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Unit – I: Introduction
a. Nature of International Law
b. Subjects of International Law
c. Relationship between International Law and Municipal Law
Unit –II: Sources of International law
a. Custom
b. Treaties
c. General Assembly Resolutions
d. General Principles
e. Juristic Works
f. Other Sources
Unit-III: Recognition, Extradition and Law of the
a. **Recognition**
(i) Theories of Recognition
(ii) De facto, De jure recognition
(iii) Implied Recognition
(iv)Withdrawal of Recognition
(v) Retroactive Effects of Recognition
b**. Extradition**
i. State Jurisdiction
ii. Customary Law basis
iii. Treaty Law
iv. The nature of obligation
c. **Law of the Sea**
i. Territorial Sea
ii. Contiguous Zone
iii. Exclusive Economic Zone
iv. Continental Shelf
v. High Sea
Unit –IV. International Organizations
a. UN
b. ICJ
c. IMF and IBRD
d. WTO
e. ICAO
f. IAEA
g. UNEP

UNIT-I-: Introduction

Nature of International law

The body of law that governs the legal relations between or among states or nations.

To qualify as a subject under the traditional definition of international law, 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 United 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. A more contemporary definition expands 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.

International law is the set of rules generally regarded and accepted as binding in relations between states and between nations. It serves as a framework for the practice of stable and organized international relations International law differs from state-based legal systems in that it is primarily applicable to countries rather than to private citizens. National law may become international law when treaties delegate national jurisdiction to supranational tribunals such as the European Court of Human Rights or the International Criminal Court. Treaties such as the Geneva Conventions may require national law to conform to respective parts signed and ratified. Much of international law is consent-based governance. This means that a state member of the international community is not obliged to abide by this type of international law, unless it has expressly consented to a particular course of conduct. This is an issue of state sovereignty. However, other aspects of international law are not consent-based but still are obligatory upon state and non-state actors such as customary international law and peremptory norms (*jus cogens*).

The term "international law" can refer to three distinct legal disciplines:

- Public international law, which governs the relationship between states and international entities. It includes these legal fields: treaty law, law of sea, international criminal law, the laws of war or international humanitarian law and international human rights law.
- Private international law, or conflict of laws, which addresses the questions of (1) which jurisdiction may hear a case, and (2) the law concerning which jurisdiction applies to the issues in the case.
- Supranational law or the law of supranational organizations, which concerns regional agreements where the laws of nation states may be held inapplicable when conflicting

with a supranational legal system when that nation has a treaty obligation to a supranational collective.

b. Subjects of international law

According to International Law, there are three theories on the concept of subject:

1. States alone are subjects of International Law
2. Individuals alone are subjects of International Law
3. States, Individuals and certain non-state entities are subjects of International Law

Realistic Theory: States alone are subjects of International Law

1. According to this theory, the States alone are subjects of International Law and that individuals are not subjects.
2. This is a traditional theory
3. The International Court of Justice treats States, because they are sovereign political entities, alone as subjects.
4. Corbett supports this theory
5. States are entitles who can be legally distinguished from individual human beings who compose them.
6. States are subjects of International Law. Individual people are objects of it.
7. Individuals lack any judicial personality under International Law because they do not have rights or duties under it.
8. Disadvantage
    - Does not address the issue of slavery, pirates etc.
    - Theory is felt to be inadequate

Fictional Theory: Individuals alone are subjects of International Law

1. This theory is proposed because the former theory failed to address the issues of slavery, pirates etc.
2. Kelsen and Westlake supports this theory.
3. League of Nations supports this theory.
4. Universal Declaration of Human Rights, Convention on the Settlement of Investment Disputes between States and Nationals of other States etc. are examples for the recognition of individuals in international law.
5. Pirates, Espionage etc. are always considered as 'Objects' and are held responsible for their illegal acts.

Functional Theory: States, Individuals and certain non-state entities are subjects of International Law

1. According to this, legal functionality is given to those who have the capability to perform legal functions internationally.
2. This is a modern theory and coordinates the prior two theories.

3. Recent Conventions show that individuals are Subjects of International Law. However, practically States are subjects for a majority of issues. Cases are often decided on the basis of States only and not on the basis of individuals.
4. The United Nations Organization is a juristic person and not a State. It is often considered as a 'Super State'. Hence, it is a subject of international law and capable of possessing international rights and duties and it has the capacity to maintain its rights by bringing international claims.

c. Relation between International Law and Municipal Law

Recent events on this continent make it seem appropriate once more to discuss the much-debated question of the relation law.' school, the dualists, municipal law prevails in case of conflict; forth other school, the monists. International law prevails.

There are two special features about the debate mention: first, that while the disputants do not widely differ in the ultimate solution of practical problems, they do differ considerably heir major premises and in the resulting theories; and second, that the attempt of various countries on occasion to escape the restraints of international law persuades them to find a justifying theory in its supposed limited scope and in a compensating emphasis upon State sovereignty. Those who have maintained the dualism of the two systems and the predominance of municipal law have found some theoretical support in the supposed weakness of international law as a legal system. The alleged readiness with which the rules have been violated in time of war lends additional strength to this view. The undue demands made on international law as a supposed preserver of peace and the failure to allow for the interjection of politics further disturbs balanced judgment. The Austinians have done their share by asserting that international law was not law at all because it did not conform to their rigid tests of a rule laid down by a political superior to an inferior, that international law was not created by legislatures, and that hence in their judgment it constituted merely precepts of morality. Nor in times like these is the argument for its legal nature helped by the unfounded allegation that only public opinion sustains international law.

