain the concept of double nationality or dual nationality ?

5. What are the rights and duties of an alien ?

6. What is the difference between nationality and citizenship ?

7. What is extradition and how is it different from expulsion?

8. Explain India's Extradition Act of 1962 ?

9. Write a short note on Asylum and its types ?

3.4 ROLE AND PRIVILEGES OF DIPLOMATS

Mamta Sharma

Structure

3.4.0 Objectives

After going through this lesson, you will be able to know:

- The laws of diplomatic agents, classification and functions of the diplomatic agents.
- Various basis of diplomatic immunities and privileges.
- Constitutional and legal provision regarding privileges and immunities of a diplomat.

3.4.1 INTRODUCTION

Nowadays, one of the most crucial means for achieving the state's foreign policy objectives

through designated officials is diplomacy. The state as a subject of international law in relations with other states is represented through its own bodies. Therefore, through diplomatic representations, states interact with one another, watch out for their interests, notify one another, and advance ties between them. Unquestionably, they have long been accorded certain rights, or have benefited from certain privileges and immunities, in order to successfully perform their tasks and activities. In this study, we would therefore attempt to provide information on the facilities provided to representatives of diplomatic mission in the states where they are accredited, freedom of movement and communication, privileges and immunity of members of the diplomatic mission, as well as cases from the practice of international law, keeping in mind that the foreign service of a state is composed of a large number of members who make up its diplomatic mission and who enjoy privileges and immunities.

The highlight of the twentieth century, in terms of diplomatic privileges and immunities, was the adoption of the Vienna Convention in 1961,559 a true international statute of the diplomatic agent.560 Prior to this treaty, the diplomatic privileges and immunities have not been divided into privileges and immunities of the diplomatic mission and personal privileges and immunities of the diplomatic personnel, but derived by leading jurists from privileges and immunities of heads of state, being considered, as continuation of their immunities. Diplomats are the persons who reside in foreign countries as the representative of the country by whom they are despatched. They act as a link between the country who despatch them and by whom they are accredited. Therefore, they perform the act of diplomacy, which in International Law means by which the States maintain or establish mutual relations and carry out their legal or political transactions based on their foreign policies. Act of diplomacy may be performed by the head of State, Government, Minister of Foreign Relations or by and by diplomatic agents.

3.4.2 Law on Diplomatic Agents

The practice of sending and receiving diplomatic agents is followed by states since ancient time. In ancient times 'Doots' were sent from one Rajya to another. However, in ancient time the practice was not uniform nor they were sent permanently to another Rajya. The practice of permanently sending the diplomatic agents started from the seventeenth century.

By the second half of the seventeenth-century permanent legation became a general

institution and certain rights and duties almost identical in nature were provided to the diplomats.

The Congress of Vienna of 1815 for the first time codified customary rules of International Law on ranks of diplomatic representatives. The institution of diplomacy continued to develop after 1815 and after the establishment of the United Nations, the task for codifying for the law relating to diplomatic agents was given to the International Law Commission.

The Commission prepared the draft article and submitted them to General Assembly. The Assembly convened a conference in 1961 and adopted Vienna Convention on Diplomatic relations.

3.4.2.1 Classification of Diplomatic Agents

Diplomatic agents accredited to a State differ in class. The Vienna Convention on diplomatic relations, 1961 under Article 14 divides diplomatic agents into three classes. They are:

- Ambassadors accredited to head of State.
- Envoys, ministers accredited to the head of State.
- Charges d' Affairs accredited to Ministers of Foreign Affairs.

3.4.2.2 Functions of Diplomatic Agents

Functions of diplomatic agents are determined by the rules and regulations of International Law and municipal law (law of country) of the States.Article 3 (1) of the Vienna Convention of Diplomatic Relations, 1961 lays down various functions of diplomatic agents which are as follows:

- **Representation: Diplomatic** agents represent the policies and beliefs of State by which they are dispatched to the state where they are accredited. The function of representation is primarily entrusted to the head of the mission. Oppenheim, in his book, says that "diplomats are the mouthpiece of the head of his own State and the Foreign Minister for communication to be made to State where they are dispatched.
- **Protection: Diplomatic** agents protect the rights and interests of sending State and also of nationals, within the limits allowed by the municipal law of respective

State. The limit of diplomats is not prescribed by the International Law but by the municipal law of the State.

- **Negotiation:** Negotiation is the most important function which is performed by the diplomatic agents. Generally, the head of the diplomatic mission negotiates on various aspects of on behalf of the sending State with the State to which they are accredited in order to maintain a friendly relationship. Diplomatic agents are required to communicate the outcome of the negotiation to sending State from time to time,
- **Observation:** Diplomatic agents are required to observe those events and happenings which take place or which may take place in the State where they are accredited, especially those which may affect the interests of the State by which they are sent. After making observations of the events, they are required to make periodical reports to the government of sending State.
- **Promotion of Friendly Relations:** Diplomats are required to promote friendly relations between the sending State and the receiving State. They also have the function to develop the social, cultural and economic relations between the two States.
- **Consular Functions:** Vienna Convention lays down that diplomatic agents can also perform consular functions which may be allotted to them from time to time such as death, birth and marriage registrations of the subjects of home State, issue of passports etc.

3.4.3 Basis of Diplomatic Immunities and Privileges

International Law confers diplomatic immunity on diplomats from the exercise of jurisdiction by receiving States. The principles governing diplomatic immunities and privileges are among the most ancient and universally recognised principles of International Law.

Different international jurists have divergent views as to the basis for giving immunities to diplomatic agents. Their views led to the emergence of three important theories which are as follows:

- Extra-territorial Theory: This theory is also known as the fictional theory. According

to this theory, diplomatic agents are considered not be within the territorial jurisdiction of the State to which they are accredited, but to all times within that of the sending State. Extra- territorially of diplomatic agents means that though diplomats physically present upon the soil of the country to which they are accredited but they remain for all purposes on the soil to which they represent.

- Representational Theory: According to this theory, diplomatic agents are regarded as personal representative of the sovereign of the sending State. Therefore, they are given the same degree of privileges and rights which are given to the head of sending State.
- Functional Theory: According to this theory, diplomatic agents are given immunities because of the nature of their functions. The duties which the diplomats perform are far from easy. In other words, their actions of duties are of typical or some special nature. They are allowed immunities from the legal and other limitations of the State to which they are accredited to effectively perform the tasks they are allotted.

3.4.4 Privileges and Immunities of a Diplomat

Vienna Convention on Diplomatic Relations of 1961 lays down the different rights and privileges which are granted to diplomatic agents. They are as follows:

- Inviolability of Diplomatic Agents: Diplomatic agents are inviolable is a principle which is recognized in International Law much before the adoption of the Convention of 1961. Article 29 of the Vienna Convention lays down that "the person of a diplomatic agent shall be inviolable". He shall not be liable to any form of arrest or detention, and the receiving State shall treat him with all due respect and should take all appropriate to prevent an attack on his personal freedom and dignity.
- The Government of receiving State by virtue of Article 29 is under a duty to conduct to abstain from any form of conduct which is injurious to the diplomatic agents and also under a duty to prevent such injurious conduct if attempted by another.

This does not mean that the immunity given to the diplomats is absolute. The receiving State has the power to arrest or detain the diplomatic agent in exceptional cases For instance, a drunken diplomat with a loaded gun in a public place can be arrested or if a diplomatic agent commits an act of violence which disturb the order and peace of receiving State in such a manner that it becomes necessary to put him under restraint for the purpose of preventing similar acts.

Inviolability of Staff of Mission

In addition to the head of mission, immunities are also given to the staff of the mission, which is defined in Article 1 of the Vienna Convention, Para 2 of the Article 37 of Vienna Convention lays down that members of the administrative and technical staff shall enjoy the immunities and privileges as mentioned from Article 29 to Article 35 if they are not nationals or are not permanent residents of receiving State.

Thus, administrative and technical staff only enjoys personal inviolability (Article 29) inviolability of residence (Article 31) immunity from criminal jurisdiction (Article 31(1)) exemption from certain taxes and duties (Article 34) and immunity from civil and administrative jurisdiction exists when they are performing service duties (Article 31(1).

Para 3 of Article 37 of the Vienna Convention provides immunities to the service staff if they are not the nationals or permanent resident of receiving State. It provides immunity to the acts performed in course of their duties, exemption from taxes and duties on emoluments received and exemptions on social security provisions.

Inviolability of family members

Vienna Convention of Diplomatic Relations in its Article 37 Para 1 states that "immunities and privileges to the family members of diplomatic the diplomatic agents having diplomatic ranks may be given, if firstly they are not nationals or permanent resident of receiving State and secondly, so long as they form the part of household, i.e. they live under one roof".

So if the son of a diplomat is studying in any University of receiving State and just come on weekends to meet his parents, then he will not be provided with any immunity as he is not forming the part of the household.

o Inviolability of premise: Article 21 of the Vienna Convention lays down that, "a permanent diplomatic mission needs premises to operate and receiving State must help the sending State to obtain the premises form mission". The sending State has the right to use its flag and emblem on the premises (Article 20). Article 22 of the Vienna Convention of Diplomatic Relations stipulates the customary rule of International Law by stating that "the premises of the mission shall be inviolable". Further Article 30 also provides that "private residence of a diplomatic agent shall also enjoy inviolability". The agents, police or any officer of the receiving State are not allowed to enter the premises without the consent of the head of mission. However, the inviolability of premises is also not absolute it can be compromised in certain exceptions. Article 41 of the Convention itself lays down that "premises of the mission should not be used in any manner as incompatible with functions of mission or by rules of general International Law". So, if the inviolability of premises is abused then the receiving State should not bear it passively and can take all the necessary steps to stop the actions of agents.

o **Inviolability from being a witness:** Diplomatic agents are completely immune from being a witness in any civil or criminal or administrative court of State to which they are accredited. He is also immune from giving evidence before the Commissioner. However, they may appear before any court by waiving of their immunity. Article 31(2) lays down that "diplomat agent is not obliged to give evidence as a witness".

o **Immunity from taxes and customs duties:** Article 34 of the Vienna Convention lays down that, "diplomatic agents shall be exempted from all dues and taxes, personal or real, national, municipal or regional". Initially, before the convention, this right was given to the agents due to Courtesy but Convention has incorporated it with more precise definition.

o **Immunity from inspection of Personal Baggage:** The bag used by the diplomatic agents for sending articles, letters or documents to the sending states or any other missions of its State to abroad be known as a diplomatic bag. Para 3 of Article 27 of the Vienna Convention lays down that "diplomatic bag should not be opened or detained'. But according to Article 36 Para 2, this right is not absolute. It lays down that, "general practice of exempting the diplomats' personal

baggage from a custom inspection is qualified by the provision that inspection can be conducted in presence of a diplomatic agent or his agent if there are serious grounds for suspecting that the article is not for official use".

- **Freedom of Communication:** Diplomatic agents are free to communicate any information for official purposes to the State by which they are accredited. Article 27 of the Vienna Convention lays down that "the freedom of communication also involves the use of code messages and couriers".

- **Freedom of movement and travel:** Article 26 of Vienna Convention empowers diplomatic agents to move and travel in the territory of receiving State but subject to laws and regulations of International Law and rules made by receiving State concerning security zone.

- **Right to worship:** Under Article 3 (1) of the Vienna Convention diplomatic agents have the right to worship any religion they like within the mission premises or residence. But they cannot invite any nationals of the receiving State to take part in the worship and have no right to preach their religion in receiving State.

- **Immunity from the Local Jurisdiction:** Diplomatic agents enjoy immunity from the jurisdiction of local courts. The immunity extends both to criminal as well as civil jurisdiction.

Article 31, paragraph 1 of the Vienna Convention provides that a diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. Thus, receiving State has no right to prosecute and punish diplomatic agents. Immunity of diplomatic agents from civil and administrative jurisdiction also a well- recognized principle of International Law.

3.4.5 Let Us Sum Up

Diplomats are provided immunity to effectively perform their function because of the typical nature of functions and diplomat being the representative of the head of State. All the rights and immunities provided to the diplomats are not absolute they can be compromised within certain exceptions. At present, the institution of diplomatic representatives has become the principal machinery by which intercourse between States is conducted.

3.4.6 Exercise

1. Define the laws of diplomatic agents?
2. Discuss the classification and functions of the diplomatic agents?
3. What are the various bases of diplomatic immunities and privileges?
4. Explain in detail the Constitutional and legal provision regarding privileges and immunities of a diplomat?

4.1 RECOGNITION OF STATES: THEORIES, MODES AND CONSEQUENCES

- A. Lalitha

STRUCTURE

4.1.8 Exercise

4.1.0 OBJECTIVES

In this lesson you will study about various ways in which a state can be recognized. After going through this lesson, you will be able to:

- comprehend the two major theories relating to the State Recognition;
- understand Modes of State Recognition; and
- learn the International and Internal Consequences of Recognition.

4.1.1 INTRODUCTION

Despite the rise of non-state actors, States remain to be the most significant members of international community. Of all the actors states possess the broadest range of rights, duties and capabilities. Statehood is crucial for nations, peoples and other political communities. Unless an entity is accorded recognition as a state by a sufficiently large number of other states, it cannot realistically claim to be a state with all the corresponding rights and obligations including the participation in International and Regional Organizations. Thus the questions about the Statehood, rights and duties of the States occupy a central position in international law.

4.1.2 RECOGNITION OF STATE

Recognition of state is thus a requirement for becoming a part of world community. As Gideon Boas maintains, States seek recognition from other states because legal recognition has the ability to confer legitimacy and make it a subject of international law. Recognition is thus sought by both new state entities seeking admission into the world of nations and also by the states that have acquired by occupation or annexation, some new piece of territory in the belief that the grant of recognition will strengthen its claims.

States seek recognition mainly because their legal status as a state is tied to the willingness of other states to recognize and deal with it and appropriate recognition is the most straight forward means of achieving the required status of statehood. Recognition by a state is a manifestation of the will of a state whereby it expresses the legitimacy of the existence of

another emerging state entity. Even though there is a general view that recognition is purely a question of policy and not of law, in practice political and legal recognition work in unison and unless an entity is accorded with recognition as a state by large number of other states, it cannot participate as a state in international law.

Recognition was traditionally considered to be a discretionary function exercised unilaterally by a state, officially acknowledging the existence of another state or government or belligerent state. However, beginning from the early 20th century, the sovereign entities of international community also used to justify the existence of state even in the absence of recognition by other state. This criterion was derived from 1933 Montevideo inter America convention on rights and duties of states, about which mention will be made in the subsequent sections too. In 1936 the prestigious The Institut de Droit too stated, that "the existence of a new state with all the legal consequences attaching to this existence is not affected by the refusal of recognition by one or more states".

4.1.3 RECOGNITION OF STATE: MAJOR THEORIES

Precisely owing to the growth of the above mentioned two opposing views, today international law is dominated by two competing theories on the question whether recognition is a necessary requirement for or merely a consequence of international personality. They are: 1) Constitutive Theory; 2) Declaratory Theory. Both the theories are discussed in the following section.

4.1.3.1 Constitutive Theory

The constitutive theory was developed in the 19th century and was closely allied to the positivist view of international law. According constitutive theory, recognition by existing states is a fundamental precondition for the attainment of statehood for a newly emerging state. Statehood, as a legal status, springs from the act of recognition itself. Given the nature of general international law, it is the states that are empowered to determine violations of general international law. Thus, it can be said that the constitutive theory reflects the legal system itself determining its own subjects with certainty. It is the recognition by an existing state of a newly emerging state that, according to the constitutive model, creates a state and determines its legal personality.

The assertion of constitutive theory was essentially developed during the late 19th century

and was based on the view that international law existed between 'civilized nations'. New states could not automatically become members of the international community; it was recognition which created their membership. This had further consequence that entities not recognized as states were not bound by international law, nor were the 'civilized nations' so bound in their dealings with them. Thus the constitutive theory primarily asserts that the act of recognition by other states confer international responsibility on an entity purporting to be a state. It means if that state exists because of international community, as they have admitted that state into the community of nations. Recognition is therefore seen as a requirement of international personality.

