# Teerthanker Mahaveer College of Law and Legal Studies

**Course Code: LAW607** **Course Name: Public International Law**

## Topic: Introduction

**Faculty Name: Bishnanand Dubey**

# WHY SHOULD WE STUDY INTERNATIONAL LAW

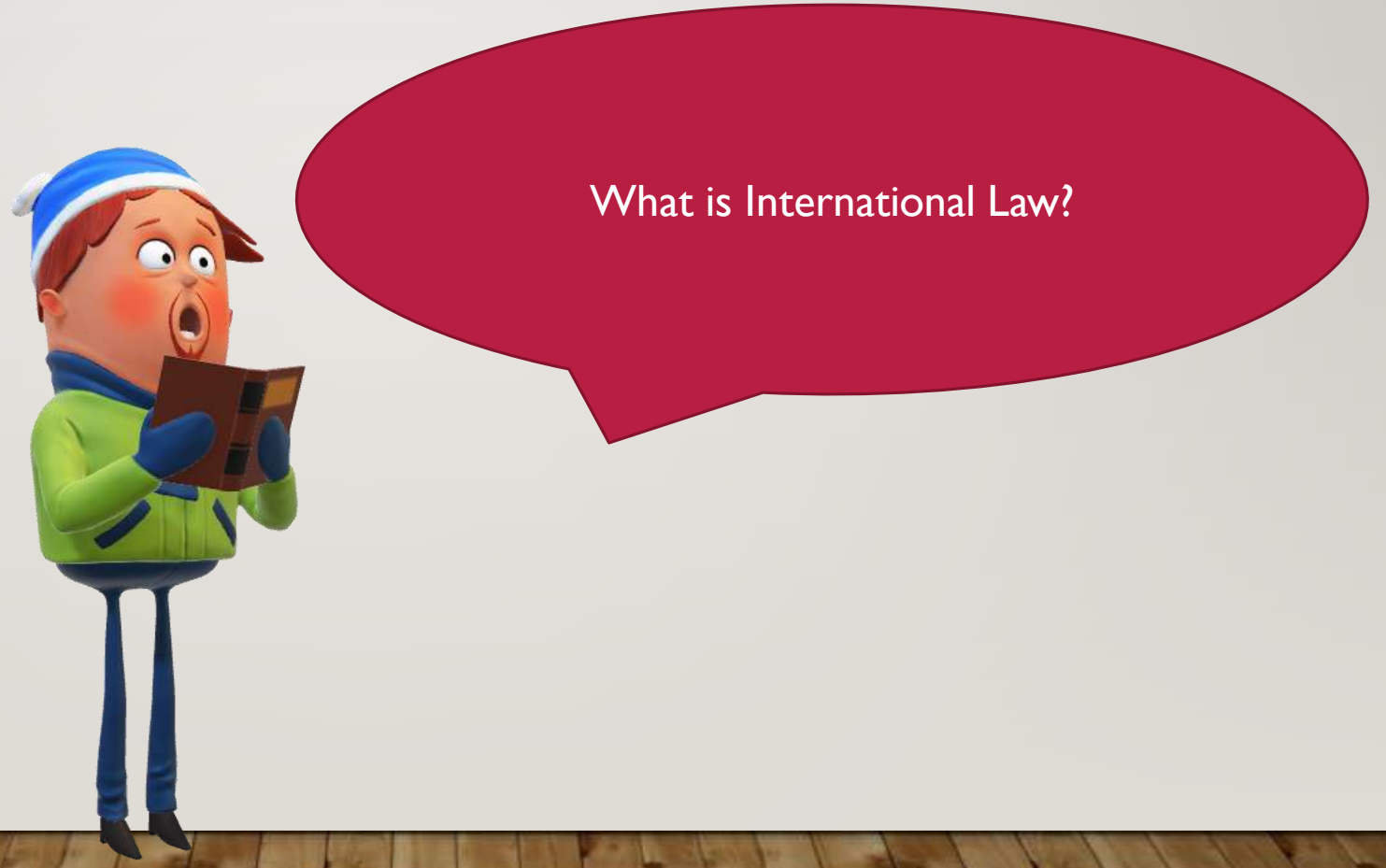
- INTERNATIONAL LAW IS IMPORTANT LAW AS IT DESCRIBES THE INTERNATIONAL LEGAL SYSTEM.
- INTERNATIONAL LAW GIVES IDEA OF RELATION AMONG DIFFERENT STATES.
- INTERNATIONAL LAW WITH ITS DIFFERENT BRANCHES OF LAW GIVE IDEA ABOUT DIFFERENT AREAS LIKE TRADE, HUMAN RIGHTS, SPACE, MARITIME, ENVIRONMENT, ETC.

# Objectives

- To understand the origin and development of International Law.
- To understand the Sources of International Law.
- To understand the concept of International law through different definitions.

# Objectives

## WHAT IS INTERNATIONAL LAW?



# TYPES OF INTERNATIONAL LAW

# Early origins

- Early origins:
- While the modern international system can be traced back some 400 years, certain of the basic concepts of international law can be discerned in political relationships thousands of years ago, Around 2100 BC, for instance, a solemn treaty was signed between the rulers of Lagash and Umma, the city-states situated in the area known to historians as Mesopotamia, were based on the principle of ***Pacta sunt servanda*** i.e. agreements must be kept) and the principle of good faith.
- It was inscribed on a stone block and concerned the establishment of a defined boundary to be respected by both sides under pain of alienating a number of Sumerian gods.

- The next major instance known of an important, binding, international treaty is that concluded over 1,000 years later between **Rameses II of Egypt and the king of the Hittites** for the establishment of **eternal peace and brotherhood**. Other points covered in that agreement signed, it would seem, at Kadesh, north of Damascus, included respect for each other's territorial integrity.
- The era of classical Greece, from about the sixth century BC and on-wards for a couple of hundred years, has, one must note, been of over-whelming significance for European thought. The value of Greece in a study of international law lies partly in the philosophical, scientific and political analyses bequeathed to mankind and partly in the fascinating state of inter-relationship built up within the Hellenistic world.

- The Romans had a profound respect for organization and the law. The law knitted together their empire and constituted a vital source of reference for every inhabitant of the far-flung domain. **The early Roman law (the jus civile) applied only to Roman citizens**. It was formalistic and hard and reflected the status of a small, unsophisticated society rooted in the soil.
- This need was served by the creation and **progressive augmentation of the *jus gentium***. This provided simplified rules to govern the relations between foreigners, and between foreigners and citizens. The instrument through which this particular system evolved was **the official known as the Praetor Peregrinus**, whose function it was to oversee all **legal relationships, including bureaucratic and commercial matters, within the empire.**

- The progressive rules of the jus gentium gradually overrode the narrow jus civile until the latter system ceased to exist. Thus, the **jus gentium** became the **common law of the Roman Empire** and was deemed to be of universal application.
- One of the most influential of Greek concepts taken up by the Romans was the **idea of Natural Law**. This was formulated by the Stoic philosophers of the third century BC and their theory was that it constituted a body of rules of universal relevance. Such rules were **rational and logical**, and because the ideas and precepts of the 'law of nature' were rooted **in human intelligence**, it followed that such rules could not be restricted to any nation or any group but were of worldwide relevance.

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

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

- Throughout Europe, mercantile courts were set up to settle disputes between tradesmen at the various fairs, and while it is not possible to state that a Continental Law Merchant came into being, a network of common regulations and practices weaved its way across the commercial fabric of Europe and constituted an embryonic International trade law.
- Maritime customs began to be accepted throughout the Continent. Founded upon the Rhodian Sea Law, a Complicated work, many of whose rules were enshrined in the Rolls of Oleron in the twelfth century, and other maritime textbooks, a series of commonly applied customs relating to the sea permeated the naval powers of the Atlantic and Mediterranean coasts.