A major criticism of this theory is that it leads to confusion where a new state is recognised by some states but not others. Lauterpacht, renowned jurist and member of International Law Commission, clarifies this confusion by stating that when an entity fulfils all the conditions of the statehood, it becomes the primary duty of other states to recognize such a state. He further states, even though recognition this way becomes declaratory of an existing fact, such a declaration make in the impartial fulfilment of a legal duty makes it a constitutive one between the recognizing state and the community so recognized, of international rights and duties associated with full statehood.

As Tim Hillier mentions, even though states do make reference to the presence or absence of the factual characteristics of statehood when granting or refusing recognition, in the last resort their decision will normally be based on political expediency – there is no real evidence that states themselves feel that there is a legal duty to recognize when the other requirements of statehood have been satisfied. The question has recently arisen with respect to the territory of former Yugoslavia and this case requires a special mention here.

In June 1991 Slovenia and Croatia declared their independence. The European Union and its member states did not recognize the two states immediately. In December 1991 Foreign Ministers of EU member states adopted certain Guidelines on the recognition of new states in Eastern Europe and in the Soviet Union. These guidelines provide that recognition would be accorded to those new states which agreed to respect five conditions. The five conditions include matters such as respect for human rights, guarantees for minorities, respect for the inviolability of frontiers, acceptance of commitments to regional security and stability and to settle by agreement all questions concerning state succession.

Slovenia, Croatia and Bosnia-Herzegovina agreed to the conditions and were formally accorded recognition in early 1992. It is clear that the conditions set down by the European Union exceeded the normal requirements of statehood. The implication would therefore seem to be that the EU viewed recognition as a political measure which was not required by any international obligation. It remains to be seen whether European practice will continue to use these conditions in all decisions on the recognition of new states or whether the application of the conditions will be restricted to the particular situation in the Balkans and Eastern Europe.

4.1.3.2 Declaratory Theory

The declaratory theory of recognition treats recognition as a mere political or symbolic act, with no legal ramifications. The proponents of this theory argue that statehood can be achieved without recognition from other pre-existing states. The theory asserts that the existence of states depend upon the facts whether these facts meet with the criteria of statehood laid down in international law. As it has been already mentioned in the introductory part, the early examples of the declaratory theory can be found in three important provisions of the Montevideo Convention, 1933. They are: Art.1 which states that "the state as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government and (d) capacity to enter into relations with the other states. Art 3 of the convention states that the political existence of the state is independent of recognition by other states. Even before recognition the state has the right to defend its integrity and independence and to organize itself as it sees fit. Further, Art 6 of the same convention states that the recognition of a state merely signifies that the state which recognizes it accepts the personality of the other with all the rights and duties determined by international law.

Thus for the supporters of declaratory theory the formation of a new state is a matter of fact, not law. Recognition is just a political act by which the recognizing state indicates a willingness to initiate international relations with the recognized state and the question of international personality is independent of recognition. However, the act of recognition is not totally without legal significance because it does indicate that the recognizing state considers that the new entity fulfils all the required conditions for becoming an international subject. The declaratory theory is more widely supported by writers on international law

today and it accords more readily with state practice, as is illustrated by the fact that non-recognized states are quite commonly the object of international claims by the very states which are refusing recognition.

After dealing with the two important theories, it is important to look at the types of such recognition as well as the act of non-recognition in order to gain greater clarity.

4.1.4 TYPES OF RECOGNITION

There are many ways in which a state recognition can be accorded by the international community. In the following section, you will study some of those methods.

4.1.4.1 Recognition of a State Involves Recognizing its Government

Recognition of State defines its membership in the world community and consequently supports its claim as an international person. It allows the recognized State to exercise the rights and duties of a State under international law. Recognition of a new State automatically involves recognition of its government. The recognition of a government is no more than an acknowledgement that it is the representative organ of the state and has the consent or at least the acquiescence of its people. Recognition will really be relevant where the change in government is unconstitutional. The question of recognition of government normally arises only with regard to recognized States. When a State recognizes a new "government," it usually acknowledges a person or group of persons as competent to act as the organ of the State and to represent it in its international relations. The only criterion in international law for the recognition of an authority as the government of a State is its exercise of effective control over the State's territory. States may, however, continue to recognize a government-in-exile if an incumbent government is forced into exile by foreign occupation or the *de facto* government has been created in violation of international law.

States may be roughly divided into three groups according to their recognition policy: States (such as the United Kingdom before 1980) that formally recognize governments; States (such as the United States) that generally do not formally recognize governments but do so in exceptional circumstances for political reasons; and States (such as the United Kingdom since 1980, and other member States of the European Union) that formally recognize only States, not governments. That policy is reminiscent of the "Estrada doctrine"

according to which States issue no declarations in the sense of grants of recognition in cases of change of regime but confine themselves to the maintenance or withdrawal, as they may deem advisable, of their diplomatic agents. Those States have not completely abolished the recognition of governments, only the making of official statements of recognition. They still have to decide whether a person or group of persons qualifies as the government of another State, especially where there are competing "governments" in the same recognized State or when there is an attempted secession and issues of governmental status and statehood are linked. In the case of the British government, its opinion on the legal status of a claimant may be determined on the basis of the nature of the dealings (non-existent, limited or government-to-government dealings) which it has with a claimant.

4.1.4.2 Recognition of Belligerency

Although a rebellion will involve a breach of the law of the state concerned, no breach of international law occurs through the mere fact of a rebel regime attempting to overthrow the government of the state or to secede from the state. Insurgency means rebellion, riot or mutiny by portion of the citizens of a State against the established government. It indicates armed struggle by dissident forces the established government in a state. On the other hand 'Belligerent signifies a stage of the civil war in which there are two contenders for power that can be placed on a platform and there is something like a state of war, and not only civil conflicts. Despite conflicting opinions as to the exact definition of "insurgency" there is a consensus that the insurgency can become belligerency. Thus, Belligerency exists when a portion of the State's territory and population is under the de facto control of insurgents seeking either to establish a separate state or to overthrow the existing government. When the rebels are granted the status of belligerents, they shall become subjects of international law and may be responsible for their actions. Belligerence has a formal status in International law that implies rights and duties.

To be recognized as belligerents, the insurgents must have a political organization able to exercise such control and maintain some degree of popular support, and conduct themselves according to the laws of war. Accordingly, recognition of belligerency is a formal acknowledgement by third-party States of the existence of a state of war between the State's central government and a portion of that State. This implies that the recognizing

State recognizes that a revolt within another State has attained such a magnitude as to constitute in fact a state of war, entitling the revolutionists or insurgents to the benefit, and imposing upon them the obligations, of the laws of war. Two conditions should exist before a third party State grants belligerent recognition, the insurgency has progressed to a state of general war and the effects of this war have gone beyond the borders of the State to affect other States. By this recognition, the insurrectionary movement is elevated to the status of a quasi international person having certain rights and duties under International Law. This sort of international personality is both non-permanent and particular. It is non-permanent, because the insurrection may fail. It is particular, because it exists only for the recognizing States. Recognition of belligerency was accorded during most of civil wars of the 19th century and the wars of independence of the 20th century.

4.1.4.3 Non-Recognition

Non-recognition, sometimes referred to as the Stimson doctrine, can occur when the international community is faced with breaches of international law by one of its members, such as the case of Iran and the NPT, the acquisition of the West Bank and East Jerusalem by force by the state of Israel, or the international isolation experienced by South Africa under the apartheid regime. The Stimson doctrine of non-recognition arises when the conduct of a state becomes so objectionable that a severe diplomatic response is considered necessary. Examples of this have included the possession of armaments in contravention of international agreements, acts of external aggression, or the resort to war or any other non-pacific means used for the solution of an international dispute. Because political recognition is always accompanied by further and more concrete evidence of support, non-recognition affects commercial treaties, extradition treaties, diplomatic protection, protection of industrial, literary and artistic property, etc. It must be distinguished from cases where recognition is withheld for legal reasons, such as where the entity in question does not possess the attributes of statehood outlined in the Montevideo Convention and recognition of it as a state would be premature, as occurred with Palestine or Taiwan. With this clarity, now let us look at the existing modes of recognition.

4.1.5 MODES OF RECOGNITION

There are different modes of recognition in practice they include, '*De facto* and *De jure*'

Recognition, 'Implied and Expressed' Recognition. While the four modes being discussed widely, the conditional recognition is witnessed quite often in the international community. Hence a brief discussion about these modes of recognition will follow in this section.

4.1.5.1 *De facto* and *De jure* Recognition

De facto recognition is temporary kind of recognition. The States, in order to safeguard their position against granting of premature recognition, often resort to the practice of according recognition *de facto* before recognizing a state or a government *de jure*. This practice had proved to be useful in cases where in the realities of the situation a state appeared to have established itself or where a government appeared to be exercising effective authority, though the legal position had remained unsettled. For instance, when a part of a state territory or a community succeeds in serving itself from the parent state, sets itself up as a new state and claims to be recognized as such, other states may feel hesitant to accord it recognition even when it fulfils all the conditions of statehood, either because they are not sure that the new community has attained that degree of permanence which they consider to be necessary before according formal recognition, or because the parent state may still be asserting its authority over the territory, even though ineffectively, and it makes it known that it would regard any act of recognition of the new state to be an hostile act.

Similarly, in the case of a government which has come to power through a revolutionary means or as a result of a civil war, states may feel reluctant to recognize it straight away even though it may be exercising effective power as they may wish to wait until they are satisfied that the government has established itself permanently or that the government commands the confidence of the people. It may also be that the states wish to be assured that the new government would be willing to fulfil its international obligations before granting it recognition *de jure*. In such situations a *de facto* recognition serves a very useful purpose by taking into account the realities of the situation as may be apparent at that time without having to express any view on the legal claims of the new state or government.

Thus a *de facto* recognition may be said to be a provisional recognition which can be withdrawn at any time if the new state ultimately fails to fulfil the condition of stability or the new government is found not to have the effectiveness. According to Lauterpatch "*de facto* recognition shows that recognizing state wants to establish its relations with the

recognized state without establishing diplomatic relations". *De jure* recognition is granted when in the opinion of recognizing state or its government the other state possesses all the characteristics and essential requirements of statehood, also it is capable of being member of international community. *De jure* recognition is final and once given cannot be taken back and it is permanent kind of recognition. It is only the *de jure* recognized State or Government that can represent the old State for the purpose of State succession or with regard to espousing any claim of its national for injury done by the recognizing State in breach of International Law. Only the *de jure* recognized state or government claim to receive property locally situated in the territory of the recognizing State. While during the *de facto* recognition diplomatic relations are not established formally they can be established only by granting de jure recognition. Choosing one mode of recognition over the other is often considered to be influenced by the political considerations than the legal in most cases. However, in some cases both the considerations coincide.

4.1.5.2 Express and Implied Recognition

Recognition is essentially based on the will and intention of a state and it could be express or implied. Express recognition indicates the acknowledgement of the recognized State by a formal declaration. This formal recognition may take place through a declaration or an announcement of recognition or any such means. However, recognition need not be expressed, that is in the form of an open, unambiguous and formal communication, but may be implied in certain circumstances. Recognition as such does not carry with it a requirement to establish diplomatic relations, but the formal act of recognition does imply that the recognizing state will seek to establish bilateral relations. Scholars like Lauterpacht argued that implied recognition arises only out of comprehensive bilateral treaties, formal diplomatic relations, and consular exequaturs. Thus, one state can recognize another without establishing diplomatic relations, but because the existence of diplomatic relations implies recognition, the same state cannot conduct diplomatic relations with a state while refusing to recognize it. The United States no longer has formal diplomatic ties with Cuba and Iran, but neither the absence of diplomatic relations, nor the fact that they were revoked after having been previously established imply non-recognition of the states of Cuba and Iran by the United States.

The existence of informal bilateral relations does not constitute an acknowledgement of

recognition. In addition, state practice demonstrates that, with respect to the interaction between recognizing states and unrecognized entities, participation in negotiations, establishment of unofficial representation, accession to multilateral treaties, and membership in international organizations do not imply recognition. For example, the fact that both Cyprus and Turkey are members of the UN cannot be taken to mean that Turkey recognizes the state of Cyprus. This would also be the case if and when Turkey becomes a member of the European Union.

4.1.5.3 Conditional Recognition

As Shaw puts it, the political nature of recognition has been especially marked with reference to what has been termed conditional recognition. This refers to the practice of making the recognition subject to the fulfilment of certain conditions: for example, the good treatment of religious minorities as occurred with regard to the independence of some Balkan countries in the late nineteenth century; the condition like respect for human rights, boarders and so on put by EU during the entry of Slovenia, Croatia and Bosnia-Herzegovina; or the granting of most-favoured-nation status to the recognized state. However, breach of the particular condition does not invalidate the recognition. It may give rise to a breach of international law and political repercussions but the law appears not to accept the notion of a conditional recognition as such. The status of any conditions will depend upon agreements specifically made by the particular parties. It is, however, important to distinguish conditional recognition in this sense from the evolution of criteria for recognition generally, although the two categories may in practice overlap.

4.1.5.4 Collective Recognition

The usefulness of collective recognition has often been stressed. Collective recognition would amount to recognition by means of an international decision, whether by an international organization or otherwise. Such recognition signifies the importance of the international community in its collective assertion of control over membership and for the same reason, it has not been warmly welcomed, nor can one foresee its general application for some time to come. The idea has been discussed particularly since the foundation of the League of Nations and was re-emphasized with the establishment of the United Nations. However, it rapidly became clear that member states reserved the right to extend recognition to their own executive authorities and did not wish to delegate it to any international

institution. The most that could be said is that membership of the United Nations constitutes powerful evidence of statehood. But that, of course, is not binding upon other member states that are free to refuse to recognize any other member state or government of the UNO.

4.1.5.5 Withdrawal of Recognition

Recognition once given may in certain circumstances be withdrawn. This is more easily achieved with respect to *de facto* recognition, as that is by its nature a cautious and temporary assessment of a particular situation. Where a *de facto* government loses the effective control it once exercised, the reason for recognition disappears and it may be revoked. It is in general a preliminary acceptance of political realities and may be withdrawn in accordance with a change in political factors. *De jure* recognition, on the other hand, is intended to be more of a definitive step and is more difficult to withdraw. Of course, where a government recognized *de jure* has been overthrown a new situation arises and the question of a new government will have to be faced, but in such instances withdrawal of recognition of the previous administration is assumed and does not have to be expressly stated, providing always that the former government is not still in existence and carrying on the fight in some way. Withdrawal of recognition of one government without recognizing a successor is a possibility and indeed was the approach adopted by the UK and France, for example, with regard to Cambodia in 1979. However, with the adoption of the new British policy on recognition with regard to governments, the position is now that the UK government will neither recognize nor withdraw recognition of regimes. Withdrawal of recognition in other circumstances is not a very general occurrence but in exceptional conditions it remains a possibility.

4.1.6 CONSEQUENCES OF RECOGNITION

Although recognition may legitimately be regarded as a political tool, it involves important consequences in the legal field. Such legal consequences affecting the rights powers privileges of recognized states or government. Recognized states have both international and national consequences of their recognition.

4.1.6.1 International Consequences

In a good number of cases it can be accepted that recognition of a state or government is a legal acknowledgement of facts already in place. It may be said that for international purposes, the declaratory theory of recognition holds true – recognition is status confirming. Hence, it cannot be assumed that non-recognition of a state will deprive it from its rights and duties before international law, except for those situations where it may be possible to say that recognition is constitutive of the legal entity.

In general, the political existence of a state is independent of recognition by other states, and thus an un-recognized state must be deemed subject to the rules of international law. It cannot consider itself free from restraints as to aggressive behaviour, nor can its territory be regarded as nobody's land. As Shaw puts it, non-recognition, with its consequent absence of diplomatic relations, may affect the un-recognized state in asserting its rights or other states in asserting its duties under international law, but will not affect the existence of such rights and duties. On the other hand under the municipal law the position is totally different and in the next section we understand the same.

4.1.6.2 Internal Consequences

As recognition is fundamentally a political act, it is reserved to the executive branch of government and accordingly the executive will have the principal responsibility over foreign affairs including the decision to recognize a State or a government. The domestic courts then are bound to follow the executive decision. If the executive has not recognized a certain situation, the courts are obliged to treat the situation in question correspondingly, that is to treat the non-recognized entity and its acts a legal nullity. This means that the judiciary must as a general principle accept the discretion of the executive and give effect to its decisions. Judiciary can only accept and enforce the legal consequence which flows from the executive's political decision.