- The collapse of the Byzantine Empire centered on Constantinople before the Turkish armies in 1453 drove many Greek scholars to seek sanctuary in Italy and enliven Western Europe's cultural life. The introduction of printing during the fifteenth century provided the means to disseminate knowledge, and the undermining of feudalism in the wake of economic growth and the rise of the merchant classes provided the background to the new inquiring attitudes taking shape.
- The rise of the nation-states of England, France and Spain in particular characterised the process of the creation of territorially consolidated independent units, in theory and doctrine, as well as in fact. This led to a higher degree of interaction between sovereign entities and thus the need to regulate such activities in a generally acceptable fashion

- The early theorists of international law were deeply involved with the ideas of Natural Law and used them as the basis of their philosophies. Included within that complex of Natural Law principles from which they constructed their theories was the significant merging of Christian and Natural Law ideas that occurred in the philosophy of St Thomas Aquinas.
- ***The founders of modern international law***
- The essence of the new approach to international law can be traced back to the Spanish philosophers of that country's Golden Age. The leading figure of this school was Francisco Vitoria, Professor of Theology at the University of Salamanca (1480–1546).
- Suarez´ (1548–1617) was a Jesuit and Professor of Theology who was deeply immersed in medieval culture. He noted that the obligatory character of international law was based upon Natural Law, while its substance derived from the Natural Law rule of carrying out agreements entered into.

- In 1598 his De Jure Belli was published. It is a comprehensive discussion of the law of war and contains a valuable section on the law of treaties. Gentili, who became a professor at Oxford, has been called the originator of the secular school of thought in international law and he minimized the hitherto significant theological theses.
- It is, however, Hugo Grotius, a Dutch scholar, who towers over this period and has been celebrated, if a little exaggeratedly, as the father of international law. He was born in 1583 and was the supreme Renaissance man. A scholar of tremendous learning, he mastered history, theology, mathematics and the law. His primary work was the *De Jure Belli ac Pacis.*

- Grotius conceived of a comprehensive system of international law and his work rapidly became a university textbook. However, in many spheres he followed well-trodden paths. He retained the theological distinction between a just and an unjust war, a notion that was soon to disappear from treatises on international law, but which in some way underpins modern approaches to aggression, self-defence and liberation.

- The Dutch scholar opposed the ‘closed seas’ concept of the Portuguese that was later explained by the English writer John Selden and emphasised instead the principle that the nations could not appropriate to themselves the high seas. They belonged to all.

- **Postivist and Naturalist**:
- On the one hand there was the ‘naturalist’ school, exemplified by Samuel Pufendorf (1632–,who attempted to identify international law completely with the law of nature; and on the other hand there were the exponents of ‘positivism’. Pufendorf regarded Natural Law as a moralistic system, and misunderstood the direction of modern international law by denying the validity of the rules about custom.
- One of the principal initiators of the positivist school was Richard Zouche (1590–1660), who lived at the same time as Pufendorf, but in England. While completely dismissing Natural Law, he paid scant regard to the traditional doctrines.
- Bynkershoek (1673–1743) stressed the importance of modern practice and virtually ignored Natural Law. He made great contributions to the developing theories of the rights and duties of neutrals in war, and after careful studies of the relevant facts decided in favour of the freedom of the seas.

- Positivism developed as the modern nation-state system emerged, after the Peace of Westphalia in 1648, from the religious wars. It coincided, too, with theories of sovereignty such as those propounded by Bodin and Hobbes, which underlined the supreme power of the sovereign and led to notions of the sovereignty of states.

- Vattel (1714–67), a Swiss lawyer. His *Droit des Gens* was based on Natural Law principles yet was practically oriented. He introduced the doctrine of the equality of states into international law, declaring that a small republic was no less a sovereign than the most powerful kingdom, just as a dwarf was as much a man as a giant.

- The eighteenth century was a ferment of intellectual ideas and rationalist philosophies that contributed to the evolution of the doctrine of international law. The nineteenth century by contrast was a practical, expansionist and positivist era. **The Congress of Vienna, which marked the conclusion of the Napoleonic wars, enshrined the new international order which was to be based upon the European balance of power.** International law became Eurocentric, the preserve of the civilised, Christian states, into which overseas and foreign nations could enter only with the consent of and on the conditions laid down by the Western powers.

- ***The nineteenth century***
- The nineteenth century was the century of positivism which was enunciated by the French philosopher **Auguste Compte**. The foundations of positivism in law were laid down by John Austin and Jeremy Bentham. The second half of the nineteenth century saw the emergence of International organizations, e.g. the International Committee of the Red Cross in the 1860s and the Universal Postal Union in 1874.
- The League of Nations and the Permanent Court of International Justice (PCIJ) were established under the auspices of the 1919 Peace Conference, which gathered the Allied victors of WWI to make peace settlements with defeated nations and to put in place a system ensuring lasting peace. The League of Nations was the first universal intergovernmental organization open to 'any full self-Governing State, Dominion or Colony' (Article 1(2) of the League Covenant.

- Its main objectives were to maintain peace and security , protect minorities and supervise the mandate system . The PCIJ, an institution separate from the League of Nations, was the first permanent world court ever created by the international community open to all States with jurisdiction over all international disputes.
- 1945
- The creation of the United Nations (UN) after WWII initiated an entirely new approach to international law. The UN, now having the membership of 192 States, was created to pursue the purposes set out in Article 1 of the UN Charter. The UN Charter endows the Security Council (UNSC) with enforcement powers to achieve them. The purposes of the UN are:

Article 1:

“The Purposes of the United Nations are:

1. To 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;

2. 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

3. To achieve international cooperation 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

4. To be a center for harmonizing the actions of nations in the attainment of these common ends."

- According to **Oppenheim**, International Law is a "Law of Nations or it is the name for the body of customary law and conventional rules which are considered to be binding by civilized States in their intercourse with each other."
- According J G **Starke** : " **International law** may be **defined** as that body of **law** which is composed for its greater part of the principles and rules of conduct which states feel. themselves bound to observe, and therefore, do commonly observe in their relations with.
- **Schwarzenberger** defines **international law** as the "body of **legal** rules which apply between sovereign states and such other entities as have been granted **international law** personality.

- Oppenheim's Revised Definition:
- International Law is the body of rules which are legally binding on States in their intercourse with each other. These rules are primarily those which govern the relations of States, but States are not the only subjects of International Law. International Organizations and to so some extent, individuals maybe the subjects of rights conferred and duties imposed upon International Law.

Is international law ‘law’?

Theoretical arguments Some scholars have challenged the status of international law as ‘law’:

Arguments submitted by John Austin:

He argued that international law was not positive law because it lacked a sovereign. According to him a sovereign is a person who receives obedience of the members of an independent political society and who, in turn, does not owe such obedience to any person. Rules of international law did not qualify as rules of positive law by this test, and not being commands of any sort were placed in the category of laws ‘improperly so called’.

The counter-arguments:

There is no municipal legal system which conforms to Austin's concept.

The international legal system is unique and therefore cannot be compared to any municipal system.

Kelsen described international law as a primitive legal order. According to him, an advanced legal order contains both primary rules, i.e. those imposing duties, and secondary rules comprising a ‘rule of recognition’, ‘rules of change’, and ‘rules of adjudication’. He posited that the international legal system is primitive because it lacks secondary rules.

The counter arguments:

The rule of recognition, which provides means of identification of primary rules, exists in international law in that it is incorporated in the Statute of the ICJ; rules of change operate, to some extent, through international treaties and customary law; rules of adjudication are, to some extent, in existence in that many international treaties provide for compulsory jurisdiction of international courts, tribunals, or other international bodies.

# Basis of International Law

1.Naturalist Theory- God's superior law as divine law. Prominent writers of this view are Grotius ,Pufendorf and vattel. Writings of these jurists were influenced greatly by the works of religiously oriented scholars such as St Augustine ,Vitoria and Suarez. Different jurists have given different meaning to it such as reason, justice and morals. It has to be admitted that the law of nature has greatly influenced the growth of International law.

2. Positivists Theory(Consent Theory): According to them only those principles may be deemed as law which have been adopted with the consent of the states. The rules of law are binding upon states therefore emanate from their own free will. Bynkershoek was the exponent who was of the view that the basis of International law is the consent of the states. The consent theory has been criticized by many writers on several grounds.

1st –All the rules of International law have not derived from customs and treaties. Some of them derive from recognized by civilized nations. International court of justice has equivocally recognized it under Article 38(1)c of the statute.

2nd-A state remains bound by certain rules of International law even if it has not given its consent. According to Article 36 of the VCLT a treaty may be binding on third states as well. Their assent shall be presumed as long as the contrary is not indicated.

3rd- States in some cases are bound by general International law even against their will.

3. Eclectic Theory: The jurists belonging to eclectic school have preferred to adopt a middle course in the positivists-naturalist debate. According to them international law comes from both natural law and consent theory.

# Codification of International law

## Codification of International law

Code is a consolidation of the statute law or statute collecting all the law relating to a particular subject. Codification is the process of translating into statutes or conventions, customary law and their rules arising from the decisions of tribunals, with little or no alteration of the law. Codification secures, by means of general conventions, agreements among the states upon certain topics of international law and acts as a check whereby the determination of particular law is not left to the caprices of judges. It also tends to reconcile conflicting views and renders agreement possible among different States.

Different Meanings of Codification

1. The harmonizing of Municipal Law of various countries by the preparation and enactment of uniform statutes.

2. A systematic re-statement of existing customary international law, for example as retaining and declaring the existing rules of international law.

3. Developing, amending and improving the law as it is re-stated.

The Committee on International Law 's Democratic Creation and codification set up by the General Assembly of the United Nations addressed the controversy between the second and third definitions of codification.

Article 15 of the Statutes of the Commission on International Law distinguishes between the democratic creation and codification of international law.

According to Professor Woosley, there must be two mechanisms for codification of law of nations (international law)-

(1) Empirical legal certainty and

(2) Achievement of universal acceptance of the law of so established through a widely agreed multilateral convention. He acknowledged that the legislative and political system were the second phase in character.

# United Nations Charter and Codification

United Nations Charter, Article 30 of the Charter gives ample scope for the codification of International law. it reads -

"the general assembly shall initiate studies and make recommendations for the purpose of - a (a) Promoting International co-operation in the political field and encouraging the progressive development of international law and its codification....."

# International Law Commission

The International Law Commission was established by the General Assembly in 1947 with the declared object of promoting the progressive development of international law and its codification. It consists of thirty-four members from Africa, Asia, America and Europe, who remain in office for five years each and who are appointed from lists submitted by national governments. The Commission is aided in its deliberations by consultations with various outside bodies including the Asian–African Legal Consultative Committee, the European Commission on Legal Cooperation and the Inter-American Council of Jurists.

Many of the most important international conventions have grown out of the Commission's work. Having decided upon a topic, the International Law Commission will prepare a draft. This is submitted to the various states for their comments and is usually followed by an international conference convened by the United Nations. Eventually a treaty will emerge. This procedure was followed in such international conventions as those on the Law of the Sea in 1958, Diplomatic Relations in 1961, Consular Relations in 1963, Special Missions in 1969 and the Law of Treaties in 1969.

Of course, this smooth operation does not invariably occur, witness the many conferences at Caracas in 1974, and Geneva and New York from 1975 to 1982, necessary to produce a new Convention on the Law of the Sea.

Apart from preparing such drafts, the International Law Commission also issues reports and studies, and has formulated such documents as the Draft Declaration on Rights and Duties of States of 1949 and the Principles of International Law recognized in the Charter of the Nuremberg Tribunal and in the Judgment of the Tribunal of 1950. The Commission produced a set of draft articles on the problems of jurisdictional immunities in 1991, a draft statute for an international criminal court in 1994 and a set of draft articles on state responsibility in 2001. The drafts of the ILC are often referred to in the judgments of the International Court of Justice.

# Relationship between Municipal law and International law

The relationship between international law and municipal law must be understood by understanding the relationship of all laws. International law is a compilation of national laws and acts. In other words , international law is a collection of laws that relate to the relationship of St ates. Municipal law, on the other hand, is sometimes called the national law of the region.

How is monistic philosophy the sole legal authority?

The monistic theory was propounded in 18th century by **MOSER & MARTENS**. 'Monistic' simply implies the continuity of the legal structures. Under this view, there is no distinction between local law and international law. Those who adopt this theory assume that the philosophy of law and the law are a common law which is universal law.

# Relationship between Municipal law and International law

There are two branches of the Law Science: the National Law and the International Law.

This argument describes the supremacy of international law over city law. Whether national or international, whatever legal work we deal with, international law itself is meant to be done.

- Which is Lauterpacht 's view on monistic theory?

Lauterpacht claims that the country lives by itself. The people are the fundamental components of society. Municipal legal structures' rights and obligations can be passed into the International Legal System. For example: Human rights are available in both national and international jurisdictions.

- National law and international law are identical, in the sense that both national and international rights and o bligations are aimed at promoting the interests of the people.

# Relationship between Municipal law and International law

- According to kelsen:

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- The principle he points out is that "in accordance with the State legal systems one should envision international la w as a single set of rules just as one is used to treating the State legal system as a unit."
- Many who do not follow this theory argue that municipal law does not comply with international law and it seems like the current historic conditions are making it more difficult to enforce new rules.
- Ultimately, Kelsen notes that it is the source of the ultimate
  legal power of all the laws based on international law fundamental norms.
- His argument indicates that all international law principles are equivalent to local law. Municipal laws inconsistent w ith international law are regarded immediately as null and not applicable.

# Relationship between Municipal law and International law

Dualist or DUALISM THEORY:(Propounded by Triepel)

The person supporting the theory of dualism claims that there is difference between municipal and international laws and that those rules have no equal intent

External laws only apply to national boundaries and do not infringe international law.

Foreign law is only applicable at the international level in this case.

The State must apply them via a legal notice enabling the application to enforce international law in a Country.

In both cases, citizens will face the international and politic nationalization of the conference.

# Relationship between Municipal law and International law

Dualism argues that national and international law are two distinct and globally accountable legal structures. All of th ese systems have different legal origins. National law shall be used for conflicts within a State and international law fo r the settlement of problems between two States. The two systems of law differ from each other on the following grounds: A) With regard to Sources: While the sources of municipal laws are custom-grown up within the boundaries of the State concerned and the statutes enacted by the sovereign, the sources of international law are custom-grown among the States and the treaties concluded by them are law making.

B) Concerning Subjects: Dualists are of the opinion that the subjects of international and municipal law are different. While municipal law regulates relationships between individuals and corporate entities, as well as relationships between the state and individuals, international law primarily regulates relationships between States.

C) Substance of law: The substance of the laws of both systems is also different. While municipal law is a sovereign law over individuals, international law is a law between sovereign states, rather than above.

D) About Principles: Local laws are obeyed in a state as they are the rules of state governments , international law is obeyed because of the Pacta sunt servanda principle

# Relationship between Municipal law and International law

Practice of States regarding Relationship:

1. Great Britain:

A) Customary International Law:

In the United Kingdom, all those laws of customary foreign law which are either generally accepted or have earned the united Kingdom 's approval are per se part of the land law. However, they are enforced only if they are not inconsistent with the Acts of Parliament or the final authority 's previous decisions. In many cases, the principle of incorporation doctrine has been applied. In the case of Buvot V. Barbuit,(1773), Lord Talbot declared that ' the law of nations in its entirety belonged to that of England. This was later followed in Triquet V. Bath(1764), where the earlier case was upheld by Lord Mansfield and applied directly the Talbot 's argument.