To this extent, Shaw considers recognition as constitutive, because the act of recognition itself creates legal results within the domestic jurisdiction. In the United Kingdom and the United States particularly, the courts feel themselves obliged to accept the verdict of the executive branch of government as to whether a particular entity should be regarded as recognised or not.

If the administration has recognized a state or government and so informs the judiciary by means of a certificate, the position of that state or government within the municipal structure is totally transformed. It may sue in the domestic courts and be granted immunity from suit in certain instances. Its own legislative and executive acts will be given effect to in the courts of the recognizing state and its own diplomatic representatives will be able to claim the various immunities accorded to the official envoys of a recognized state. In addition, it will be entitled to possession in the recognizing state of property belonging to its predecessor.

4.1.7 LET US SUM UP

In this lesson so far we have discussed about the importance of a State's Recognition and how through this recognition a state becomes the member of international community and acquires its international entity. As a part of it, we have tried to understand the basic difference between the theoretical propositions of the Constitutive and Declaratory Theory. Then we moved towards a discussion on various modes of recognition and the withdrawal of recognition. As no state can establish its diplomatic and political relations other consequences in the absence of its recognition, we have further proceeded towards a discussion on the international and internal consequences of a State's Recognition.

4.1.8 EXERCISES

1. Explain major propositions of Constitutive and Declaratory Theory ?
2. Why is recognition important for a State? What are different modes of such recognition?
3. Give a detail of the International and Internal consequences of Recognition ?
4. Write the difference between *de facto* and *de jure* recognition ?
5. What do you understand by Express and Implied Recognition?

4.2 STATE SUCCESSION AND STATE RESPONSIBILITY

- A. Lalitha

STRUCTURE

4.2.12 Exercise

4.2.0 OBJECTIVES

The present lesson analyses issues related to the State Succession that is how a new state emerges from the earlier entity and what constitute the basic responsibilities of the State with respect to treaties, state property and debts as well as nationality. After going through this lesson, you will be able to:

- define and identify various forms of state Succession;
- understand the main theoretical approaches to the State Succession; and
- learn how the codification of the rules governing State Succession took Place.

4.2.1 INTRODUCTION

States are no exception either to change or to the wrongful acts they commit towards the international community. Federations, mergers, dissolutions and secessions that take place from time to time result in the disappearance of old states and appearance of new states. Thus a new state succeeds the old one and in international public law, the principle of state succession essentially involves the replacement of one state by another in the responsibility for the international relations of territory. The state whether a new or old is also held responsible for it wrongful acts and the principle of state responsibility provides that whenever one state commits an internationally unlawful act against another state, it is internationally responsible for reparations. Both the principles are considered important, complex and contentious in international law. In the current lesson we will look into both the concepts beginning with the concept of State Succession.

4.2.2 THE CONCEPT OF SUCCESSION IN PUBLIC INTERNATIONAL LAW

You have studied in earlier lessons that States are the main actors in international relations, but compared to the subjects within the domestic legal system, they are only small in number in international setting. Given their relatively small number, their function as the main producers of international law and as almost the only actors called upon to ensure observance of the law, their role in this system is by far greater than that of the subjects of domestic law. Hence, any change to the key elements of the international system has a greater impact on it than on the domestic system. Such changes particularly occur in the

case of the demise or creation of states. The main legal problems generated in such cases, especially by the emergence of new states, involve how and under what conditions new entities are accepted as actors within this system, what should happen to the property belonging to and the debts assumed by the predecessor and how should legal relations of the new states towards existing states be regulated, based on either international customary law or on treaty law. In particular, the latter issue is treated under the subject "state succession in matters of treaties" using terminology common to domestic private law.

The institution of succession was taken from civil law, where we find it in the form of transfer of rights and obligations either after the death of an individual (assigning an inheritance) or after the termination of a legal person (by bankruptcy). However, as Marian Vladoiut observes, in international law, the term succession is used only in terms of its conventional meaning because it was not possible to arrive at a sum of rules, of principles able to regulate the transfer of sovereignty over a territory from one state to another Therefore, in international law the concept of succession has no counterpart in terms of private individuals or legal entities, but refers only to the transfer between states.

State succession has become increasingly important since World War II, as it affected more States and more legal relationships than ever before. Approximately 100 new States emerged with the end of decolonization. Recently, Germany reunified, while the Soviet Union, Yugoslavia and Czechoslovakia dissolved. These changes affected more legal relationships than the earlier decolonization process. Thus today, under the international public law there emerged three aspects of state succession namely: a) state succession in respect of treaties; b) succession in respect of matters other than treaties; and c) successions in respect of membership of international organizations. In the subsequent section you will study these issues in detail.

4.2.3 DEFINITION OF STATE SUCCESSION

The concept of succession under public international law is an extremely complex and disputed one in International Law. Even though, there is extensive literature on the subject in International Law, it is rather inconsistent and confusing. It is such a subject under whom wide practices have come into being and as a result of theoretical polarization exists depriving the concept any agreed theoretical structure. In this regard, within the UN

system the International Law Commission has considered the matter extensively. Owing to its efforts, two multilateral treaties were negotiated and adopted aiming to identify and regulate the general trends used in practice in terms of solving various situations of state succession.

They are the C*onvention on Succession of States in respect of Treaties* and *Convention on Succession of States in Respect of State Property, Archives and Debts*, both adopted in Vienna in 1978, respectively 1983. The latter convention has not fulfilled the required number of ratifications so far to enter into force. A particular application of the rule of state succession to treaties is the succession of states in international organizations.

An official definition of "state succession" being expressed in Article 2 (1) (b) of the Vienna Convention of 1978, according to which, "succession of States means the replacement of one State by another in the responsibility for the international relations of territory." With this orientation towards national territory the definition applies to a great number of practical cases of succession, except for those where there is no actual transfer of territory. Thus the concept of State succession today merely represents a collective designation for very different instances of succession with more or less close connections to a given State territory. A basic, albeit not comprehensive, criterion of legal delimitation is the status as a subject of international law; in this way, "State personality" provides a key to the whole problem of State succession. At the same time the role played by other states through recognition and agreement with the process are especially important.

4.2.4 FORMS OF STATE SUCCESSION

Emanuelli observes that State succession may take different forms:

1. A State may break up and disappear giving way to the emergence of two or more new States (former USSR: 1991; Yugoslavia: 1991-1992; Czechoslovakia: 1993);
2. A portion of the territory of a State may secede or separate and become the seat of a new State (Pakistan from India: 1947; Bangladesh from Pakistan: 1971; Eritrea from Ethiopia: 1993);
3. A colony may become independent and give rise to a newly independent State (starting with Haiti in 1804);

4. Two or more States may merge to create a single new State (the merger of Syria and Egypt to form the United Arab Republic between 1958 and 1961);

5. A State may be taken over and assimilated by another State (absorption of the German Democratic Republic by the Federal Republic of Germany: 1990);

6. A portion of the territory of a State may be transferred from one State to another State by way of cession: such was the case in the purchase of Louisiana by the United States from France in 1803.

As a form of State succession, the cession of a territory from one State to another was quite current at the time. It often accompanied by the conclusion of a peace treaty between the predecessor State and the Successor State. In some cases, the Predecessor State remains in existence, so that the succession is said to be partial: such was the case when France ceded Louisiana to the United States. In other cases, the Predecessor State does not survive the succession, so that the succession is said to be total, as with the dissolution of the former USSR. However, a change of regime, even as drastic as the shift from Tsarist Russia to the Soviet Union or from Saddam Hussein's Iraq to a democratic or a religious State, does not equate to a succession of State. Indeed, international law traditionally distinguishes between changes of regime, on one hand, and succession of States, on the other. Changes of regimes do not affect the continuity of States in which they occur. As a result, a change of regime will not, as a rule, affect the rights and obligations of the State in which the change takes place. So, Iraq will keep its seat at the UN and will remain bound by commitments made by the former regime. On the other hand, regardless of the form it takes, State succession will in some way affect the rights and obligations of the States concerned (predecessor and successor States). It may also affect the rights and obligations of third parties. The extent to which the rights and obligations of States will be affected by State succession may vary with each situation since it depends on a number of factors: what is the nature of the rights and obligations at stake? (Treaty rights and obligations? Rights and obligations relating to public property and debts?); what form does the State succession take? (partial or total succession?); in what context does the succession of States occur? (colonial or non-colonial case?); which legal approach should govern the issues arising from State succession?

In order to deal with the above mentioned kind of questions and the legal problems arising from the state succession various theories were propounded, from such theories we will briefly discuss about two prominent theories in the following section.

4.2.5 THEORETICAL APPROACHES TO STATE SUCCESSION

Among various theories that were offered to solve the problem of State Succession, theories such as Universal Succession Theory, which is also called as the continuity theory, and the Clean Slate Theory are prominent and the same theories will be discussed here in brevity.

4.2.5.1 The Doctrine of Universal Succession

The doctrine of "universal succession" (also known as doctrine of continuity) provides that the rights and obligations of the Predecessor State, relating to the territory transferred, are transmitted to the Successor State. Thus, the Successor State inherits the treaty rights and obligations of the Predecessor State relating to the territory transferred. As well, the Successor State inherits public property and debts belonging to the Predecessor State relating to the territory transferred. Indeed, the "universal succession" doctrine provides that the Successor State ensures the continuation of the Predecessor State's sovereignty over the territory transferred.

Under this theory, Successor assumes the whole of the legal clothing of the person to whom he succeeds; steps, as it were, into his shoes. He takes over his rights and liabilities of every kind; his property and the debts and other obligations (such as rights of action for damages for breach of contract) owing to him, and the debts and obligations which he owes.

4.2.5.2 The Clean Slate Doctrine

The "Clean Slate" doctrine, on the other hand, was developed in the late 19th century under the influence of voluntarist theories which dominated international law during that period. According to such theories, sovereign States can only enjoy rights and incur obligations to which they consent. Therefore, the rights and obligations of the Predecessor State relating to the territory transferred cannot be considered to automatically pass to the Successor State. It asserts that the Successor State substitutes its sovereignty over the

territory transferred to that of the Predecessor State instead of ensuring its continuation. Therefore, the Successor State does not inherit the rights and obligations of the Predecessor State with respect to the territory transferred.

As Emanuelli cites, examples of both the "universal succession" and the "clean slate" doctrines can be found in the practice of States. Thus, while the "universal succession" doctrine governed the emergence of Dominions, such as Canada, as independent States, the "clean slate" doctrine was invoked by Israel. However, State practice rarely reflects either the "universal succession" doctrine or the "clean slate" doctrine in their entirety. In most cases of State succession, some rights and obligations relating to the territory transferred are transmitted from the Predecessor State to the Successor State, while others are not. Thus, following the absorption of the German Democratic Republic (GDR), the Federal Republic of Germany took over the property and debts of the GDR but refused to be bound by its treaties.

This way, the State practice relating to succession has been inconsistent as a consequence of the changing attitude of states on the incorporation of new states in the existing community of states. Even today the practice lacks uniformity and fails to substantiate either the "universal succession' or the "clean slate" approach even today. Nonetheless, in order to shed some light on this confusing area of international law, efforts have been made under the aegis of the United Nations to codify the rules governing State succession and in the next section we will gain some understanding about the same.

4.2.6 CODIFICATION OF THE RULES GOVERNING STATE SUCCESSION

Amidst the uncertain practice of States with respect to State succession, the International Law Commission (I.L.C.) has endeavoured to codify the rules governing three areas:

1. succession of States with respect to treaties;
2. succession of States with respect to public property, archives, and debts;
3. succession of States and nationality of natural persons.

4.2.6.1 Succession of States with respect to Treaties

In order to clarify some of the rules relating to succession to treaties, the International Law

Commission drafted the Vienna Convention of the Succession of States in respect of Treaties. The Convention was concluded in 1978. It entered into force in 1996. The general solution which is embodied in this convention is based on a distinction between State succession arising out of colonial cases and State succession arising out of non-colonial cases. According to this distinction, "newly independent States", i.e. States born out of the decolonization process, do not automatically inherit treaty rights and obligations previously concluded on their behalf by colonial powers (Art. 16). However, they may unilaterally choose to succeed to multilateral treaties to which the Predecessor State is a party (Art. 17). In all non-colonial cases, including those involving a cession of territory, the rule is different. As a rule, the Successor State succeeds to treaty rights and obligations concluded by the Predecessor State (Art. 34). This distinction between colonial and non-colonial cases is informed by the evolution of State practice after World War II. Yet, it is criticized by most states which prefer a general application of the "clean slate" doctrine with respect to succession to treaties regardless of the form of State succession. Today the aforementioned distinction is becoming obsolete as the decolonization process comes to an end. What remains is the rule of continuity which is not favoured by States. As a result, the Convention came into force only in 1996. So far, it has been ratified by less than 20 States.

4.2.6.2 Succession of States with respect to State Property, Debts and Public Achieves

The Vienna Convention on the Succession of States in Respect of State Property, Archives and Debts was adopted in 1983. Its rules are also based on a distinction between State successions arising out of colonial cases and State succession arising out of non-colonial cases. This distinction, however, does not reflect the practice of States. For instance, in colonial situations, a "newly independent State" is entitled, in whole or in part, depending on the case, to property owned by the predecessor State, wherever located, that originated in the territory transferred (Art. 15 (1) (b), (c), (e), (f)). Moreover, the Convention provides that no public debt is transmitted to a "newly independent State" without its consent (Art. 38 (1)).

In non-colonial situations, the Convention provides that the Successor State is entitled to an equitable part of the public property of the Predecessor State which is not otherwise

transmitted (Arts. 17 (1) (c); 18 (1) (b), (c)). The predecessor State may, in return, be entitled to some compensation (Arts. 17 (3); 18 (2)). As for debts, the Vienna Convention provides that, short of an agreement to the contrary, an equitable portion of the public debt of the Predecessor State passes to the Successor State. To establish that portion, considerations relating to the amount of property, rights, and other interests which the successor State has acquired by succession maybe taken into consideration (Arts. 37 (2); 40 (1); 41). The Vienna Convention of 1983 is stated that the successor State is entitled to documents which are necessary to administer the territory transferred or which are directly related to that territory (Arts. 27 (2) (a), (b); 28 (1) (b), (c); 30 (1) (a), (b); 31 (1) (a), (b)). So far, the Vienna Convention of 1983 has been ratified by only 5 States, meaning that it has not yet come into force.

The primary impediment to broader ratification is that most western States disagree with its distinction between colonial and non-colonial situations. However, as mentioned before, the significance of this distinction is lost to the fact that the decolonization phenomenon is coming to an end.

4.2.6.3 Succession of States with respect to the Nationality of Natural Persons

In 2001, the UN General Assembly adopted the resolution 55/153**,** dealing with the "nationality in relation to the succession of States" and 26 articles pertaining to the subject were annexed to the resolution and they were adopted on second reading by the International Law Commission in 1999. Contrary to the recommendation of the Commission, the draft articles were not adopted by the General Assembly in the form of a declaration. Instead, Resolution 55/153 describes the draft articles as "a useful guide for practice in dealing with" nationality of natural persons in relation to succession of States. It also acknowledges that the work of the International Law Commission on this topic could contribute to the elaboration of a convention or other appropriate instrument in the future. In that respect, Resolution 55/153 invites governments to comment on the question of a convention on nationality of natural persons in relation to the succession of States. With respect to succession of States, the draft provisions annexed to Resolution 55/153 favour the habitual residence of an individual as the relevant connecting factor to determine whether he/she loses the nationality of the Predecessor State and acquires that of the Successor State (arts. 5, 8, 14, 20, 22, 24, 25). The draft articles further provide a right of option for

individuals who are affected by a succession of States (Arts. 11**,** 26). Finally, in view of several developments that took place, the draft articles annexed to Resolution 55/153 still remain to be an expression of the progressive development of international law rather than a codification of existing rules.

To sum-up the discussion so far we had about state succession, we have studied in the introductory part that State succession remained to be one of the complex and highly contested concepts in International Law. While the successions that took place in the initial phases were in adherence to the continuity doctrine, however, slowly this doctrine found its replacement by the "clean" slate doctrine under the influence of voluntarist theories. This development is reflected in the practice of States which became independent through the process of decolonization. The State practice relating to State succession is not uniform. It often embodies both the doctrine of continuity and the "clean slate" doctrine in a proportion which varies from case to case. Even though, attempts were made to codify the rules pertaining to succession, they remained ineffective as the states were not willing to ratify such codification.