However, in R v. Keyn,(1876)Popularly known as the case of Franconia, Justice Cockburn distanced himself from the above-mentioned doctrine by arguing that customary law is part of the law of the land only to the degree that the rules were clearly adopted and incorporated into the law only to the extent that the rules were clearly adopted and incorporated into the law of England by statute, court decision or usage. The doctrine applied in the case is known as the Transformation doctrine,. That is to say, it is necessary to transform the customary international law into English municipal law by using the required constitutional mechanisms, such as the Act of Parliament, before it is enforced by the courts.

# Relationship between Municipal law and International law

- Later, West Rand Central Mining co. Vs. Lord Alverstone(1905) reaffirmed the doctrine of incorporation by claiming that whatever the universal consent of civilized nations had received, it must also have received the consent of Great Britain and as such be enforced by the municipal courts.
- In Trendtex Corporations Trading v,. Central bank of Nigeria(1977), Lord Denning believed that as between these two schools (transformation and incorporation), "I now understand that incorporation doctrine is right." In Maclaine Watson Vs. Department of Trade and Industry, the Court of Appeal clearly reaffirmed the incorporation theory.(1988)
- **TREATIES.**
- The British practice regarding the application of treaties is conditional primarily by the constitutional provisions. Certain treaties are binding on the courts only if an enabling Act of parliament has been passed. This rule applies to treaties which affect private rights or liability or which imposes any financial obligations, or which require modifications of the common law or statute for their enforcement in the courts.

# United States of America practice

- A) **Customary International Law:**
- Customary International law which is universally recognized or has at any rate received the assent of the united States, is binding upon American courts and will be applied by them. In doing so the courts may be guided or even bound, by suggestions or statements made to them by the executive branch of government on certain matters affecting the conduct of foreign relations.
- Justice Grey In Paquete Habana case ( 1900) stated that:
- "International Law is a part of our law and must be ascertained and administrated by the courts of justice of appropriate jurisdiction as often as questions of rights depending upon it are duly presented for their determination'.
- In case of Banco nacional de cuba Vs. Sabbatino(1964) , I was held that, a later clear statute will prevail over customary international Law.
- B) **Treaties:**
- American Practice is different from the British practice. Article VI, clause 2 of the united states 'constitution provides that " …….all treaties made , or which shall be made under the authority of the united States, shall be the supreme law of the land."

# United States of America practice

- In U.S Vs. Pink, the Supreme court stated:
- "A treaty is a law of the land under the supremacy clause (Article VI, clause 2 of the constitution). Such international compacts and agreements as the Litvinoff Assignment ( an executive agreement) have a similar dignity.
- American courts do not regard all the treaties strictly as part of the law of the land .In practice, a distinction is made between self-executing treaties and non-self executing treaties. Self executing treaties are those which become enforceable without implementing legislation. They override state constitutions and laws previously enacted statutes. Such treaties are covered within the framework of the constitution and are treated as a part of the law of the united states.
- Non- self executing treaties become part of the law of the land when the necessary legislation has been made to that effect.

# INDIAN PRACTICE

- Indian Constitution under Article 51 provides the general obligations of India to the world by Stating: The state shall endeavor
- a) to promote international peace and security;
- (b)Maintain just and honorable relations between nations ;
- ( C) foster for International law and treaty obligations in the dealings of organized peoples with one another
- (d) encourages settlement of International dispute by arbitration.
- A) Customary International law:
- In case of customary international law ,Indian courts follow the doctrine of incorporation same as Great Britain. Indian courts would apply customary rules of International law , if they are not overridden by clear rules of domestic law.
- In the case of **Gramophone company of India ltd Vs. Birendra bahadur Pandey(1984**), the observation of supreme court relate to the binding force of the customary rules of international law held " National courts will endorse International law but not if it conflicts with national law. National courts being organs of the state and not organs of international law must apply national law if international law conflicts with it.

# INDIAN PRACTICE

- B) Treaties: For treaties , it is submitted that they shall not be binding unless implemented by legislation. Article 253 of the Indian constitution, said that the parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement, convention with any country or countries or any decision made at any international conference , association or other body.
- In Vishaka V. state of Rajasthan(1997), the supreme court held that the international conventions and norms are to be read into them in the absence of enacted domestic law occupying the field when there is no inconsistency between them. In this case the reference was given of Article 11 of CEDAW, which is a International legal document.
- By reading both articles 51(c) and 253 read with entry 14 of union list of seventh schedule of the constitution , that the courts in India may enforce international treaties and conventions which are not inconsistent with Indian laws.

# SOURCES OF INTERNATIONAL LAW

- Article 38 of the ICJ statute:

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- Article 38(1)(a-c) of the ICJ was adopted by the same provision of the statute of the Permanent Court of International Justice which operated under the auspices/support of Legal of Nations in 1920. The article refers to the primary sources of international law which are enumerated below:
- **Custom as a Source of International Law**
- The original and the oldest sources Law is known as Custom. The rules of customary International Law involved a long historical process which gained recognition by the entire community. The presence of customary rules can be deduced from state practice and behaviour because it is not a written source of law. A rule of customary law is said to have two elements:
- First, there must be widespread and consistent State practice.

# SOURCES OF INTERNATIONAL LAW

- Secondly, there has to be "opinio Juris", a Latin term which means a legal obligation to believe in the existence of such law.
- Features of Customary Law
- **Uniform and general**
- State practice to give rise to binding rules of customary International Law, that practice must be uniform, consistent and general and must be coupled with a belief that the practice is obligatory rather than habitual. In the Asylum Case, the court declared that a customary rule must be used constantly and uniformly throughout history which can be traced through state practice.
- **Duration**
- Continuous and regular use of particular conduct is considered as a rule of customary law. In the North Sea Continental Shelf cases, the ICJ stated that there is no precise length of time during which the practice must exist. It is simply that it must be followed long enough to show that other requirements of custom are satisfactory.

# SOURCES OF INTERNATIONAL LAW

- **An opinion of Law.**

- To assume the status of customary international law the rule in question must be regarded by the state as binding in Law i.e. the states must regard themselves as being under a legal obligation to follow the practice. In the Lotus case, Opinio Juris was seen as an essential element of customary international law and this was affirmed in North Sea Continental Shelf Cases as well.
- **Convention as a source of International Law**
- Treaties and conventions are one of the most important sources of International Law. These conventions can be multilateral or bilateral. Multilateral conventions relate to the treaties which formulate the universal or general application of the law. On the other hand, bilateral conventions are those which is formed exclusively by two states to deal with a particular matter concerning these states.

# SOURCES OF INTERNATIONAL LAW

- Vienna Convention on the Law of Treaty 1969, the codified law for contracting treaties, gives the definition, "A treaty is an agreement whereby two or more states establish or seek to establish a relationship between them governed by international law." Treaties act as a direct source of rights and obligations for the states, they codify the existing customary source of law.
- They are voluntary and cannot bind non-signatory to it, however, there are certain exceptions to it that is if any rule forms part of the Jus Cogens norm as they are part of the accepted principles of International law and every state has a peremptory duty of not breaching them due to their erga omnes obligations. (owed to the whole world)

# SOURCES OF INTERNATIONAL LAW

- **General Principle of International Law**
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Most modern jurists accept general principles of law as common to all national legal systems, in so far as they are applicable to the relations of States. There are fewer decided cases in international law than in a municipal system and no method of legislating to provide rules to govern new situations. It is for such a reason that the provision of 'the general principles of law recognized by civilized nations' and was inserted into article 38 as a source of law.

- Some of the examples of General principles include:
- The rule of res judicata which has been affirmed by the court in the case of Genocide Convention Bosnia and Herzegovina v. Serbia and Montenegro,
- The rules of Pacta Sunt Servanda made applicable,
- Reparation must be made for damage caused by the fault,

# SOURCES OF INTERNATIONAL LAW

- The right of self-defense for the individual against attack on his person, family, or community against a clear and present danger,
- For one's own cause no one can be a judge and that the judge must hear both sides.
- Article 38(1)(d) forms part of the material source of International Law also known as the secondary source. It states that judicial decisions and the teachings of the most highly qualified publicists of the various nations also help in guiding the formation of international law, however they are not binding but merely advisory in nature.
- **Judicial Decision**
- Under this, the court is authorised to apply previous decisions of the court which are also known as an evidence of international law, however, it is subject to the exception stated under Article 59 of the statute which states that the previous decision of the court can only guide the court, it is not binding on the court.

# SOURCES OF INTERNATIONAL LAW

- ICJ plays a major role in the law-making process through its advisory opinions, case laws and judge's rule. One of the major examples of this includes the principle of the prohibition against the use or threat of use of force laid down by the court in the case of Nicaragua vs. USA which is now considered as a part of Customary International Law. T

- he judicial decision of the court also encompasses international arbitral awards and the rulings of national courts. One leading example is Alabama Claims arbitration, which marked the opening of a new era in the peaceful settlement of international disputes, in which increasing use was made of judicial and arbitration methods in resolving conflict.

# SOURCES OF INTERNATIONAL LAW

- **Juristic writings and teachings**
- Other major parts of this source also include the 'teachings of the highly qualified writers such as Gentili, Grotius, and Vattel who were considered as the supreme authorities of the international law in the 16th to 18th Centuries.

- Textbooks are used as a method of discovering what the law is on any particular point rather than as the source of actual rules, and the writings of even the most respected international lawyers cannot create law. These are considered as an evidentiary source of law as they provide an explanation and understanding of the International principles. They carry an essential value because they provide to fill the grey areas of International Law where treaties or customs do not exist

# SOURCES OF INTERNATIONAL LAW

- International law is not based on a set of rules and therefore article 38 is not exhaustive. There are various other factors that develop the usage of International Law which include declarations of Security Council resolutions, declarations, and recommendations adopted by the UN General Assembly, International morality and equity, etc.

- The world is constantly evolving and the problems are becoming more complex, the resolutions and declarations adopted by assembly act as an inevitable impact upon the direction adopted by modern international law. The way states vote in the General Assembly and the explanations given upon such occasions constitute evidence of state practice and state understanding as to the law.

# SOURCES OF INTERNATIONAL LAW

- For example, in the case of the USA vs Nicaragua, General Assembly had asked the court for an advisory opinion on the question: "is the threat or use of Nuclear weapons in any circumstances permitted under International Law?" The court after a review of the relevant international legal instrument as well as the Security Councils' General Assembly resolution of the matters reached a resolution that the threat or use of nuclear weapons would generally be contrary to the rules of International Law applicable to armed conflicts and in particular the principles and rules of humanitarian law.

- The concept of equity has been referred to in several cases. In the Rann of Kutch Arbitration between India and Pakistan in 1968, the Tribunal agreed that equity formed part of international law and that accordingly, the parties could rely on such principles in the presentation of their cases.

# SUBJECTS OF INTERNTIONAL LAW

- Any entity which possesses international personality is called an international person or a subject of international law. An entity may be deemed to possess international personality if it is capable of possessing **International Rights and Duties** and having the capacity to maintain its rights by bringing international claims.
- In Reparation for injuries case, it was observed that ‘an entity capable of possessing international rights and duties and having the capacity to maintain its rights by bringing international claim is a subject of International law.
- If an entity is competent to perform only a few acts or even a single act as provided by the rules of International law, that entity would be regarded as to have possessed capacity to become subject of International law.
- A**) REALIST THEORY**: According to this theory ‘Only States are subject of International law. The theory is called ‘ realist theory’ whose profounder assumed that the states as an entity is legally distinguishable from the human beings who compose them. While the former are the subjects of International law, latter are the objects of International law. According to this view individuals lack any juridical personality because they possess neither rights nor duties under International law. If they have any rights at all , that can be claimed only through the states.

# SUBJECTS OF INTERNTIONAL LAW

- B) **FICTIONAL THEORY**: According to it, individuals only are the subjects of International Law like municipal law. As states do not have souls and they have no capacity to from and express an autonomous will. They are abstract structures acting through individuals .Kelsen was of the view that the rules of municipal law as well as those of International law are meant for human beings. The theory was based on a fiction that duties and rights of the state are only the duties and rights of men who compose them.
- C) **FUNCTIONAL THEORY**: According to this theory, International personality is granted to those who are capable of performing legal functions under it. The theory for convenience, may be called 'Functional Theory'. The theory of recognizing an entity as a subject of International law on the basis of the capacity of rights and duties under it appears to be sound.
- **ORIGINAL AND DERIVED PERSONALITY**:
- The concept of original and derived personality means, the states are original subjects of International law and when states vest its power in individuals it also become subjects but derived one.

# SUBJECTS OF INTERNTIONAL LAW

**Original personality** belongs to states ipso facto once they satisfy the criteria of statehood, whereas **derived personality** flows from the recognition by states that other entities may have some competence in the field of International law.

It is not necessary that all entities having international legal personality have identical nature i.e. Population, Government , Territory and sovereignty.

International court of justice in **Reparation of Injuries suffered in the service of the United nations case** (1949) that the subjects of law in any legal system are not necessarily identical in their nature or in the extent of their rights, and their nature depends upon the needs of the community. The court came to the conclusion that the United nations is an international person in spite of the fact it is not a state. **What it does mean that United nations is a subject of International law and it is capable of possessing international rights and duties and that it has capacity to maintain its right by bringing international claims.**

# States

States are the primary subjects of international Law. States is not defined any where in International law as a definition but its features(qualifications) where define in Montevideo convention on rights and duties of States of 1933. The convention under Article 1,stipulated that :

‘The State as a person of international law should possess the following qualifications :

a) a permanent population b) a defined territory c) a government d) capacity to enter into relations with other states’

A) POPULATION: The population term means ’ People’. According to monte video convention on the rights and duties of states of 1933 stated a permanent population instead of population as one of the qualifications of a state. Permanent population does not mean that there cannot be migration, but it suggest that there must be some population linked to a specific piece of territory.

B) Territory: A state must have a territory. It is immaterial what is the size of the territory is in existence. Israel is a state but it does not have a defined territory. In Deutsche continental gas Cesslshaft Vs. Polish state.(1929-30) the tribunal held that statehood does not absolutely depend on the existence of rigidly fixed boundaries.

C) Government: The people and the territory should be governed by a government. The may be different types of government:

1. A de Jure government whose origin or existence is in conformity with the constitutional law of the state represented and whose legality is uncontested in International law.

2. A de facto government is a government whose origin and existence is contrary to the constitutional law of the state concerned and legality is challenged in International law.

3. A military government

4. A government in exile

D) capacity to enter into relations with Other States:

A state must have the capacity to enter into relations with other states, in order to call it a 'State' in International law.

# KINDS OF STATES

## 1. SOVEREIGN STATES:

By the term 'Sovereignty' is meant the supreme authority within the state which on the international plane means not legal authority over all other states but rather legal authority which is not in law dependent on any other earthly authority. The Sovereign word was coined by Jean bodin. And according to Hobbes & Bodin theory-Sovereign must be **self perpetuating, undivided and ultimately absolute**. Sovereignty in the strict and narrowest sense of the term implies, therefore , **independence all round, within and without the borders of the country**.

Thus, the essential elements of sovereignty are firstly, that it is exercised within territorial limits and secondly, sovereignty is constituted by the **independence of State power** from any other power, I.e. an authority over which there is no other authority.

There is a considerable difference between these twos aspects of state sovereignty. The State's independence in its internal affairs presupposes full freedom in the socio-political organization of society, that is, in the establishment of the state's social and political system , and law and order. **Interference of one state in the affairs of another state in the internal matters is unjustified**.

# KINDS OF STATES

A sovereign State is not free to do even in its internal affairs which is detrimental to the freedom and independence of other states. **A state cannot pretend absolute sovereignty without demonstrating a duty to protect people's right**. A State has a duty to **protect human rights and fundamental freedoms** of its citizens. It is to be noted that at present the meaning of the term 'sovereignty' has undergone a drastic change. A sovereign state may have a supreme power within the state, but in international law where all states are equal and sovereign**, the sovereignty no longer conveys the idea of supremacy**.