4.2.7 STATE RESPONSIBILITY

The doctrine of state responsibility is one of the core tenets of international law. As Malcom N.Shaw discusses, State responsibility may be understood that "if a state commits an internationally unlawful act against another State, it will be internationally responsible for reparation". Legally speaking state responsibility is "simply the principle which establishes an obligation to make good any violation of international law producing injury". State responsibility arises out of the legal maxim stated by Grotius in 1646 that "every fault creates the obligation to make good the losses". As states are the conventional subjects of international law, technically the principle of state responsibility applies only on the state-to-state level. Thus State responsibility arises out of the international legal system and the principles of State sovereignty and equality of States.

4.2.8 DEVELOPMENTS IN CODIFICATION

The subject of State responsibility had been selected for codification under the League of Nations, and was one of the principal subjects of the unsuccessful conference in The

Hague in 1930. In 1948, the United Nations General Assembly established the International Law Commission (ILC), and State responsibility was selected amongst the first 14 topics to be dealt with by the new body. Between 1948-75 the International Law Commission worked extensively on the subject. In the year 1975, it has initiated its work on the draft articles on the State responsibility and the articles were adopted by ILC on August, 2001 and it was followed by the adoption of UN General Assembly in the same year, recommending it for the practice of the States and the decisions of international tribunals. The law of State responsibility is essentially concerned with the nature of State responsibility, its legal consequences and implementation of such responsibility.

Since 2001, the draft Articles have been subject of scrutiny by doctrine, jurisprudence and State practice. As an example, successive studies of the Secretariat show that, until 31 January 2013, over 200 decisions of international courts, tribunals and other bodies referred to the draft Articles, which is a good indicator of their relevance. However, and as the studies by the Secretariat also demonstrate, those decisions did not always coincide in their interpretation of some of the draft Articles. Furthermore, and although the Commission's work has been in general well received, it is known that some of those draft provisions do not share the same level of acceptance by member States.

The General Assembly has been considering since 2001 the opportunity of preparing a convention on the topic. It has returned to the possibility of convening a diplomatic conference to adopt a treaty on the basis of the articles in 2004, 2007, 2010 and 2013, without taking a decision. It is scheduled to consider the fate of the articles again in 2016. In 2013, the General Assembly, while acknowledging the increasing relevance and usefulness of the draft Articles in daily practice, decided to defer to the 71st session of the General Assembly (2016) the question of the adoption of a convention on the Responsibility of States for Internationally Wrongful Acts. The question is divisive and the General Assembly has not been able so far to reach a consensus on the need to adopt a convention on the Responsibility of States. Even though there are different perspectives on this subject, there is a growing sentiment that the time has come to seek agreement on a way forward.

Against this background of the developments in the codification of State Responsibility of the States for Internationally Wrongful Acts, in the next section you will gain understanding about the basic definitions provided in the articles and their structure in brief.

4.2.8.1 Structure of the "Articles"

The "Articles" define internationally wrongful act as "a conduct consisting of an action or omission attributable to the State under International Law that constitutes a breach of an international obligation of the State." Further, the breach of an international obligation is defined "as an act which is not in conformity with what is required of the State by that Obligation". They also provide that every internationally wrongful act of a State entails responsibility.

The 59 Articles on the Responsibility of States for Internationally Wrongful Acts are divided into four Parts.

Part One (The Internationally Wrongful Act of the State, articles 1-27) is further divided into five Chapters (General Principles, articles 1-3; Attribution of Conduct to a State, articles 4-11; Breach of an International Obligation, articles 12-15; Responsibility of a State in Connection with the Act of another State, articles 16-19; Circumstances Precluding Wrongfulness, articles 20-27).

Part Two (Content of the International Responsibility of a State, articles 28-41) is divided into three Chapters (General Principles, articles 28-33; Reparation for Injuries, articles 34-39; Serious Breaches of Obligations under Peremptory Norms of General International Law, articles 40-41).

Part Three (The Implementation of the International Responsibility of a State, articles 42-54) consists of two Chapters (Invocation of the Responsibility of a State, articles 42-48; Countermeasures, articles 49-54).

Part Four (articles 55-59) contains the final five General Provisions of the text.

These articles establish the Basis for the nature of State Responsibility and various provisions covered under those articles will be is discussed in the following section.

4.2.8.2 Basis and Nature of State Responsibility

State Responsibility consists of three basic elements and these three elements are required for establishing the responsibility of the State. They are: a) the existence of international legal obligation between the concerned States; b) the occurrence of a wrongful act or the omission of an act in violation of such an obligation, which is imputable to the State; and c)

loss or damage has resulted from such wrongful act or omission.

State responsibility only arises when the act of omission which constitutes a breach of legal obligation is attributable to a State. As it was already mentioned, a state is responsible for wrongful acts which constitute international delicts (wrongful acts) but not international crimes (ILC articles does not mention about international crimes due to their controversial nature, examples of such crimes include genocide, slavery, colonial domination, aggression ,apartheid and massive pollution of the atmosphere). Even though the ILC Draft Articles made a distinction between international crimes and international delicts, ILC omitted any mention of international crimes of States in its Articles as finally approved.

Wrongful Acts that can be attributed to the State

"Imputability" is a legal notion which incorporates the acts or omissions of the State officials to the State itself and which renders the State liable for damages to persons or properties resulting from such acts. While a State is responsible only for its own acts or omissions, it is often identified with its "government" which includes the executive, the legislature and the judiciary, and also the central authorities as well as local authorities. It is established by the case law that a State is liable for the conducts of any of its organs and the ILC's "Articles" also reiterate the rule.

The "Articles" provide that the conduct of any organ (including any person or entity)of a State shall be considered as an act of the State concerned under International Law, provided that organ was acting in that capacity in the case in question. Similarly the conduct of an organ of a territorial governmental entity within a State shall also be considered as an act of that State under International law, provided that organ was acting in that capacity in the case in question. Further, the conduct of an organ of an entity which is not part of the formal structure of the State or the territorial governmental entity, but which is empowered by the internal law of that state to exercise elements of governmental authorities, shall also be considered as an act of the State under International Law, provided that organ was acting in that capacity in the case in question.

The State in reality acts through its authorized officials and it is also established that a State is liable for the acts of such officials if those acts are imputable (attributable) to the State. This rule however, depends on the link that exists between the State and the person or

persons committing the wrongful act or omission. While the state is not liable under International Law for all acts of its officials, in those acts that can be attributable to the state, it is liable even when the authorized officials exceed or disobey their instructions, or if they are abusing powers or facilities placed at their disposal by the State.

Even though, the state is not responsible for the wrongful acts committed by private persons, in principle, it is established by case law and reaffirmed by the ILC Articles that a State is responsible for acts of private persons if those persons are acting on behalf of that state, on its instructions, under its control, or exercising elements of governmental authority in the absence of governmental officials and under circumstances which justify them in assuming such authority. It is also responsible for acts of private persons if such acts are accompanied by some act or omission on part of the State, for which it is liable.

With regard of actions of rioters or rebels causing loss or damage to a foreign State or its nationals, the general principle is that the State is not liable for such actions if it has acted in good faith and without negligence. However, in such a case, the State is under a duty to show due diligence. Nevertheless, when the rebellion movement succeeds in establishing the new government of a State or a new State in part of the territory of the pre-existing State, it will be held responsible for its activities prior to its assumption of authority; this rule is even reaffirmed by the ILC Articles.

4.2.9 LEGAL CONSEQUENCES

The state responsibility for international wrongful acts entails certain legal consequences on that State. The first consequence is the *cessation of the wrongful act* (Art30**)**, and the second is the *reparation* (Art31).

Cessation of the Wrongful Act

The first legal consequence is that the wrongdoing State is obliged to cease the wrongful act, if it is continuing, and to offer appropriate assurances and guarantees on its non-repetition.

Reparation

The second legal consequence is that the wrongdoing state is under the duty to remedy its acts. The injured State is entitled for full reparation. The reparation may take the form of

restitution in kind, compensation and *satisfaction,* either singly or in combination. The choice of a particular form of reparation varies depending upon the content of the obligation that has been breached or the nature of the injury sustained

Article 35 of the ILC Articles deals with *Restitution in kind*, under which, the injured State is entitled to obtain from the State which has committed an internationally wrongful act restitution in kind, that is, the re-establishment of the situation which existed before the wrongful act was committed, provided and to the extent that restitution in kind:

(a) is not materially impossible;

(b) would not involve a breach of an obligation arising from a peremptory norm of general international law.

If restitution in kind is not available, *compensation* (Art 36) for the damage caused must be paid. Monetary compensation covers any financially assessable damage suffered by the injured state, and may include interest, and may include, in certain circumstances, loss of profits. It may be paid for both material and non-material (moral) damage.

The third form of reparation mentioned under Art 37 is *Satisfaction.* It is a remedy which is appropriate in cases of moral damage and non-monetary compensation. It may take the forms of an official apology, a nominal damage, the punishment of the guilty officials or the acknowledgement of the wrongful character of an act.

4.2.10 THE IMPLEMENTATION OF STATE RESPONSIBILITY

A State is entitled to invoke the responsibility of another State if the obligation breached is owed to it individually or to a group of States, including it, or to the international community as a whole. A State other than an injured State may invoke the responsibility of another State if either the obligation is owned to a group of States including it, and is established for the protection of a collective interest of the group, or the obligation breached is owed to the international community as a whole. In such cases, a State may demand the cessation of the wrongful act, assurances and guarantees of non-repetition, satisfaction, as well as reparation. These doctrines are reaffirmed in the ILC Articles beginning from Art 42.

Where several States are injured by the same wrongful act, each State may separately invoke responsibility. Where several states are responsible, the responsibility of each may

be invoked. However, responsibility cannot be invoked if the injured State has validly waived the claim, or it has caused, by reason of its conducts, in the lapse of the claim. Any waiver needs to be explicit and clear. An injured State may seek to settle its claim peacefully through any of the peaceful means, or it may take counter measures against the Wrongdoing State. In a case of an injury affecting its national, the State may provide him with diplomatic protection.

A State may present an international claim against the wrongdoing State before an international tribunal. However, a State has to establish its qualifications for bringing the claim and the validity of the claim itself before the merits of the claim can be addressed. Where a claim is brought before an international tribunal, objections may be raised against its admissibility. The first is an objection to the jurisdiction of the tribunal; if successful, it will stop all proceedings in the case. Other objections are the nationality of the claimant, the non-exhaustion of local remedies, and the undue delay in presenting the claim.

4.2.10.1 Diplomatic Protection and Nationality of Claims

The doctrine of state responsibility with regard to injuries to nationals is based upon the attribution to one State of the wrongful act or the omission and the capacity of the other State to adopt the claim of its injured national. Nationality is the link between the individual and his State as regards particular benefits and obligations and it is only through the State the individual may obtain the full range of benefits available under International Law.

Although a State is under a duty to protect its nationals, it is not under a duty to provide them with diplomatic protection. Thus a State may or may not provide diplomatic protection to its nationals. Diplomatic protection consists of resorting to diplomatic action or other means of peaceful settlement by a State adopting in its own rights the cause of its nationals in respect of an injury to any of its national arising from an internationally wrongful act of another State. Such diplomatic protection is not a right of the national concerned, but a right of the State which may or may not choose to exercise.

The exercise of diplomatic protection is not regarded as intervention contrary to International Law. A State may take up the claim of its national against another state before an international tribunal. Once a State does this, the claim then becomes that of the state, not of the injured individuals. Thus, the State may waive its claim, but the individual cannot.

4.2.10.2 The Exhaustion of Local Remedies

It is established in the customary International Law that before international proceedings are instituted or claims or representations made, the remedies provided by the local State should have been exhausted. This rule implies that an injured individual must exhaust remedies in the courts of the Defendant State before an international claim can be brought on his behalf. It is a rule which is justified by political and practical considerations, not by any logical necessity deriving from the International Law. Among the political and practical considerations suggested to justify such rule are the avoidance of resorting to diplomatic protection in small and insignificant claims, and the greater suitability and convenience of local courts as forums for claims of individuals. This rule is reaffirmed in the ILC Articles which provides that the responsibility of a State may not be invoked if the claim is one to which the rule of exhaustion of local remedies applies and any available and effective local remedy has not been exhausted.

The exhaustion of local remedies rule does not apply where one State has been guilty of a direct breach of International Law causing direct injury to another State. It applies to cases of diplomatic protection where a State claims injury to its nationals, and when effective remedies are available in the Wrongdoing State. A claim will not be admissible in the International Law unless the natural or legal foreign person concerned has exhausted the legal effective remedies available to him locally in the Defendant State.

4.2.10.3 Unreasonable Delay and Improper Activities of the Injured National

A claim by a State against another State will not be admissible if it is presented after an unreasonable delay by the Claimant State. It may be inadmissible if the injured national has suffered injury as a result of his improper activities. However, in such a case, the injury suffered by the national must be roughly proportional to his improper activities.

4.2.10.4 Resorting to Countermeasures

An injured State may seek to settle its claim peacefully through any of the peaceful means, or it may take countermeasures against the wrongdoing State. Countermeasures are acts of retaliation which are traditionally known as “reprisal”. They may be in a form non-compliance of the injured State with its legal obligations towards the Wrongdoing State, or unilateral coercive actions taken by the injured State against the Wrongdoing State.

Such measures are a type of self help utilized in order to induce the Wrongdoing State to discontinue its wrongful act and to provide reparation. Today, there are certain legal limits to countermeasures. The most important limit is the prohibition of the armed retaliations because of the general prohibition of the use of force provided in Article 2(4) of the Charter of the United Nations. Countermeasures have to be proportional to the wrongful act. They must not violate basic human rights or the peremptory norms of International Law.

To conclude the discussion, more than 350 years ago, the treaty of Westphalia led to the establishment of the classic system of international law, which centred exclusively on sovereign states that had defined territories and were theoretically equal. States made international law and were accountable to each other in meeting international legal obligations. Even though the States continue to be central actors even in the twenty-first century, where the international community is globalizing, integrating, and fragmenting, At the same time many other actors like international organizations, nongovernmental organizations, corporations, ad hoc transnational groups both legitimate and illicit, and individuals have also become important As a result the international law inhabits a much more complicated world than the one that existed fifty or even thirty years ago.

The articles on state responsibility of the International Law Commission's (ILC) Articles on State Responsibility for wrongful acts affirm this traditional, state centric definition of state responsibility, crystallize customary international law on state responsibility and set out reparation, restitution, compensation, satisfaction and guarantees of non-repetition as the basic legal tools states have to remedy injuries. As the initial ILC report in January 1956 observed, it is important to do more than the codification of the law; it is necessary to change and adapt traditional law so that it will reflect the profound transformation which has occurred in international law and to bring the "principles governing State responsibility" in line with international law at its present stage of development.

4.2.11 LET US SUM UP

In the present lesson we tried to understand what the state succession means and what are its forms and the main theoretical propositions namely the doctrine of Universal Succession and the doctrine of Clean Slate, relating to the state succession. Then the

discussion proceeded towards the codification of the rules governing State succession in relation to treaties, with respect to property and debts as well as nationality issues which are very important from the point of the lesson framework. In the last section we have studied the legal consequences in case of violation of state responsibility.

4.2.12 EXERCISES

1. Define State Succession and discuss various forms of State Succession ?
2. Deal with the two theoretical arguments relating to the State Succession ?
3. Give a detail of the codification of the rules governing the State Succession ?
4. Briefly discuss about the Clean Slate Doctrine ?
5. Write a short note on succession of State with respect to Treaties ?

4.3 SETTLEMENT OF INTERNATIONAL DISPUTES: PACIFIC AND COERCIVE METHODS

- A. Lalitha

STRUCTURE

4.3.0 OBJECTIVES

The present lesson makes you aware of various judicial and non-judical mechanisms developed internationally to settle disputes between the states, with particular reference to negotiation, mediation, arbitration and also critical role of International Court of Justice in settling the disputes. After going through this lesson, you will be able to:

- understand the need for pacific settlement of disputes and how UN promoted such culture;
- learn about the basic difference between the Non-Judicial and Judicial Methods of dispute settlement; and
- comprehend the merit of pacific settlement of dispute over the Wars and Use of Force.