In International and International relations**, a sovereign state does not possess supreme and absolute powers, and therefore, it has a restricted meaning than what it had in the earlier centuries. This theory is referred to relative theory.** State themselves by giving their consent have placed limitations on their supreme and absolute powers. It implies that a state, at present , does not possess " Supreme and "absolute" powers. But it does not mean that states have ceased to remain sovereign. The theory of relative sovereignty provided the essential prerequisites for the co-existence of states within the international community. Consequently, sovereignty in international relations means that a **state is independent in international affairs as long as it keeps within the bounds of the mutually rules of international law**.

# KINDS OF STATES

- The limitation so placed by **giving consent on the sovereignty is termed as "auto-limitation theory**". Thus a state has absolute freedom of action **except in so far as it has agreed to rules restricting that freedom**.

- **Principle of Good neighbourliness-**

- Supreme and absolute powers of the sovereign states are further qualified, by the principle of good neighbourliness. Preamble of the Charter of the United nations lays down that states shall live together in peace with one another as **good as good neighbours.'** Further **Article 74 of the charter states** that members of the united nation also agree that their policy in respect of the (non-self-governing) territories….. Must be based on the general principle of good neighbourliness.

- **Supreme and absolute powers of the sovereign:**

- Sovereign states are the subjects of International law in the fullest sense. Oppenheim has stated **them 'real' international person because they are the main legal actors in International law**. The principle of the equality of states means that every state is entitled to full respect as a sovereign state by other states. **The Principle of equality of states has been recognized under Article 2 para 1 of the charter of the united nation which says that 'the organization is based**

# KINDS OF STATES

- on the principle of the sovereign equality of all its members.
- Sovereign equality includes the following elements:
- A) States are juridically equal
- B) each state enjoys the rights inherent in full sovereignty
- C) each state has the duty to respect the personality of other states
- D) the territorial integrity and political independence of the states are inviolable
- E) each has the right freely choose and develop its political, social, economic and internal systems
- F) each state has the duty to comply fully and in good faith with its international obligations and to live in peace with other states.

# KINDS OF STATES

**Union of States**:

Sovereign states are a single international person, that is, they have one central political authority. Such single States may be called ‘ Simple international persons’. Two or more single states may from a union by an international treaty, recognized by other powers wherein they surrender their sovereignty in favor of the union.

**Not Fully Sovereign States**:

State should be sovereign in order to be an international person. If the attributes of statehood are possessed by the states other than sovereign states, even of the smallest degree, they may be deemed international law. In fact such states often enjoy in many respect rights, and fulfil in other points duties, established by international Law. Such State are called not-fully sovereign States.

A) **Protectorate States**:

When one state surrenders itself, by an agreement embodied in a treaty, the administration of certain important international affairs, to the protection of another state, a kind of relationship is established between the two states known as protectorate.

# KINDS OF STATES

- Fenwick defines the term protectorate as a state which by formal treaty placed itself under the protection **of a stronger state**, surrendering to the latter control over **its foreign relations** while retaining a large measure of control over its domestic government.
- **Protected states are not sovereign states. However, they are *prima facie* independent and the possessor of all rights which they have not surrendered**. They are therefore international persons and subjects of International Law.
- For e.g.
- Bhutan:
- Bhutan became a protectorate of India through a treaty of friendship concluded on August 8,1949.Under Article 3 of the treaty, the government of India undertook to exercise no interference in the internal administration of Bhutan.
- B) **Vassal States:**
- A State which remains under the suzerainty of another state is called vassal state. Vassal states do not have capacity to enter into relationship with other states, since the suzerain absorbs these relations entirely, they may be listed in the category of not-fully sovereign states in view . Manchukuo in North Eastern China. This State owed its existence to Imperial Japan.

# KINDS OF STATES

- All international treaties concluded by the suzerain state are ipso facto concluded for the vassal if exception is not expressly mentioned or as not self-evident. War of suzerain is ipso facto a war of the vassal. The suzerain bears within certain limits a responsibility for the actions of the vassal state.
- The position of that vassal state is different from the protectorate state. The two differ on may grounds . Firstly, **while in the case of the protectorate state, the superior state protects the weak state in accordance with the terms of treaty concluded between themselves, in the case of vassal state, suzerain powers absorbs foreign relations entirely**.
- Secondly, if a war s declared by the protecting state, protected state does not Ipso facto become a party to that war. However, in the case of vassal state , war of the suzerain is ipso facto war of the vassal.
- Thirdly, while a treaty concluded by the protectorate state, is not ipso facto binding on the protected state, all International treaties concluded by the suzerain state are ipso facto concluded for the vassal.
- Fourthly, While a protectorate state may become a member of the International organization including that of the United Nations Organization, a vessel state does not have capacity either To become a member of International organization or to establish relationship with other states. E.g.- Tibet

# KINDS OF STATES

## C) **Federal States**:

A federal state is a union of several states which has organs of its own and is invested with power, not over the member states, but also over their citizens. The union is based, normally through an **International treaty of the member states, and on a subsequently accepted constitution of the federal state.** It is not possible for the member states of a federal state to be recognized as international persons for the reason that they are neither the full nor half-sovereign political entities, and therefore, they are not 'states' in the sense in which the term is used in international Law. **They do not possess independence nor do they exercise exclusive territorial or personal supremacy. The exception of this Switzerland as member states have the right to conclude treaties between themselves without the consent of the federal state as well as the right to conclude treaties with foreign states as regards matters of minor interest**.

Federal States are different from confederation. **Confederated states are a number of sovereign states** linked together for the maintenance of their external and internal independence by a recognized international treaty into union with organs of its own, which are vested with certain powers over the member states.

# KINDS OF STATES

## D) **Commonwealth**:

Commonwealth is neither a formal alliance nor a federation of states since there exists no central government. It is not a super state but **an association of free and equal states who believe and recognize certain common principles**. One of the instances of commonwealth is the commonwealth of nations- an association of independent sovereign states all which have been, at one time, British territories. Earlier it was called British commonwealth nations but in 1946 they have dropped British.

## E) **Associated States:**

Associated States have a large measure of autonomy in internal affairs, and possess the right to secede in accordance with specified procedures. However, they are different from federal states and from the union of states, in view of their status. **The relationship between them depends upon the terms of the agreement**. In some cases, they may appear to be analogous to a protected state, in some to a colonial territory, and in other perhaps to a union of states.

**Sikkim is one of the example of Associated state of India and in 1975 it come to an end.**

# KINDS OF STATES

## F) TRUST Territories:

After the first world war, many territories came before the international law scene whose political institutions **were not sufficiently developed so as to make them independent**. It was therefore decided under the administration of other states. The system was termed as **'mandate' system.** The territories in questions were to be administrated by the designated allied nations, **who were called 'mandatory' states, subject to considerations laid down in agreements made between theses states and the league of nations**. After the creation of United nation a improved mandate system created called the '**Trusteeship System**', under which the mandatory states would voluntarily place the territories under their control. Trust territories are by no means sovereign states.

## 3) **Not-Typical States**:

A few states which are though sovereign, are not like sovereign states as discussed.

A) Holy State: The term 'Holy See' is used to refer to the supreme organ of the catholic Church, i.e. Bishop of Rome, commonly called the Pope. The holy see possesses an international personality despite very small state. **It has diplomatic relations with 166 nations, 69 of which have permanent diplomatic mission in the Vatican.**

# KINDS OF STATES

B) Neutralized States:

**When a state declares that it would never take up arms against any other state except in the case of aggression, and it shall adopt the attitude of impartiality in all the wars that may occur, the state is called neutralized state**. Three elements are required to exist in order to call a State as neutralized state. Firstly, **a State must abstain from offensive action**. However, it may take up arms of aggression. Secondly, **a State must remain neutral in all the wars in future** and thirdly, the above position of a state should **be guaranteed collectively by other states in an international convention.**

For E.g. Switzerland and Austria

C) Free cities:

Free Cities are specific political formation comprising of one independent town. Their status is determined by the agreement with the states concerned. And it not necessarily required to be sovereign.