4.3.1 INTRODUCTION

Disputes between States belong to the realm of Public International Law. Opposing views, disagreements between States or a sense of grievance do not necessarily mean that a dispute exists. In international law 'dispute' tends to be treated as a technical term. As Geoffrey Palmer mentions referring to a case in 1924, the Permanent Court of International Justice defined dispute 'as a disagreement on a point of law or fact, a conflict of legal views or interests between two persons.'

This Peaceful dispute resolution at the international level has occurred more or less formally since the existence of international law itself, much before the creation of the Permanent Court of Arbitration. Indeed states engaged in the settlement of disputes through a range of bilateral and ad hoc mechanisms. As Gideon Boas mentions, an important nineteenth-century example was the settlement of the famous *Caroline* dispute, relating to the sinking by the British of a US ship. That event, still significant in understanding self-defence in international law, was resolved by diplomatic exchanges between the affected states. The more ancient examples of states resolving their disputes by peaceful means can be often found in the Roman system of *jus gentium* (law of nations).

However, is often felt that prior to 1945, there was no universally accepted prohibition against the use of force by states to settle disputes except for the existence of some loose

legal framework. Although, the Hague Peace Conferences of 1899 and 1907 finally led to creation of an arbitral framework, a Permanent Court of International Justice and a multilateral treaty rendering the use of force in large part unlawful, they remained unsuccessful in preventing the Second World War. At the same time, the norms that developed during this point of time, did lend a greater legitimacy to the prosecution of German and Japanese leaders following the Second World War for the crime of aggression.

Subsequently, the creation of United Nations in 1945 gave birth to a radical new international framework under which states must never resort to armed force to settle disputes except in limited circumstances.

4.3.2 U.N CHARTER AND ITS VARIOUS PROVISIONS

Article 2(4) of the UN Charter prohibits the threat or use of force by states other than in individual or collective self-defence (Article 51). Article 2(3) provides that all members 'shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered'. Under the U.N Charter, pacific settlement of disputes appears in Chapter VI and Articles 33 to 38 deal with the same as mentioned below.

Article 33

The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.

Article 34

The Security Council may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security.

Article 35

Any Member of the United Nations may bring any dispute, or any situation of the nature referred to in Article 34, to the attention of the Security Council or of the General Assembly.

A state which is not a Member of the United Nations may bring to the attention of the Security Council or of the General Assembly any dispute to which it is a party if it accepts in advance, for the purposes of the dispute, the obligations of pacific settlement provided in the present Charter. The proceedings of the General Assembly in respect of matters brought to its attention under this Article will be subject to the provisions of Articles 11 and 12.

Article 36

The Security Council may, at any stage of a dispute of the nature referred to in Article 33 or of a situation of like nature, recommend appropriate procedures or methods of adjustment. The Security Council should take into consideration any procedures for the settlement of the dispute which have already been adopted by the parties. In making recommendations under this Article the Security Council should also take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court.

Article 37

Should the parties to a dispute of the nature referred to in Article 33 fail to settle it by the means indicated in that Article, they shall refer it to the Security Council. If the Security Council deems that the continuance of the dispute is in fact likely to endanger the maintenance of international peace and security, it shall decide whether to take action under Article 36 or to recommend such terms of settlement as it may consider appropriate.

Article 38

Without prejudice to the provisions of Articles 33 to 37, the Security Council may, if all the parties to any dispute so request, make recommendations to the parties with a view to a pacific settlement of the dispute.

To quickly consolidate the main provisions that so far we have discussed, Article 33(1) obliges parties to a dispute to seek resolution first by 'negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice'. Article 33(2) gives the Security Council the power to call upon parties to settle disputes by such means as those listed in Article 33(1) when it deems necessary. The way in which chapter VI is framed allows the Security

Council to mull over in order to form its views on disputes and take any of the actions mentioned below:

- Calling upon the parties to settle when it deems necessary,
- Investigating any dispute or any sanction that might lead to international friction;
- Recommending appropriate procedures or methods of adjustment;
- Dealing with disputes referred by the parties where they have failed to settle it;
- And if all the parties so request making recommendations with a view to the pacific settlement of the dispute.

Besides, the Charter provides that any member may bring any dispute to the attention of the Security Council or the General Assembly. Art 99 enables the Secretary-General to bring to the attention of the Security Council any matter that in his opinion may threaten the maintenance of international peace and security.

The Security Council also has the power under Chapter VII to take measures to maintain or restore international peace and security, which includes the creation of international criminal tribunals. Further, the General Assembly's adoption of Manila Declaration on the Peaceful Settlement of International Disputes on 15th November 1982 has focused the attention of member states on the need to strengthen the process of the peaceful settlement of disputes through progressive development and codification of international rules on the subject.

4.3.3 THE GENERAL OBLIGATIONS FOR STATES

As discussed, the Manila Declaration created a general obligation on the member states to adopt ways to resolve international disputes peacefully. In particular, it obligated that States, as parties to a dispute, shall continue to observe in their mutual relations their obligations under the fundamental principles of international law concerning the sovereignty, independence and territorial integrity of States, as well as other generally recognized principles and rules of contemporary international law.

It further obligates the States to seek in good faith and in a spirit of co-operation an early and equitable settlement of their international disputes by any of the following means:

negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional arrangements or agencies or other peaceful means of their own choice, including good offices. In seeking such a settlement, the parties shall agree on such peaceful means as may be appropriate to the circumstances and the nature of their dispute. Such peaceful means of dispute settlement can be broadly categorized into non-judicial and judicial.

Out of many such means as per the framework of the present lesson we will be discussing about Negotiations, Mediation, Arbitration and International Court of Justice (ICJ). The same will be discussed in the subsequent sections.

4.3.4 NON-JUDICIAL METHODS OF DISPUTE SETTLEMENT

The states under dispute attempt to resolve their dispute without approaching for the judicial remedy. They opt for judicial arbitration only after failing to resolve their problem bilaterally or using the assistance of third party. The non-judicial methods at the disposal of the states are elaborated below.

4.3.4.1 Negotiation

Negotiation is by far the most popular means of dispute settlement and consists of discussions between the interested parties. It is distinguished from other diplomatic means of settlement in that there is no third party involvement and they are purely consensual and informal. Therefore, for negotiations to be successful they require a measure of goodwill, flexibility and mutual understanding between the parties. Negotiations are normally conducted through 'normal diplomatic channels' (foreign ministers, ambassadors, etc) although some states have set up semi-permanent 'mixed commissions' consisting of an equal number of representatives of both parties which can deal with disputes as and when they arise, for example the Canadian-US Joint Commission. Negotiation is used to try and prevent disputes arising in the first place and will also often be used at the start of other dispute resolution procedures.

Even if a negotiation fails to resolve a dispute, it will often assist the parties in clarifying the nature of the disagreement and the issues in dispute and in obtaining a clearer idea of their own and each other's positions, what they are willing to compromise on and what it might take to resolve the dispute. In the Mavromattes Palestine Concessions (Jurisdiction) case

(1924) the PCIJ indicated that negotiation should be a preliminary to bringing a case before the Court in order that the subject matter of a dispute is clearly defined. Many treaties provide for negotiation as a precondition to binding international dispute resolution. Examples include Article 84 of the Vienna Convention on the Representation of States in their Relations with International Organizations (1975) and Article 41 of the Convention on the Succession of States in Respect of Treaties (1978). However, neither in the UN Charter nor otherwise in international law is there any general rule that requires the exhaustion of diplomatic negotiations as a precondition for a matter to be referred to a court or tribunal. Nevertheless, the court or tribunal may direct parties at the preliminary stages of the proceedings to negotiate in good faith and to indicate certain factors to be taken into account in that negotiation process. Ultimately, there is no obligation on states to reach agreement, only that 'serious efforts towards that end will be made'. This requires parties to 'negotiate, bargain and in good faith attempt to reach a result acceptable to both parties'. Examples of a breach of good faith have include unusual delays, continued refusal to consider proposals and breaking off discussions without justification. Negotiations may continue while there are other resolution processes under way, formal or informal, and a resolution may be reached at any time.

4.3.4.2 Mediation

Mediation is the second of the non-binding procedures for the pacific settlement of international disputes. Unlike the negation, in mediation there will be a third party and the third party plays a more active role by offering advice and proposals for a solution of the dispute. This neutral intermediary assists the parties in reaching a negotiated settlement of the dispute. In a growing number of cases parties agree to first try to settle their dispute through mediation, and to resort to arbitration only if the dispute has not been settled within a certain period of time. Mediation is essentially a voluntary process it depends on the continuing cooperation of both parties since either party can withdraw at any time. Employed over the years in diplomatic matters, recently parties have begun using mediation to resolve transnational business disputes prior to binding dispute settlement alternatives or litigation. This method is particularly popular among Asian cultures.

Currently no consensus exists about the specifics of transnational mediation or its procedures, thus further complicating matters when it is employed as the only contractual

means of dispute settlement. However, some international dispute resolution organizations offer procedural rules for mediation. Since mediation has only recently come to the forefront, however, these rules remain vague in many areas. For example, the mediator's duties are not detailed specifically. The International Chamber of Commerce Rules of Optional Conciliation merely state that the mediator has discretion to conduct the proceedings as he or she sees fit. The only restriction imposed on the mediator by many of these rules is that the mediator operates under the principles of impartiality, equity and justice. Mediators are left to determine the contents of these principles. Given the lack of rule specificity and the discretion granted to the mediator, the success of the mediation often depends on the talents and temperament of the mediator. His or her ability to get the disputants to negotiate and work towards compromise is of utmost importance. Ultimately, if these techniques fail and the parties are not satisfied with the settlement, they can pursue other methods of dispute resolution, such as traditional litigation or arbitration. More specifically, when international parties use mediation exclusively, there is no guarantee of a binding or definitive outcome at all.

4.3.4.3 Arbitration

International arbitration is a binding process of resolving disputes between or among transnational parties through the use of one or more arbitrators rather than through the courts. It requires the agreement of the parties, which is usually given via an arbitration clause that is inserted into the contract or business agreement. The decision is usually binding.

The Hague Convention on Pacific Settlement of Disputes 1899 marked the beginning of a new era of arbitration by establishing a Permanent Court of Arbitration (PCA) which began functioning in 1902 and is still in existence. The Permanent Court of Arbitration is a bit of a misnomer since it is neither a court nor is it permanent. The PCA consists of a panel of 300 members (four nominated by each contracting party to the Hague Conventions 1899 and 1907) from whom each disputant can select one or more arbitrators (normally two, one of whom can be a national). The selected arbitrators then choose an umpire who presides over the arbitration. Decision of the arbitration panel is by majority vote. The states do not have to use the PCA procedures necessarily; they can establish ad hoc arbitration tribunals of their own as the arbitration depends on consent. The law to be

applied, the makeup of the tribunal, any time limits must all be mutually agreed before the arbitration starts. The mutual agreement under which the parties agree to submit their one set up to deal with the dispute to arbitration and under which they agree the procedures and rules to be applied is known as the compromise. The compromise should also provide that the arbitration decision will be binding on the parties.

The Model Rules on Arbitral Procedures which were drawn up by the International Law Commission and adopted by the UN General Assembly in 1958. Arbitration has received popularity more recently especially since the coming into force of the Convention on the Settlement of Investment Disputes 1964 which set up an international arbitration centre in Washington to deal with disputes between states arising out of the expropriation of foreign owned property. Arbitration is today most commonly used for the resolution of commercial disputes, particularly in the context of international commercial transactions (International Commercial Arbitration) as the people who have specialist knowledge can be appointed as arbitrators. It is also used in some countries to resolve other types of disputes, such as labour disputes, consumer disputes, and for the resolution of certain disputes between states and between investors and states. It also has the advantage over judicial settlement in that it is usually less expensive. As the number of international disputes mushrooms, so too does the use of arbitration to resolve them.

One question which has been raised recently is whether the decision of an arbitration tribunal is capable of review. It has already been seen that the decisions of such tribunals are to be regarded as final and this would seem to rule out the possibility of review or appeal unless there is a clear error of law. As Gideon Boas cites however, in Guinea Bissau v Senegal (1991) the ICJ was willing to consider whether or not it should declare an arbitration award to be void. Guinea-Bissau alleged that the arbitration tribunal had exceeded its powers, that there was no true majority in favour of the decision, and that the award was based on insufficient reasoning. The Court did not uphold Guinea-Bissau's claims but the fact that it was prepared to investigate the claims would indicate that arbitration awards are susceptible to review by the ICJ. The decision has been criticized on the grounds that it undermines arbitration as a means of achieving final settlement of disputes.

4.3.5 JUDICIAL SETTLEMENT AND THE INTERNATIONAL COURT OF JUSTICE

Judicial Settlement is the fourth method of peacefully settling international disputes. Judicial settlement means a settlement brought about by a properly constituted international judicial tribunal, applying rules of law. The most well known of the international judicial tribunals is the International Court of Justice (ICJ).

The International Court of Justice was established by the Charter of the United Nations, which provides that all Member States of the United Nations are ipso facto parties to the Court's Statute. The composition and functioning of the Court are organized by this Statute, and by the Rules of the Court which are drawn up by the Court itself. The International Court of Justice is the primary judicial organ of the United Nations. It is based in the Peace Palace in The Hague, Netherlands. Its main functions are to settle legal disputes submitted to it by states and to give advisory opinions on legal questions submitted to it by duly authorized international organs, agencies, and the UN General Assembly.

4.3.5.1 COMPOSITION OF ICJ

The ICJ is composed of fifteen judges elected for a nine year term by the UN General Assembly and the UN Security Council from a list of persons nominated by the national groups in the Permanent Court of Arbitration. The election process is set out in Articles 4-12 of the ICJ statute. Judges serve for nine year terms and may be re-elected for up to two further terms. Elections take place every three years, with one-third of the judges retiring (and possibly standing for re-election) each time, in order to ensure continuity within the court. Should a judge die in office, the practice has generally been to elect a judge of the same nationality to complete the term. No two may be nationals of the same country. According to Article 9, the membership of the Court is supposed to represent the "main forms of civilization and of the principal legal systems of the world". Essentially, this has meant common law, civil law and socialist law (now post-communist law).

4.3.5.2 JURISDICTION OF ICJ

As stated in Article 93 of the UN Charter, all UN members are automatically parties to the Court's statute. Non-UN members may also become parties to the Court's statute under the Article 93(2) procedure. For example, before becoming a UN member state,

Switzerland used this procedure in 1948 to become a party. And Nauru became a party in 1988. Once a state is a party to the Court's statute, it is entitled to participate in cases before the Court. However, being a party to the statute does not automatically give the Court jurisdiction over disputes involving those parties. The issue of jurisdiction is considered in the two types of ICJ cases: contentious issues and advisory opinions.

The International Court of Justice acts as a world court. The Court has a dual jurisdiction : it decides, in accordance with international law, disputes of a legal nature that are submitted to it by States (jurisdiction in contentious cases); and it gives advisory opinions on legal questions at the request of the organs of the United Nations or specialized agencies authorized to make such a request (advisory jurisdiction).

4.3.5.3 Contentious Cases

In contentious cases (adversarial proceedings seeking to settle a dispute), the ICJ produces a binding ruling between states that agree to submit to the ruling of the court. Only states may be parties in contentious cases. Individuals, corporations, parts of a federal state, NGOs, UN organs and self-determination groups are excluded from direct participation in cases. The key principle is that the ICJ has jurisdiction only on the basis of consent. Article 36 outlines four bases on which the Court's jurisdiction may be founded.

Firstly, 36(1) provides that parties may refer cases to the Court (jurisdiction founded on "special agreement" or "compromise"). This method is based on explicit consent rather than true compulsory jurisdiction. It is, perhaps, the most effective basis for the Court's jurisdiction because the parties concerned have a desire for the dispute to be resolved by the Court and are thus more likely to comply with the Court's judgment.

Secondly, 36(1) also gives the Court jurisdiction over "matters specifically provided for ... in treaties and conventions in force". Most modern treaties will contain a compromissery clause, providing for dispute resolution by the ICJ. Cases founded on compromissory clauses have not been as effective as cases founded on special agreement, since a state may have no interest in having the matter examined by the Court and may refuse to comply with a judgment. For example, during the Iran hostage crisis, Iran refused to participate in a case brought by the US based on a compromissory clause contained in the Vienna Convention on Diplomatic Relations, nor did it comply with the judgment. Since the 1970s,

the use of such clauses has declined. Many modern treaties set out their own dispute resolution regime, often based on forms of arbitration.

Thirdly, Article 36(2) allows states to make optional clause declarations accepting the Court's jurisdiction. The label "compulsory" which is sometimes placed on Article 36(2) jurisdiction is misleading since declarations by states are voluntary. Furthermore, many declarations contain reservations, such as exclusion from jurisdiction certain types of disputes. The principle of reciprocity may further limit jurisdiction. Of the permanent Security Council members, only the United Kingdom has a declaration. In the Court's early years, most declarations were made by industrialized countries. Since the Nicaragua Case, declarations made by developing countries have increased, reflecting a growing confidence in the Court since the 1980s. Industrialized countries however have sometimes increased exclusions or removed their declarations in recent years. Examples include the USA, as mentioned previously and Australia who modified their declaration in 2002 to exclude disputes on maritime.

Finally, 36(5) provides for jurisdiction on the basis of declarations made under the Permanent Court of International Justice's statute. Article 37 of the Statute similarly transfers jurisdiction under any compromissory clause in a treaty that gave jurisdiction to the PCIJ.

In addition, the Court may have jurisdiction on the basis of tacit consent. In the absence of clear jurisdiction under Article 36, jurisdiction will be established if the respondent accepts ICJ jurisdiction explicitly or simply pleads on the merits. The notion arose in the Corfu Channel Case (UK v Albania, 1949) in which the Court held that a letter from Albania stating that it submitted to the jurisdiction of the ICJ was sufficient to grant the court jurisdiction. Examples of contentious cases include: a complaint by the United States in 1980 that Iran was detaining American diplomats in Tehran in violation of international law; a dispute between Tunisia and Libya over the delimitation of the continental shelf between them.

4.3.5.4 Advisory Jurisdiction

An advisory opinion is a function of the Court open only to specified United Nations bodies and agencies. On receiving a request, the Court decides which States and organizations might provide useful information and gives them an opportunity to present

written or oral statements. Advisory Opinions were intended as a means by which UN agencies could seek the Court's help in deciding complex legal issues that might fall under their respective mandates. In principle, the Court's advisory opinions are only consultative in character, though they are influential and widely respected. Whilst certain instruments or regulations can provide in advance that the advisory opinion shall be specifically binding on particular agencies or states, they are inherently non-binding under the Statute of the Court.

The non-binding character does not mean that advisory opinions are without legal effect, because the legal reasoning embodied in them reflects the Court's authoritative views on important issues of international law and, in arriving at them, the Court follows essentially the same rules and procedures that govern its binding judgments delivered in contentious cases submitted to it by sovereign states. An advisory opinion derives its status and authority from the fact that it is the official pronouncement of the principal judicial organ of the United Nations. Advisory Opinions have often been controversial, either because the questions asked are controversial, or because the case was pursued as an indirect "backdoor" way of bringing what is really a contentious case before the Court.

4.3.5.5 Enforcement

Article 59 of the ICJ provides that a decision of the Court "has no binding force except between the parties and in respect of that particular case". This Article, therefore, indicates that the decision in a particular case is binding on the parties involved in the dispute alone. In practice, however, decisions and Advisory Opinions which advance the jurisprudence of international law are referenced and used in support of subsequent decisions both by the court and other international tribunals. With regard to the parties to a specific case, Article 94 of the UN Charter provides that all Members of the UN undertake to comply with any decision of the ICJ to which they are a party and, if a state fails to comply with this decision, recourse may be had to the Security Council which may make recommendations or decide upon measures to be taken to give effect to the judgment. In practice, the Security Council has refrained from enforcing ICJ decisions, and is unlikely to do so for political reasons.

The record of state compliance with decisions of the ICJ has been mixed. There have been examples of states respecting and complying with the orders of the Court, including

the Territorial Dispute case where measures imposed by the Court in relation to a border dispute between Libya and Chad were complied with. On the other hand, there are a number of cases where states have refused to comply with the decision of the Court, for example the Corfu Channel case, where an order to pay remedies was ignored by Albania, and the Tehran Hostages case, where Iran ignored the Court's order to free the hostages.

4.3.6 LET US SUM UP

In this lesson we discussed how the pacific settlement of disputes slowly replaced force as a method of resolving the disputes between and among states and how the creation of United Nations Organization has radicalized the process of pacific settlement of disputes. The four methods that we discussed are not exhaustive, but many other methods exist outside the purview of the lesson. Reflecting the nature of the international law many of such methods are essentially non binding and in some cases the binding is limited to the consented parties. However, such a settlement of dispute would always become a reference and source in the evolution of international law.

These methods obligate the States to observe their mutual relations, their obligations under the fundamental principles of international law concerning the sovereignty, independence and territorial integrity of States and to seek in good faith and in a spirit of co-operation an early and equitable settlement of their international disputes. Any one particular method or process itself may not lead to the resolution of dispute sometimes, hence, the methods are not to be used isolating from the other but only as a precursor to the one in hierarchy. While the states could not make use of these methods as much as they need to be, owing to several reasons, in the initial phases, off late the methods once again gained prominence indicating the faith in the spirit of co-operation.

4.3.7 EXERCISE

1. What is Pacific Settlement of Disputes? Explain various provisions that deal with pacific settlement of disputes that appear in Chapter VI of under the U.N. Charter?

2. What are Non-Judicial Methods of Dispute Settlement? Discuss each method mentioned in the lesson ?

3. Deal with the basic difference between the Non-Judicial and Judicial methods of Dispute Settlement of Disputes ?

4. Discuss the functions and role of International Court of Justice in dispute settlement?

5. Write a brief note on Negotiation ?

6. What is Arbitration and how it works?

7. What do you understand by Mediation?

4.4 INTERNATIONAL HUMANITARIAN LAW : AN OVERVIEW OF LEGAL REGIME

STRUCTURE **- SAKSHI SHARMA**

4.4.12 Internal Armed conflict and the protocol additional to the Geneva Convention, relating to the protection of Victims of non-international Armed Conflicts (Protocol II) :

4.4.13 Protocol Additional to the Geneva Conventions, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III)

4.4.14 Contemporary issues and challenge with special reference to the implementation of the humanitarian law

4.4.15 Let Us Sum Up

4.4.16. Exercise

4.4.1 INTRODUCTION

International humanitarian law is also known as the laws of war or the law of armed conflict. It is the legal framework applicable to situations of armed conflict and occupation. It is a set of rules and principles aimed at humanitarian reasons so as to limit the effects of armed conflict.

Two principles which are fundamental to IHL

a. Persons who are not, or are no longer, participating in hostilities must be protected; and

b. The right of parties to an armed conflict to choose methods and means of warfare is not unlimited.

It is important to know that can the opposite parties in war use any means and methods of warfare or are there any limits because in war if parties are given freedom to use any means and methods of warfare, then the all kinds of brutalities may also be committed which may outrage the conscience of human civilization. If the persons who fight war, become sick or wounded, can they still be the enemies to be worth fought against or they should rather be given first aid so that they can recover and then fight for their nation? If there is a naval warfare, and suppose the ship of one party is wrecking inside the sea, can

the fight still continue to finish the persons inside sea? To answer all these above questions, let us ponder upon.

History of human civilization is replete with all kinds of wars whether local, regional, national, and international. Same is true of the brutalities committed during these wars. We know that wars are the blots to humanity and involve brutal and arbitrary violence. Therefore, several attempts have been made at all levels to make some rules of conduct even during warfare. Those attempts have been instrumental in shaping the modem laws of warfare. The new nomenclature, "international humanitarian law" is given to the law of war because earlier wars have been declared illegal under international law. Now-a-days, there are many examples of armed conflicts resorted to by the nations which are not in the nature of war.

4.4.2 WHAT IS INTERNATIONALHUMANITARIAN LAW

IHL has been defined by the International Committee of the Red Cross (ICRC) to mean "international rules, established by treaties or custom, which are specifically intended to solve humanitarian problems directly arising from international or non-international armed conflicts and which, for humanitarian reasons, limit the right of Parties to a conflict to use the methods and means of warfare of their choice or protect persons and property that are, or may be, affected by conflict"

4.4.3 APPLICATION OF INTERNATIONAL HUMANITARIAN LAW

International humanitarian law is applicable in the situations of an armed conflict between the armed forces of two or more states or between the armed forces of a state and an organized resistance movement inside the country. It is not relevant for international humanitarian law to know about the reasons of the armed conflict. Only the fact that an armed conflict has arisen that international humanitarian law starts to step in.

Two terms are generally important in this regard. One is called 'jus in bello' and another is called 'jus ad bellum'. Jus ad bellum means rules of international law related to prohibition of the use of force against another nation. On the other hand, jus in bello means the rules of international law related to regulation of armed conflict by promoting humanity. The Charter of United Nations does not only prohibit war, but also prohibits the threat to use force against the territorial integrity or political independence of any nation. The nation

states are ordained by international law to settle their differences in all circumstances by peaceful means. Even if a nation state justifies the use of force on some moral grounds, it is not legal unless the use of force is for self-defense. The UN Charter permits the use of force in self-defense. Self-defense means that if a nation state is attacked, then it has to defend itself. For that purpose, use of force is justified. These rules are the rules of jus ad bellum.

4.4.4 PURPOSE OF INTERNATIONAL HUMANITARIAN LAW

a. To foster the peaceful solution of disputes and to prevent recourse to force.

b. If a war nonetheless takes place, to limit its ill-effects by concrete action and the putting into effect of humanitarian law.

c. During wartime to improve the chances of and actively prepare for the return to peace.

4.4.5 MAJOR INSTRUMENTS OF INTERNATIONAL HUMANITARIAN LAW

The major sources of IHL are the four Geneva Conventions of 1949 and three Protocols additional to these conventions and notably:

1. Geneva Convention for the Amelioration of the Condition of Wounded and Sick in armed forces in the Field of12 August, 1949
2. Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked members of armed forces of Sea of 12 August, 1949
3. Geneva Convention relative to the treatment ofPrisoners of War(POW)of 12 August, 1949.
4. Geneva Convention relative to the protection of civilian persons in times of war of 12 August, 1949

The three Protocols Additional to these Conventions are:

1. Protocol Additional to the Geneva Convention of 12 August 1949 relating to the Protection of Victims of International Armed Conflict (Protocol I), 8 June 1977

2. Protocol Additional to the Geneva Convention of 12 August 1949 relating to the Protection of Victims of Non-internal Armed Conflicts(Protocol II), 8 June 1977

3. Protocol Additional to the Geneva Conventions of 12 August 1949relating to the Adoption of an Additional Distinctive Emblem (Protocol III), 8 December 2005

In addition to these documents, international humanitarian law also consists of some earlier declarations and conventions for instance the declaration of Paris 1856, the declaration of Petersburg of 1868, the Hague Convention of 1899 and 1907, the 1925 Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare; the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict and its two Protocols of 1954 and 1999; the 1972 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction; the 1976 Convention on the Prohibition of Military or any Other hostile use of; Environmental Modification Techniques; the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which might be excessively injurious or to have indiscriminate effects(CCW) and its five Protocols of 1980 (I, II and III), 1995 (IV), and 2003 (V); the 1993 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction; the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (APMBC);the 2000 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict; the 2006 International Convention for the Protection of All Persons from Enforced Disappearance;the 2008 Convention on Cluster Munitions (CCM).In addition, the 1998 Statute of the International Criminal Court (ICC) established the Court's jurisdiction in respect of war crimes (Article 8), thus strengthening States' obligation to prevent serious violations of IHL.

Many provisions of the treaties mentioned above are now thought to reflect customary IHL and are, consequently, binding on all states and all parties to a conflict.

4.4.6 ORIGIN AND DEVELOPMENT OF INTERNATIONAL HUMANITARIAN LAW

The IHL is comparatively recent in its origin may be traced back to the first Geneva Convention of 1864. It is known as the Geneva Convention for the Amelioration of the

condition of the wounded in Armies in Field. The rules contained herein are of general nature and concerns mainly with the protection of war victims.Another milestone in the development of IHL was the Hague conferences of 1899 and 1907. Many conventions were adopted at these conferences which provided for the regulation of conduct of hostilities. The purpose of this convention was not only to regulate the conduct of hostilities and thus to limit the means to causing injuring to enemy, but also to provide better protection to the combatants and war victims. For this reason, this convention may be described as IHL applicable in armed conflict. Notably, the IHL in its initial stages of development was concerned mainly with the protection of war victims. This trend has continued throughout the period of World War Ist. However, in 1919, the League of Red Cross Society was organized with the mandate to provide assistance to the victims of natural calamity on an international basis which has added new dimension to the scope of IHL.

The period immediately after the end of the second world war may be described as epoch marking from the view of the development of IHL because of the fact that four new international humanitarian instruments that is four Geneva Conventions of 1949 were evolved during this period. Not only this, these conventions have imposed corresponding responsibilities and duty upon the parties to the conflict, upon the protecting power, the International Committee of Red Cross, other humanitarian organizations and to certain extent upon the neutral state also.In addition, the UN has adopted a convention in 1981 concerning the prohibition or restriction on the use of certain conventional weapons. The purpose of this convention is to protect the human beings from the weapons which are very cruel and excessively injurious in effect.

Protection of Defenseless in war

The four Geneva Convention are made for the protection of defenseless in war

1. The Geneva Convention for the Amelioration of the Condition of the Wounded and Sick members of armed forces in the field.
2. Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Ship wrecked members of Armed Forces
3. Geneva Convention relative to the treatment of Prisoners of War.

4. Geneva Convention relative to the protection of civilian persons in times of war.

4.4.7 THE GENEVA CONVENTION FOR THE AMELIORATION OF THE CONDITION OF THE WOUNDED AND SICK MEMBERS OF ARMED FORCES IN THE FIELD:

For the protection of wounded and sick in armed forces in the field,the first Geneva convention has followed the fundamental principle:

"Wounded or Sick and therefore defenseless combatants shall be respected and cared for, whatever their nationality, personnel attending them, the buildings in which they shelter and the equipment used for their benefit, shall be protected a red cross on a white ground shall be emblem of this immunity".

4.4.7.1 PERSONS WHO ARE ENTITLED TO BE PROTECTED UNDER THE FIRST CONVENTION:

Article 12 of the first Geneva convention mentions following two categories of persons who shall be protected and respected in all circumstances.

a. The wounded and sick members of armed forces.

b. The wounded and sick persons put on the same footing as members of the armed forces which includes:

Firstly, Members of militia or volunteer corpseincluding those of organized resistance movements belonging to a party to a conflict and operating in or outside their own territory. Secondly, members of regular armed forces who profess allegiance to a government or an authority not recognized by the detaining power. Thirdly,persons who accompany the armed forces without being member thereof, such as civil members of military aircraft.Fourthly, members of crew, including masters, pilots, apprentices of the merchant marine and the crews of civil aircraft of the parties to the conflict, who do not benefit by more favorable treatment under any other provisions in international law. Lastly,Inhabitants of a non-occupied territory who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having time to form

themselves into regular armed units, provided that they carry arms openly and respect the laws and customs of war.

4.4.7.2 PROTECTION AND CARE

Article 12 of the first Geneva Convention lays down following protections and care to be provided to wounded and sick:

Persons belonging to the categories mentioned above are supposed to be treated humanely and cared for by the party to the conflict without any adverse distinction on the basis of sex, race, nationality, religion, political opinions, or any other similar criteria;Any attempts upon their lives, or violence's to their persons would be strictly prohibited, in particular, they should not be murdered or exterminated, subjected to torture or to biological experiments;They should notwillfully be left without medical assistance and care, nor should condition exposing them to contagion or infection be created;Women should be treated with all consideration due to their sex.The party to the conflict which is compelled to abandon wounded and sick to the enemy should, as far military consideration permit, leave with them apart of its medical personnel and materials to assist in their care.

4.4.7.3 SEARCH FOR CAUSALITIES AND EVACUATION

Article 15 of the first Geneva convention of 1949 imposes obligation upon the parties involved in the conflict to take certain measures to ensure protection and care to the wounded or sick. The parties to the conflict are enjoined to take without delay, all possible measures as:

1. To search for and collect the wounded and sick;
2. To protect them against, pillage and ill-treatment;
3. To ensure their adequate care;
4. To search for the judge and prevent there being despoiled.