# Rights and duties of States

## Rights of the States:

1) Rights to independence

2) Right to Territorial Jurisdiction

3) Right to equality

4) Right to Self-Defence

**Duties of state**:

1) Duty to refrain from intervention

2) Duty refrain from fomenting civil State

3) Duty to respect for Human Rights and Fundamental freedoms

4) Duty to ensure International Peace

5) Duty to refrain from Resorting to war

6)Duty to settle disputes by peaceful means

7) Duty to refrain from recognizing territorial Acquisition

8) Duty to Carry out obligations in Good faith

09) Duty to conduct relations with other States

**ECONOMIC RIGHTS AND DUTIES OF STATE:**

The 1970s could be called the decade of International economic diplomacy . The demand for the establishment of New International Economic Order(NIEO) was made by the states officially at the united nations Conference on Trade and Development(UNCTAD) III Conference held Santiago(chile) in 1972 by a group of developing countries of Africa, Asia and Latin America.

Later on December 12, 1974, the general assembly at its 29th Session adopted a resolution which is known as the Charter of Economic rights and Duties. The Preamble of the charter stressed the purpose of the charter i.e. the charter shall constitute an effective instrument towards the establishment of a new system of International economic relations based on equity, sovereign equality, and independence of the interests of developed and developing countries. The charter under chapter II laid down the economic rights and

# Rights and duties of States

**Economic Rights of a State:**

1) Right to choose its economic system

2) Permanent sovereignty over Natural Resources

3) Right to engage in International trade

4) Right to associate with producer organization

5) Right to participate in International decision- making process

6) Transfer of technology

**Economic duties of States:**

1) Duty of Promotion, Expansion and Liberalization

2) Duty of utilization of Resources released by disagreement

3) Duty of most favored nation relevant

4) Duty of Indexation of Prices

# International Organization as a Subject of International law

Tunkin has defined international organization as an association of states established on the basis of treaty in accordance with International law in order to achieve specific objectives.

1. International organization are the associations of states and therefore sometimes they are also known as inter-governmental organization whose members are official government delegations of states.

International organization are set up by the states through a treaty which is the constituent instrument and character of the International organization. The constituent instrument describes the structure, purposes and main guidelines of the organization being the product of treaties, in principle they establish rights and duties only between the contracting states. Sometimes, organization are set up on the basis of treaties, but through the resolutions of the organs of International organization. For e.g. United nation Conference on trade and development (UNCTAD) and the United Nation Environment Program(UNEP) were established by the resolutions of the general assembly within the framework of the United nations.

International Organization are established for specific purposes. The purposes of an International organization are important in establishing its legitimacy.

International organization possess international personality by virtue of having distinct rights and duties. Sometimes they proclaim their personality in their constitutions or at least assert capacity in law for autonomous action.

# International Organization as a Subject of International law

**Evolution of International organizations**:

**The congress of Westphalia of 1648** was a notable milestone in the development of international organization which ended the thirty year old religious conflict of Central Europe. Although it was not an international organization, the joining of practically all the European states in diplomatic conference signalled the opening of a new era in International relations.

Nineteenth century saw the beginning of the movement towards interdependence and International cooperation. The result was that international conferences acquired new dimensions and they extended their scope beyond that of peace settlements. Conferences and meetings began to be held in increasing frequency. The political conference system was therefore a step forward towards the creation of International organizations. The result of these Conferences was the emergence of a number of International administrative agencies and public international unions in the latter half of the nineteenth and the early twentieth centuries.

Theses were permanent agencies dealing with non-political technical international unions in the latter half of nineteenth and the early twentieth centuries. E.g. **Universal Telegraphic Union(1865**) and **Universal postal Union**( 1874).

## Hague Peace Conferences:

With the **Hague conferences(1899 and 1907**),an important threshold was crossed on the way to International institutionalization. These conferences which were meant to take place every seven years were convened in time of peace and enjoyed the nearly universal participation of the then recognized states. The Hague Conferences of 1899 produced major regulatory instruments, such as the convention for the pacific settlement of Disputes (Which established the permanent Court of arbitration), the convention on laws and customs of Land Warfare, and the Convention on laws of naval Warfare. The 1907 Hague Conference updated the 1899 conventions and produced ten more conventions on neutrality and land and sea warfare.

# International Organization as a Subject of International law

The league of nation was founded to avoid war in future. In June,1915," the league of nation to enforce peace was founded. After long and bitter deliberations, the league of Nations commission of the peace Conference accepted the joint draft commission, and the covenant of the league of nations was adopted. The Covenant was a part of the treaty of Versailles of 1919. The League of nations was established on January 10,1920 with the main object of maintaining peace and security and to promote International cooperation.

The league had two principal organs: the Assembly and the council assisted by the permanent secretariat.

# International Organization as a Subject of International law

- A) **The Assembly**:
- The assembly was represented by all the members of the league. According to Article 3, each member of the league could send three representatives to the assembly, but they all had one vote. The assembly met at least once a year, and more frequently if required. The functions of the assembly are:
- i) Some were exclusively reserved for the assembly
- ii) Others were reserved for the council
- Iii) and some required the cooperation of these two organs.

- B) **The Council**:

The council was the executive organ of the league. The council consisted of :

i) Permanent member ( including great powers of the league)

ii) Eleven non- permanent members

- C) **The Secretariat**:
- The secretariat was headed by a secretary-general who was appointed by the council with the approval of the majority of the assembly. Its work was to assist all organs of the league by providing services of different kinds for e.g. Coordination, registration of treaties, keeping of records, etc

- **Weaknesses of the League of nations**:
- An evaluation of the twenty years (1920-1940) record of the league of nations leads one to classify the first decade(1920-1930) as the successful years and the second decade(1930-1940) as the unsuccessful years.
- 1) league did not forbid war completely.
- 2) America did not joined league even after starting the whole process as an founding member, as senate did not ratify the treaty.
- 3) Powers for the enforcement of the decision was not centralized.
- 4) functions of the Assembly and council were not clearly demarcated.
- 5) Members were not bound by the decisions of the council.
- 6) There was no provision which can stop the withdrawal of nation from league of nation.
- 7) No provision in relation to stop aggression of nation against another.

# International Organization as a Subject of International law

**Kinds of International Organization**:

International organization may be classified in different ways on the basis of Duration, Permanent or provisional, on the basis of nature i.e. Judicial, general, governmental etc, Geographical i.e. Regional or Universal.

1) **General membership and General purpose Organization**:

Such organization are global in scope and are open to all states. They embrace the whole range of activities of the international community: Political, Economic, Social, cultural and technical. E.g. United nation, League of Nation.

2) **General membership and limited purpose Organization**:

Such organization are also called as functional organization because they are devoted to a specific function, but they are open to all states. E.g. WHO, WTO, ILO etc.

organization. They are created for a wide range of subjects i.e. political, economic, military etc. E.g. SAARC, ASEAN etc

**4) Limited membership and Limited Purpose organization**:

These organization is open for particular area nations only and its purposes are also limited or specific. E.g. North Atlantic Treaty organization etc.

# Law of International Organization(I.O)

This branch of international law is of recent origin. It combines principles and norms regulating the establishment, legal status and activities of inter-governmental organization. Law of International organization includes internal as well external laws. While the external laws will govern the relation between international organization and its members whereas the internal laws will look after its internal procedure, finance rule and staff regulations. The sources of law of international organization are:

1) treaties and agreements which are acts of institutions

2) other treaties 3) international custom 4) rules of procedure, finance regulations and staff rules

5) Certain resolutions of International organizations

The charter of united nation is the principal source of the law of international organization which lays down general principles related to UN and other I.O

## Legal personality of the organization

The attribution of international personality to an organization endows it with separate entity, distinct from the constituent elements. International organization possess any legal personality could have been answered expressly had international community been regulated through a constitution.