4.4.7.4 PRESCRIPTION, REGARDING THE DEAD, GRAVES REGISTRATION SERVICE

Parties to the conflict should ensure that burial or cremation of the death carried out individually as far as circumstances permits. However, burial or cremation should be

preceded by a careful examination, if possible, by a medical examination, of the bodies, with a view to confirming death, establishing identity and enabling a report to be made.It is provided under Article 17 of the first Geneva convention that bodies should not be cremated except for imperative reasons of hygiene or for motives based on the religion of the deceased. In case of cremation, the circumstances and reasons for cremation should be stated in detail in the death certificate or on the authenticated list of the dead.As soon as circumstances permit, and at least at the end of hostilities, the official Graves Registration Services should exchange through the Prisoners of War information Bureau lists showing the exact location and markings of the graves together with particulars of the dead interred.

4.4.8 PROTECTION OF WOUNDED, SICK AND SHIPWRECKED IN ARMED FORCES AT SEA: THE SECOND GENEVA CONVENTION 1949

The Second Geneva Convention is called the maritime convention, is the extension of the First Geneva Convention. It applies the terms of the first convention to the maritime warfare. The general plan of this second convention covers the same field and protects the same categories of persons as the First

4.4.8.1 PERSONS ENTITLED FOR PROTECTION AND CARE

Article 12 of the second Geneva convention protects the shipwrecked in addition to the wounded and sick. It laid down that:

1. Members of the armed forces;
2. The persons put on the same footing as members of the armed forces should be protected and respected in all circumstances if:
    a. they are at sea; and
    b. they are wounded, sick or shipwrecked. The term "Shipwrecked" means shipwreck from any cause and includes forced landings at Sea by or from aircraft.

Persons put on the same footing as members of armed forces are described under Article 13 of the second convention and it is the same persons as given under the first Geneva convention.

4.4.8.2 PROTECTION AND CARE

The protection and care may be discussed under the following four headings:

a. Protection of wounded, sick and shipwrecked;

b. Protection of hospital ships and other aircraft;

c. Protection of medical personnel;

d. Protection ofmedical transport.

A. Protection of Wounded, Sick and Shipwrecked:

1. Wounded, sick and shipwrecked should be treated humanely and cared for by the parties to the conflict without any adverse distinction based on sex, race, nationality, religion, political opinion or any other similar criteria;They are entitled to be protected against any attempt upon their lives, or violence to their persons. They should not be murdered exterminated, subject to torture or biological experiment;They are entitled for medical assistance and care. They should not willfully be left without medical assistance and care, nor should conditions be exposing them to contagion or infection created.Women should be treated with all consideration due to their sex.The wounded, sick and the shipwrecked of a belligerent who fall into enemy hands are, besides being given above treatments also entitled to be treated as POW.

B. Protection of hospital ships and other crafts: -

1. Military hospital ships should in no circumstances be attacked or captured.

2. Medical established ashore should be protected from bombardment or attack from the sea.

3. Hospital ships utilized by National RedCross Societies,officially recognized as relief societies or by private persons of parties to conflict as well as private persons of neutral countries should have the same protection as military hospital ship and should be exempted from being captured.

4. Smallcraft employed by the state or by the officially recognized lifeboat institutions for coastal rescue operations should be respected and protected as far as operational requirements permit.

5. The fixed coastal installations used exclusively by these craft for their humanitarian missions should also be respected and protected.

6. If fighting occurs on board a warship, the sick-bays should be respected and secured as far possible.

7. Any hospital ship in a port which falls into the hands of the enemy should be authorized to leave the said port.

8. Merchant vessels which have been transformed into hospital ships can't be put to any other use throughout the duration of hostilities.

C. Protection of Medical Personnel: - Chapter IV of the second Geneva Convention deals with the protection of the personnel of hospital ships and medical and religious personnel of other ships. These may be discussed as follows: -

1. Protection of the personnel of hospital ship: -The religious, medical and hospital personnel of hospital ships and their crews should be respected and protected. They may not be captured during the time they are in the service of the hospital ship, whether or not there are wounded and sick on board.

2. Protection of medical and religious personnel of other ships: - The religious, medical and hospital personnel assigned to medical or spiritual care of the wounded, sick and shipwrecked if fall into the hands of the enemy, be respected and protected.They should continue to carry out their duties as long as this is necessary for the care of the wounded and sick.Such personnel may take with them, on leaving the ship, their personal property. Some of these personnel may, however, be retained owing to the medical and spiritual needs of POW. In such cases, everything possible should be done for their earliest possible landing.

D. Protection of Medical Transport: -Chapter V of the second Geneva Convention deals with the protection of ships used for the conveyance of medical equipment, medical aircraft etc. These may be discussed as follows:

a. Ships used for the conveyance of the medical equipment: -The ships chartered for the purpose of transporting medical equipment's should be authorized to transport such equipment exclusively intended for the treatment of wounded and sick members of armed forces or for the prevention of disease, provided that the particulars regarding their voyage should be notified to the adverse power and approved by the letter.

b. Medical aircrafts: -Medical aircrafts are aircraft exclusively employed for the removal of wounded, sick or shipwrecked, and for the transport of medical personnel and equipment should not be object of attack.Such medical aircraft should be respected by the parties to the conflict while flying at heights at times and on routes specifically agreed upon between the parties to the conflict concerned. However, flights over enemy or enemy-occupied territory are prohibited unless agreed otherwise.Medical aircraft should obey every summons to alight on land or water.

c. Flight over Neutral Countries:Landing of wounded: -Article 40of second Geneva Convention lays down provisions regarding: -

a. **Flight of medical aircraft over neutral countries. -**Medical aircraft of the parties to the conflict may fly over the territory of neutral powers, land there on in case of necessity or use it as a part of call. They should give a prior notice to the neutral powersfor their passage over the said territory, and obey every summons to alight on land or water. They would be immune from attack only when flying on roots, at heights and at times specifically is agreed upon between the parties to the conflict and the neutral powers concerned.

b. **Landing of Wounded:** The Wounded, Sick or shipwrecked who are disembarked with the consent of the local authorities on neutral territory by medical aircraft should be detained by the neutral powers. Whereso required by international law, in such a manner that they cannot again take part in operation of law. However, an agreement between the neutral powers and the partis to conflict. The cost of their accommodation and interment has to be borne by the power on which they depend.

4.4.9 PROTECTION OF PRISONERS OF WAR: THE THIRD GENEVA CONVENTION

It is now widely accepted that the Prisoners of War are not criminals. They are merely an enemy no longer able to bear arms. As such, they are defenseless persons who are entitled to be respected and treated humanely while in captivity and to be liberated at the close of hostilities. Keeping in mind these requirements, the rules regarding the protection of POWare formulated in the form of the third Geneva convention 1949. These rules may be discussed as follows:

4.4.9.1 Prisoners of war: **Article 4 of third Geneva Convention defines the categories of persons entitled to be treated as prisoners of war.**These are also same persons (members) as those covered under the first and the second Geneva Conventions respectively.

4.4.9.2 General Protection of Prisoners of War: Part II of the Third General Convention (Article 12-16) deals with the essential principles which shall at all times and in all places, govern the treatment of prisoners of war. The prisoners of war are entitled for following protections in general:

1. Prisoners of War must be humanly treated. No Prisoners of War should be subjected to physical mutilation or to medical or scientific experiments.
2. Prisoners of War are entitled to respect for their persons and their honour.
3. Women should be treated with all regard due to there sex. They should retain the full civil capacity which they enjoyed at the time of their capture.
4. The power detaining Prisoners of War have to be bound to provide free of charge for their maintenance and for the medical attention required by their health.
5. They shall be treated alike by the detaining power, without any adverse distinction based on race, nationality, religious belief or political opinion, or any other distinction founded on similar criteria.

4.4.9.3Protection of Prisoners of War under Captivity: -Part III of the third Geneva Convention deals with the protection of the Prisoners of War under captivity. It is divided

into six sections. First section deals with interrogation of prisoners, property of prisoners and there evacuations;Second section deals with living conditions for prisoners in camp or during transfer, the places and methods of internment accommodation, food and clothing, hygiene and medical attention, medical and religious personnel retained for the care of prisoners, religious needs, intellectual and physical activities, discipline, Prisoners of War ranks and transfer after arrival in camp;Third Section deals with prisoners' labour;Fourth section deals with financial resources of prisoners;Fifth section deals with correspondence and relief shipments; Sixth section deals with penal and disciplinary procedure.

4.4.9.4 Repatriation of Prisoners of War: - There are two kinds of repatriation.

First, Repatriation and Accommodation of Prisoners in Neutral Countries during Hostilities: -Throughout the duration of hostilities, parties to the conflict should make effort, with the cooperation of the neutral powers to make arrangements for the accommodation in neutral countries of the sick and wounded prisoners of war. Thus, repatriation to neutral countries has to be resorted to during the period when hostilities are continuing for the welfare of the wounded and sick POW. However, no sick or injured POW may be repatriated against his will during hostilities. Moreover, no POW on whom a disciplinary punishment has been imposed and who is eligible for repatriation or for accommodation in a neutral country, be kept back on the plea that he has not undergone his punishment.

Second, Repatriation of POW at the close of hostilities: -After the cessation of active hostilities, the POW should be released and repatriated without delay. In the absence of any agreement between the parties to conflict, each of detaining powers should itself establish and execute without delay a plan of repatriation. The costs of repatriation of POW should in all cases be equitably apportioned between the detaining power and the power on which the prisoners depend. POW should be allowed to take with them their personnel effect, and correspondence, and parcels which have arrived for them.Prisoners of War against whom criminalproceedings for an indictable offence are pending may be detained until the end of such proceedings, and if necessary, until the completion of punishment. The same should apply to Prisoners of War already convicted by an indictable offence. Moreover, in case of death, the Prisoners of War should be buried honorablyas per the last rites of the religion to which they belonged.

4.4.10. PROTECTIONS OF CIVILIANS:

Fourth Geneva Convention, 1949: The fourth Geneva Convention aims at ensuring that "even in the midst of hostilities the dignity of human person. universally acknowledged in principles, should be protected.

4.4.10.1 Protected Persons: Article 4 of the Fourth Geneva Convention describe the persons who are protected under the convention. Protected person means a person who finds himself in case of conflict or occupation, in the hands of a party to the conflict or occupying power of which is not a national. Nationals of a state which is not bound by the convention or not protected by it. However, following persons are not included in the category of the protected persons.

i. Nationals of a neutral state who finds themselves in the territory of a belligerent state, and nationals of co-belligerent state;

ii. Persons protected by the First Geneva Convention, 1949;

iii. Persons protected by the Second Geneva Convention 1949 and

iv. Persons protected by the Third Geneva Convention, 1949.

4.4.10. 2General Protection of Populations Against Certain Consequences of War:

1. **Establishment of hospital and safety zones and localities**: The high contracting parties may establish in their own territory and if the need arises, in occupied areas hospital and safety zones and localities for the protection of wounded sick and aged persons children under fifteen, expectant mothers and mothers of children under seven from the effect of war.

2. **Establishment of neutralized zone**: The parties to the conflict should establish neutral zones by writtenagreement, in the regions where fighting is taking place.

3. **General protection of wounded and sick**: The Wounded and sick, as well as infirm and expectant mothers should be given protection and respect.

4. **Evacuation of wounded and sick etc**: - The Parties to the conflict should make an effort to conclude local agreements for the removal from besieged or encircled areas, of wounded, sick, infirm and aged persons, children and maternity cases and for the passage

of ministers of all religions, medical personnel and medical equipment on their way to such area.

5. **Protection of hospital and hospital staff**: - Civilian hospitals organized to give care to all such peopleshould not be attacked in any circumstances and be respected and protected by the parties to the conflict.

6. **Protection of hospital vehicles and trains:** - Hospital vehicles, trains and vessels on sea conveying wounded and sick civilian, the infirm and maternity cases be respected and protected and should be marked by emblem of red cross on a white ground.

7.**Protection of hospital aircraft**: - Aircraft should not be attacked and should be respected while flying at heights time, and on routes.

4.4.10.3. Status and treatment of protected person: - Part III of the fourth Geneva Convention 1949 deals with the status and treatment of protected persons-this subject matter has been dealt with in following five sections.

1. General Protection to protected persons;

2. Aliens in the territory of a party to conflict;

3. Prescription for occupied territories;

4. Internment;

5. Information Bureau and the central Agency.

1.**General protection to protected persons**: -Provisions relating to the general protection of protected persons are common to the territories of the parties to the conflict and to occupied territories.Women should be especially protected against any attack of their honour,in particular,against rape, enforced prostitution,or any form of incident assault.All protected persons should be treated with the same consideration by the party to the conflict.

2. **Aliens in the territory of a party to conflict**: -All Aliens who may desire to leave the territory at the outset of or during a conflict,should be entitled to do so,unless, departure is contrary to the national interests of the state.Those persons permitted to leave may

provide themselves with necessary funds for their journey and take with them a reasonable amount of their effects and articles of personal use.

3.**Prescriptions for occupied territories: -**Certain obligations have been imposed upon occupying power for the welfare of protected persons who are living in the occupied territory. Article 47 of the fourth Geneva Convention provides that protected persons who are in occupied territory should not be deprived from the benefits of the present convention. Following rights are provided to themlike deportation is prohibited, individual or mass forcible transfer is not prohibited, labour enlistment is prohibited. Also,hygiene, public health, penal legislation, enforcement of penal legislation of such persons is taken care of.

4.**Internment: -** Protected persons may be interned in following circumstances:

a. The Internment of the protected persons may be ordered only if the security of the detaining powers makes it absolutely necessary.

b. If any person acting through the representatives of the protecting powers, voluntary demand Internmentif his situation renders this step necessary, he should be interned by the powers in whose hands he may be.

c. Protected persons who commit an offence which is solely intended to harm the occupying power but which doesn't constitute an attempt on life or limb of members of the occupying forces or administration, nor a grave collective danger, nor seriously damage the property of the occupying forces or administration or the installations used by them should be liable to internment provided the duration of such internment is proportionate to the offence committed.

d. If the occupying power considers it necessary, for imperative reasons of security, to take safety measures concerning protected persons, it may, at the most subject them to assigned residence.

5. **Information Bureau and Central Agency: -**This has been dealt with under section V of the part III of the fourth Geneva Convention.

4.4.11 Protectionof Defenseless person and protocol Additional to the Geneva Convention of 1949 relating to the protection of Victims of International Armed Conflict (Protocol I)

The application of the Protocol I is not limited only to the international armed conflict which has been defined, under common Article 2 of the Geneva Conventions as "all cases of declared war of any other Armed conflict which may arise between two or more of the High Contracting Parties even if the state of war is not recognized by one of them. Instead, its application has been extended to "Armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercises of their right of self-determination, as enshrined in the charter of the United Nations and the Declaration on the principles of International Law concerning Friendly Relations and Cooperation among states in accordance with the charter of the United Nations. Thus, the meaning of the term "armed conflict" has been expanded to include the wars of the national liberation".

Article 3(a) of the Protocol I extends the application of the four Geneva Conventions to the Armed conflicts to which Protocol I applies. The coverage of protections envisaged under the four Geneva Conventions has thus been extended to the Armed conflict which includes wars of the national liberation within its meaning.

It may be noted that Section III of the Part IV of Protocol I dealing with "Treatment of person in power of a party to the conflict" has expanded the scope of international humanitarian law so as to bring it at par with major international human rights instruments. It includes following provisions:

1. Article 72 of the Protocol I grant protection to captured guerilla fighters and mercenaries, who do not benefit from more favorable treatment un
2. der other provisions of the General Conventions or protocols.
3. Article 75 provides that persons who are in the power of the party to the conflict should be treated humanely and without any distinction based upon race, colour, sex, language, religion, political or other opinion, national or social origin, wealth, birth or other status, or any other similar criteria.

4. Article 75 also provides for extensive due process guarantors for the benefits of the persons arrested, detained or interned for actions related to the Armed conflict.

5. Provisions have also been made under Article 73 of the Protocol I for the protection of refugees and stateless persons.

6. Special protections have been granted in favor of women, children and journalists.

4.4.11.1 Limitations on means and methods of use of force:

The 1977 Geneva Protocol I, on one hand, amplifies and expands the obligations of the High Contracting Parties who accepts and become parties to the present Protocol I and on the other hand seek to make warfare less brutal and inhuman. For the purpose of imposing limitations on the means and methods of use of Force this Protocol contains following provisions:

i. It declares that right of the parties to the conflict to choose methods or means of warfare is not unlimited.

ii. It prohibits the employment of weapons, projectiles and material methods of warfare which cause superfluous injury or unnecessary suffering.

iii. It prohibits the employment of such methods or means of warfare which are intended or may be expected, to cause widespread, long term and sever damage to the natural environment.

iv. It prohibits to kill, injure or capture an adversary by resort to perfidy. However, ruses of war are not prohibited.

4.4.11.2 Law of Internal Armed Conflicts: -The period of the post-World War Second has been witnessed by various armed conflict and insurgencies. Some of their conflicts have acquired massive proportions involving organized armed forces and a large number of combatants. Since these conflicts are not of international character, the protective system envisaged under the four Geneva conventions is not applicable. However, common Article 3 of the Geneva convention applies in such conflicts. Article 3 lays down that in the case of armed conflict not of an international character, occurring in the territory of one of the high contracting parties, each party to the conflict should be bound to treat humanely all

persons taking no part in the hostilities including members of the armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention or any other cause without any adverse distinction founded on sex, colour, religion or faith, birth or wealth or similar other criteria.

4.4.12 Internal Armed conflict and the protocol additional to the Geneva Convention 1949 relating to the protection of Victims of non-international Armed Conflicts (Protocol II):

Article 1 of the protocol II declares that this protocol develops and supplements common Article 3 of the Geneva Conventions without modifying its existing conditions of application. It applies to all armed conflicts which are not covered by Article 1 of the protocol I and which take place within a state's territory between its armed forces and dissident organized armed groups in control of part of the territory to enable such groups to carryout sustained and concerted operations and to implement protocol II. Protocol II doesn't apply to the situations of internal disturbance and tensions, such as riots, isolated and sporadic acts of violence and other acts of similar nature as not being armed conflicts. Protocol II covers wider guarantees than the common Article 3. Thus, when internal armed conflicts occur within the meaning of Protocol II the affected individuals are entitled to greater protection or more rights than they would enjoy under common Article 3. Protocol II protects following categories of persons:

a. All persons who do not take a direct part or who have ceased to take part in hostilities, whether or not their liberty has been restricted or entitled to respect for their person, honour and conviction and religious practices. It prohibits certain acts which can't be committed against these persons.

b. Person deprived of them for the reasons related to the armed conflict whether they are interned or detained should be treated humanely.

c. The civilian populations and individual civilians are protected against the dangers arising from military operations and they should not mean the object of attackor threats of violence the primary purpose of which is to spread terror among the civilian populations are prohibited.

4.4.13 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III)

It is an amendment protocol to the Geneva Conventions relating to the Adoption of an Additional Distinctive Emblem. Under the protocol, the protective sign of the Red Crystal would be displayed by medical and religious personnel at the time of war instead of the traditional Red Cross or Red Crescent symbols

Two major difficulties for the International Red Cross and Red Crescent Movement namely,

First, they may be perceived as having religious, cultural or political connotations. This perception conflicts with neutral, humanitarian status of medical personnel in armed conflicts.Second, it has led some states and relief societies to refuse to adopt any of the existing emblems on the grounds that none is suitable for them. Hence, any such refusal prevents the movement from attaining true universality, since its statutes lay down the use of one or the other of these symbols as a necessary condition for a National Society to be recognized and to become a full member of the Movement.

In order to correct these two problems, the state's party to the Geneva Conventions adopted a third protocol additional to the conventions at a diplomatic conference held in Geneva from 5 to 8 December 2005. Article 38 of the first Geneva Convention of 1949 clearly states that these emblems are intended to signify one thing only-something which is, however, of immense importance: respect for the individual who suffers and is defenseless, who must be aided, whether friend or enemy, without distinction of nationality, race, religion, class or opinion. The Additional Protocol III was adopted for the prevention of any future proliferation of other emblems. This instrument recognizes an additional emblem composed of a red frame in the shape of a square on edge on a white ground commonly referred to as the red crystal. The shape and name of this additional emblem was to come up with a result devoid of any political, religious or other connotation and which could thus be used all over the world. The red crystal is not intended to replace the cross and crescent but to provide a further option. These emblems are tied to membership in the National Societies. Members are required to use the red cross or red crescent emblem.

It is an amendment protocol to the Geneva Conventions relating to the Adoption of an Additional Distinctive Emblem. Under the protocol, the protective sign of the Red Crystal

would be displayed by medical and religious personnel at the time of war instead of the traditional Red Cross or Red Crescent symbols. The persons and entities authorized to display the red crystal are the same as those entitled to use the emblems recognized by the Geneva Conventions of 1949. These include in particular the medical services of the armed forces of States, civilian hospitals with explicit authorization and the various components of the International Red Cross and Red Crescent Movement namely, the International Committee of the Red Cross (ICRC), the National Societies, and their International Federation. The recognized emblems are equivalent in meaning. They must be treated equally and receive equal protection in the national legislation of states.

4.4.14 OBSTACLES TO THE IMPLEMENTATION OF GENEVA CONVENTIONS

There are two major obstacles to the implementation of Geneva Conventions;

First:Parties to an international armed conflicts generally do not agree on the designation of protecting powers. As a matter of necessity, states generally resort to the International Committee of Red Cross to perform the duties assigned to protecting powers under Geneva Conventions.

Secondly: Another obstacle to the implementation of Geneva Convention is the refusal on the part of states parties to the conflict to recognize that it has international armed conflict, in this the states parties to the conflict succeed in providing the application of the protective system established under Geneva Convention.

4.4.15 LET US SUM UP

On the basis of the above description, we can conclude that IHL represents a balance between military necessity and humanitarian considerations in the context of conflict. Humanity, as a cornerstone of IHL, represents the imperative during conflict to alleviate suffering and save lives, and to treat humanely and respectfully each individual.Military necessity is the justification of measures necessary to achieve a military goal, provided these measures comply with international humanitarian law. The balancing of humanity and military necessity is seen in the foundational IHL norms of distinction and proportionality. Parties to an armed conflict are required to distinguish, at all times, between civilians and combatants and between civilian objects and military objects. Additionally, an attack may

not be launched if it is anticipated to cause incidental loss of civilian life, injury to civilians, or damage to civilian objects that would be excessive in relation to the direct military advantage anticipated. Additional IHL principles include the duty to take precautions to spare the civilian population before and during an attack, the prohibition against infliction of unnecessary suffering or superfluous injury, and the prohibition of indiscriminate attacks.The law of armed conflict looks torn between two contradictory impulses- the need, on to wage war effectively and the desire to protect people and property against the ravages of such warfare. The law of armed conflict tries to reconcile these impulses, in a very fundamentally pragmatic way. International humanitarian law compels states and non-state parties alike to try their utmost to guard and preserve the life, limband property of civilians and others *hors de combat* (out of action due to injury), whereas at the identical time giving parties to a conflict leave to commit acts of violence among bounded boundaries.

However, once those boundaries are transgressed, once perpetrators of war crimes aren't delivered to account for his or her transgressions, there's a natural impulse to dismiss international humanitarian law as lacking any "real" normative force. This can be a visible response; however, it fails to understand the complexities of international humanitarian law. The objective of international humanitarian law is to limit the suffering caused by warfare and to alleviate its effects. Its rules are the result of a delicate balance between the exigencies of warfare ("military necessity") on the one hand and the laws of humanity on the other. Humanitarian law is a sensitive matter and it suffers no tampering. It must be respected in all circumstances, for the sake of the survival of human values and, quite often, for the sheer necessity of protecting life. Each and every one of us can do something to promote greater understanding of its main goals and fundamental principles, thereby paving the way for better respect for them. Better respect for humanitarian law by all states and all parties to armed conflicts will do much to help create a more humane world.

4.4.16 Exercise

1. Explain International Humanitarian Law and its application ?
2. What are the major instruments of International Humanitarian Law ?
3. Explain the origin and development of International Humanitarian law ?

4. Explain Geneva Convention for the Amelioration of the conditions of the wounded in armies in field (First Geneva Convention of 1864) ?

5. Explain the Second Geneva Convention, 1949 ?

6. Explain the Third Geneva Convention, 1949 ?

7. Explain the Fourth Geneva Convention, 1949 on protection of civilians ?

8. Discuss the procedure of repartition of prisoners of war ?

9. Explain the law dealing with the protection of defenseless person ?

10. Discuss the law dealing with the internal armed conflicts ?

11. What are the obstacles to the implementation of Geneva Conventions ?

SOURCES AND FURTHER READINGS

- "International Organization", in *International Encyclopaedia of the Social Sciences,* http://www.encyclopedia.com
- "Uniting on Climate", United Nations Framework Convention on Climate Change, UNFCCC, 2007.
- *A Beginner's Guide to the United Nations Development Programme* 5th edition May, 2015, at http://www.jposc.org/documents/UNDP%20for%20Beginners/UNDP_for_Beginners_en.pdf
- Alexander Andreev , "To What Extent Are International Organizations (IOs) Autonomous Actors In World Politics?", 2016, available at http://www.ucl.ac.uk/opticon1826/archive/issue2/VfPS_HS_International_Organisations.pdf
- Amos Yoder, *The Evolution of the United Nations System*, Washington, DC: Routledge, 1993.
- Aneek Chatterjee, "The UN At Sixty Three: Problems And Prospects of Reforming A Veteran", *Journal of Management and Social Sciences*, Vol. 5, No. 1, 2009.
- Anne Burnett, International Environmental Law: Electronic Resource Guide, American Society of International Law, 2015, available at https://www.asil.org/sites/default/files/ERG_ENVIROMENT.pdf
- Bob Reinalda, *Routledge History of International Organizations*, New York: Routledge, 2009.
- C. Emanuelli, "State Succession, Then and Now, With Special Reference to the Louisiana Purchase (1803)", *Louisiana Law Review*, Volume 63, Number 4, 2003.
- Chandrakant Yatnoor, Challenges to the United Nations in the New World Order, *The Indian Journal of Political Science*, Vol. 67, No. 4, October-December 2006.
- Christopher Greenwood, "Sources of International Law: An Introduction", 2008, available at http://legal.un.org/avl/pdf/ls/Greenwood_outline.pdf
- Conway W. Henderson, *Understanding International Law*, West Sussex, UK: Wiley-Blackwell, 2010.
- Daniel W. Drezner, "The New World Order", *Foreign Affairs*, Vol. 86, No. 2 2007.

- David Armstrong (ed.), *Routledge Handbook of International Law*, London, 2009.
- David Armstrong, Lorna Lloyd, and John Redmond, *International Organization in World Politics*, New York: Palgrave Macmillan, 2004.
- David Armstrong, *The Rise of the International Organization: A Short History*, London: Macmillan, 1982.
- David MacKenzie, *A World Beyond Borders: An Introduction to the History of International Organizations*, Toronto: University of Toronto Press, 2010.
- David Shorr, "United Nations Reform in Context", Stanly Foundation Policy Analysis Brief, 2006.
- Edith Brown Weiss, "Invoking State Responsibility in the Twenty-First Century", Georgetown University Law Centre, 2002, available at http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1334&context=facpub
- Envisioning the United Nations in the Twenty-first Century,Proceedings of the Inaugural Symposium on the United Nations System in the Twenty-first Century, UNU, Tokyo
- *Evaluation of UNDP's Role in Poverty Reduction*, UNDP, 2013,
- F. P. Walters, *A History of the League of Nations*, London: Oxford University Press, 1952.
- Frank Biermann, Steffen Bauer, M.A., "United Nations Development Programme (UNDP) and United Nations Environment Programme (UNEP)", 2004, available at http://www.wbgu.de/fileadmin/templates/dateien/veroeffentlichungen/hauptgutachten/jg2004/wbgu_jg2004_ex02.pdf
- Gideon Boas, *Public International Law: Contemporary Principles and Perspectives*, Gheltenham, UK: Edward Elgar, 2012.
- *Handbook on International Environmental Agreements: An Indian Perspective*, Centre for Environmental Law, WWF, 2006.
- *Handbook on the Peaceful Settlement of Disputes between States*, New York: United Nations, 1992, available at http://www.un.org/law/books/HandbookOnPSD.pdf
- Harold K. Jacobson, "The United Nations System in the Nineties: Opportunities and Challenges", *International Journal*, Vol. 45, No. 4, 1990.

- Huw J. Davies, "The Concert of Europe: The Rise And Fall of The First United Nations", accessed on 9th January 2016.
- J. Samuel Barkin, International Organization: Theories and Institutions, New York: Palgrave, 2006.
- Jerome J. Shestack, "The Philosophic Foundations of Human Rights", *Human Rights Quarterly*, Volume 20, Number 2, May 1998, pp. 201-23.
- Joanna Depledge, "Tracing the Origins of The Kyoto Protocol", Technical Paper, UNFCC, 2000.
- Karen Mingst, "International Organization", Encyclopaedia Britannica, available at http://www.britannica.cow/topic/international-organization.
- Louis B. Sohn, "The Development of International Law", *American Bar Association Journal*, Vol. 35, No. 4, April 1949, pp. 339-342.
- Malcolm N. Shaw, *International Law*, Cambridge: Cambridge University Press, 2008.
- Manila Declaration on the Peaceful settlement of disputes between States, 37/10 General Assembly Resolution - UN Documents , November 15, 1982.
- Merja Pentikäinen, "Changing International 'Subjectivity' and Rights and Obligations under International Law – Status of Corporations", *Utretch Law Review*, Volume 8, Issue 1, January 2012.
- Nikhil R. Ullal, "A Successor for the Kyoto Protocol: Challenges and Options", , available at http://mccawlewis.co.nz/assets/PDF/Kyoto-Protocol-Dissertation.pdf
- Patrick Dumberry, "New State Responsibility for Internationally Wrongful Acts by an Insurrectional Movement", *The European Journal of International Law*, Vol. 17, No.3, 2006.
- Philip Marshall Brown, "The Legal Effects of Recognition", *The American Journal of International Law*, Vol. 44, No. 4, 1950.
- Rajni Kothari, "Globalization and New World Order: What Future for the United Nations?", *Economic and Political Weekly*, Vol. 30, No. 40, 1995.
- *Responsibility of States for Internationally Wrongful Acts 2001*, United Nations 2005

- S.L Patil, "The Kyoto Protocol and Aftermath, 2015, shodhganga.inflibnet.ac.in
- Sarah Valentine and Reed Smith, "International Environmental Law Advocates for International Development", 2012, available at http://www.a4id.org/sites/default/files/user/International%20Environmental%20Law.pdf
- Shashi Shukla, "Making United Nations a Visible Organization", *India Quarterly*, 2002.
- Steven R. Ratner, "Image and Reality in the UN's Peaceful Settlement of Disputes", *European Journal of International Law*, Vol. 6, 1995, available at http://www.ejil.org/pdfs/6/1/1305.pdf
- Tim Hiller, *The Source Book of International Law*, Cavendish, 1998.
- UNFCC, "Kyoto Protocol Reference Manual on Accounting of Emissions and Assigned Amount", 2008, available at https://unfccc.int/resource/docs/publications/08_unfccc_kp_ref_manual.pdf
- United Nations Security Council, "Security Council", available at http://www.un.org/en/sc/.
- United Nations Treaty Collection, available at https://treaties.un.org/
- United Nations, "Charter of the United Nations", available at http://www.un.org/en/charter-united-nations/.
- United Nations, "Kyoto Protocol to the United Nations Framework Convention on Climate Change", 1998, available at http://unfccc.int/resource/docs/convkp/kpeng.pdf
- *Vienna Convention on Succession of States in respect of Treaties*, 1978, United Nations, 2005.
- Wolfgang Friedmann, "Half a Century of International Law", *Virginia Law Review*, Vol. 50, No. 8, December 1964), pp. 1333-1358.
- Wolfgang Friedmann, "United Nations and the Development of International Law", *International Journal*, Vol. 25, No. 2, Spring 1970, pp. 272-28.
- *Worldmark Encyclopedia of the Nations*, Volume 1, Uunited Nations, Thomson Gale, 2007.

Websites and Journals

1. UN Website
2. UN Journal
3. International Organization