In **Reparations for injuries** suffered in the service of the united nation, commonly known as Reparation case, the international court of justice was asked for an advisory opinion(Article 96) on the capacity of the united nation, as an organization, bring an international claim in respect of injury to its personnel. Accordingly, the court came to the conclusion that the organization is an international person. It is a subject of international law and capable of possessing international rights and duties, and that it has capacity to maintain its rights by bringing international claims.

Many other institutions include the claim of their personality in their constitution(Legal documents). For instance, Article 15(1) of the food and agricultural organization agreement provides that " the organization shall have the capacity of a legal person to perform any legal act appropriate to its purpose which is not beyond the powers granted to it by this constitution. The articles of Agreement of International Monetary fund under article 9(2) and of the International bank of reconstruction and development under article 7(2) state that both the entities " Shall possess full judicial personality and in particular capacity :

A) contract

B) To acquire and dispose of immovable and movable property

C) to institute legal proceedings

# Legal functions of International organization

**1) Treaty making powers**:

Treaty making powers of the international organizations depend upon the constitutions of the different organizations. Article 104 of charter of UN obligates each member of the united nation to accord to the organization within its territory " such legal capacity as may be necessary for the exercise of its functions.

UN charter specifically authorizes the organization to conclude agreements with member states on the provisions of military contingents(Article 43) and with specialized agencies bringing them into relationship with the United nations(Article 63).Article 77 and Article 105(3) have been interpreted as authorizing the conclusion of trusteeship agreements and conventions on privileges and immunities with member state respectively.

# Legal functions of International organization

2) **Privileges and Immunities**:

International organization require a certain minimum freedom in order to perform their functions smoothly and effectively and legal security for their assets, headquarters and other establishments and for their personnel and representatives of member states accredited to the organization. Article 105 of the U.N charter provides that the " the organization shall enjoy in the territory of each of its members such privileges and immunities as are necessary for the fulfilment of its purpose" , and further, 'representatives of the members of the united nation and officials of the organization shall similarly enjoy such privileges and immunities as are necessary for independent exercise of their functions in connection with the organization.

# Legal functions of International organization

3) **Capacity to make International Claims:**

The capacity to espouse claims depends on the existence of legal personality and in the interpretation of the constituent instrument in light of the purposes and functions of the particular organization.

4) **Functional Protection**:

Some international organization have a legal capacity to perform certain functions in the territory of each contracting party. Under International law, the organization must be deemed to have those powers which, though not expressly provided in the charter, are conferred upon it by necessary implications as being essentials to the performance of its duties.

# Legal functions of International organization

5) Responsibility of International organization:

International legal theory and International legal practice recognize the proposition that International Organization are subjects of International responsibility in the event of a violation of International law by its organs. A number of treaties concerning the exploration and use of outer space have laid down that international organization and its member states are liable for damage caused by activities out by that international organization in outer space

# INDIVIDUAL POSITION IN INTERNATIONAL LAW

In classical International law, individuals were regarded as the object of International law, and not as its subject. The charter of the United nation in the preamble has given a place of importance to individuals. However, this alone did not change the position of individuals in the domain of International law. It is undisputed that International law primarily regulates the relationship of states, and they are the primary subjects of International law.

**RIGHTS OF INDIVIDUALS**:

1**) Human Rights**:

One of the principles of the UN is to promote and encourage respect for human rights and fundamental freedom for all. The Universal declaration on human rights(UDHR) was adopted by the general assembly in 1948 which provided various rights to the individuals. But this declaration did not impose legal obligations on states to give effect to its provisions. The International covenant on civil and political rights and the International protocol to the covenant on economic, social and Cultural rights, along with an optional protocol to the covenant on civil and political rights were adopted in 1966, wherein the contracting parties declared that they would provide different rights to as stipulated in the covenant to the individuals.

## 2) **RIGHT TO MAKE PETITIONS**:

The optional protocol to the covenant on civil and political rights of 1966 provides for the petitions by the individuals before the human rights committee against its own state. The convention on elimination of All Form of Racial Discrimination of 1966 also provides under article 14 that the committee on the Elimination of racial discrimination shall receive communications from individuals or group of individuals for the violation of the human rights mentioned in the convention. Article 22 of the convention against Torture and other Cruel, Inhuman or degrading treatment or Punishment of 1894 and Article 75 of the international convention on the Protection of the rights of all migrants workers and members of their families of 1990 also provided for the individual's petitions. **Rights to individuals to make petitions before the International forums are available only at the instance of the state.**

Some regional conventions have also provided for the petition mechanism. The European convention for the protection of Human rights and Fundamental freedoms of 1950, lays down under Article 25 that the commission my receive petitions from any persons, non-governmental organizations or group of individuals claiming to be victims of a violation by one of the high contracting parties provided **the state concerning which a petition is made, has declared that it recognizes the competence of the commission to receive such petitions.**

# INDIVIDUAL POSITION IN INTERNATIONAL LAW

- 3) **RIGHT TO CONCILIATION AND ARBITRATION PROCEEDINGS**:
- The convention for the settlement of Investment disputes between States and Nationals of other States concluded on March 18, 1965 provided for the machinery of conciliation and arbitration on a consensual basis so that private foreign investors might have direct access thereto settle legal disputes with investment-receiving states.

# INDIVIDUAL POSITION IN INTERNATIONAL Investment LAW

- ICSID Convention of 1965,7 private investors who are nationals of a State party of ICSID may institute arbitration proceedings in regard to "any legal dispute arising directly out of an investment" against another Contracting State in which they have made an investment (host State) provided that the host State has consented in writing to ICSID arbitration(Article 36 in conjunction with Article 25 of ICSID).
- A directly investment-related legal dispute for the purposes of the Convention may arise not only from a breach of the "diagonal" investment-related contract between that State and the investor, but also from the breach of an international investment agreement (IIA), often a bilateral investment protection treaty (BIT) concluded between the home State of the investor and the host State. The investor may accordingly claim both a breach of the contract and a breach of a treaty before the ICSID tribunals.

# INDIVIDUAL POSITION IN INTERNATIONAL Investment LAW

- According to Article 25 of ICSID, “a national of [a] Contracting State” may “submit” a dispute to the International Centre for Settlement of Investment Disputes. Article 36, paragraph 1 of ICSID reads, “Any . . . national of a Contracting State wishing to institute arbitration proceedings shall address a request to that effect in writing to the Secretary-General . . .”
- In investment protection law, the discussion of the legal status of investors – i.e., of legal or natural persons under private
- law – accordingly progresses in the opposite direction of the debate in international humanitarian law, which began with the substantive legal status of the individual

# INDIVIDUAL POSITION IN INTERNATIONAL Criminal LAW

- International criminal law prohibits certain conduct and imposes the special punishment of a criminal penalty when the prohibitions are violated. The prohibitions (or the obligations to refrain from conduct contained therein) are all directed at individuals, and even in their personal capacity. Neither is it necessary to be an officeholder of a State  nor does such a position protect the perpetrator from punishment. This last aspect represents the historical achievement of international criminal law since the Nuremberg trials: It breaks with the traditional immunity of organs of the State.
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# INDIVIDUAL POSITION IN INTERNATIONAL Criminal LAW

- The Nuremberg judgment against the major war criminals of 1946 assumed the direct imposition of obligations on individuals under international law: "It was submitted that International Law is concerned with the actions of sovereign States and provides no punishment for individuals; and further, that where the act in question is an act of State, those who carry it out are not personally responsible, but are protected by the doctrine of the sovereignty of the State. In the opinion of the Tribunal, both these submissions must be rejected. That International Law imposes duties and liabilities upon individuals as well as upon States has long been recognized. . . . Crimes against International Law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of International Law be enforced