But even among those who admit that international law is positive law, although of a source, nature and scope different from that of municipal law, many still maintain that it does not control municipal law since it operates in a different sphere. It argued that international law functions between States and municipal law between individuals, with sovereign control. The argument finds philosophical support in the view that international law is the product of national will, is consensual in character and cannot subordinate its creators. The theory of consent is used as a justification for the view that consent may be withdrawn. If these were sound premises, the conclusion would be that international law is not law at all 'because any law that is binding only by consent is not binding at all. Foreign Offices and arbitral tribunals do not invoke it on any such basis, nor, strictly speaking, do nations claim exemption from its binding control by presenting *ad hoc* resignations or disavowing its validity. Nations in their diplomatic correspondence do not assert the prevalence in principle of their municipal law over international law. They may assert that international law does not control a particular situation, that the issue falls within the domain of domestic jurisdiction, that international law is to be construed or interpreted according to the views they advance, that, exceptionally, some motive like reprisal justifies their momentary departure from international law in a particular case. But they will not claim that either in general or in particular they are not bound by international law. The dualists maintain that as international law cannot address itself to individuals, but only to States, States

are free to regulate their internal affairs as they see fit, and that international law exercises little or no control over municipal law. Professor Oppenheim maintained, without support in theory or practice, that "international law and municipal law are in fact two totally and essentially different bodies of law which have nothing in common, except that they are both branches-but separate branches--of the tree of law." The dualists are especially concerned to prove that international law cannot be invoked in municipal courts, quite a different matter. Courts constitute only one agency of the State. Although the dualists will admit that many of the rules of treaty and international law are devised for and accrue to the benefit of individuals, they nevertheless insist that only States may become spokesmen for these rules and advantages. Confronted by the fact that several treaties confer on individuals the right to bring personal actions against States. As in the Central American Court of Justice of 1907 and in the abortive international prize court, they maintain that this is an exception to the general rule. Those, on the other hand, who assert the supremacy of international law have often been led to overemphasize the claim by the assertion, particularly of the so-called Vienna school of Kelsen, that municipal law finds its source in international law, that international law regulates individual conduct, that therefore there is only one single system of which all types of law are simply branches. From the admitted or obvious fact that international law exercises a considerable control over municipal law and to some extent dictates its content, as in the matter of diplomatic agents, immunity from the local jurisdiction, territorial What the dualists overlook is the fact that while departures from international law are occasionally successful in fact, this merely indicates that lawlessness, in the particular instance, has prevailed. It is not always practical to submit violations of international law to arbitration, and even less so to hail a recalcitrant nation into court or compel it to perform its international obligations. Considering the frequency, however, with which issues are arbitrated or settled by diplomacy according to rules of law, it would be improper to convert the exception into the rule or to endow the exception with legality and make the rule seem an accident. Observance of law is the custom and non-observance-- which is noted by the entire world-the exception. We have innumerable precedents which have held States liable for their failure to perform international obligations, whether the delinquency arises out of statute or administrative act. The monistic theory in spite of its architectural attraction is not quite tenable. Municipal law existed long before international law came upon the scene and survives its depressions. Even in a legal State international law controls but a very small part of external State activity and a smaller part of internal State activity, so that it is a little tenuous to argue that
municipal law finds its source in international law. Technically, municipal law cannot authorize what international law prohibits, but in fact it often does, and individuals are bound by the operative municipal law. No individual can be punished for observing a municipal law which may be deemed to conflict with international law. On the contrary, his conduct, domestically, is privileged. The explanation of the inconsistency lies in the fact that while individuals are bound by their municipal law, regardless of its conformity with international law, the State may have to repair the wrong done to other States by its internationally unprivileged municipal law or decision. The monists again go too far in predicating a common principle *pacta sunt servanda* as the basis both of international law and of municipal law. Whatever the philosophical basis for explaining the observance of international law, this theory can hardly explain the binding character of municipal law. The monists err also in suggesting that the occasional divergence between municipal and international law is explained as a delegation of power by international law which authorizes the State to enact domestic rules contrary to international law. This is even

less tenable in theory and practice, which not only do not sustain it but furnish a more correct explanation. The error of each school appears to lie in the unwillingness to admit a principle of coordination between the two systems. They do have a relation and an easily established one. Although it is true that international law is addressed to States as entities, it exerts a command upon law-abiding States not to depart from its precepts, subject to international responsibility.'

UNIT-II- Sources of International law

Introduction

Where does international law come from and how is it made? These are more difficult questions than one might expect and require considerable care. In particular, it is dangerous to try to transfer ideas from national legal systems to the very different context of international law. There is no "Code of International Law". International law has no Parliament and nothing that can really be described as legislation. While there is an International Court of Justice and a range of specialized international courts and tribunals, their jurisdiction is critically dependent upon the consent of States and they lack what can properly be described as a compulsory jurisdiction of the kind possessed by national courts.
The result is that international law is made largely on a decentralized basis by the actions of the 192 States which make up the international community. The Statute of the ICJ, Art. 38 identify five sources:-
(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 the writings of "the most highly qualified publicists".

This list is no longer thought to be complete but it provides a useful starting point.

a.Custom

It is convenient to start with customary law as this is both the oldest source and the one which generates rules binding on all States.
Customary law is not a written source. A rule of customary law, e.g., requiring States to grant immunity to a visiting Head of State, is said to have two elements. First, there must be widespread and consistent State practice – i.e. States must, in general, have a practice of according immunity to a visiting Head of State. Secondly, there has to be what is called "opinio juris", usually translated as "a belief in legal obligation; i.e. States must accord immunity because they believe they have a legal duty to do so.

A new rule of customary international law cannot be created unless both of these elements are present. Practice alone is not enough – see, e.g., the *Case of the SS Lotus* (1927). Nor can a rule be created by opinio juris without actual practice – see, e.g., the *Advisory Opinion on Nuclear Weapons* (1996).
But these elements require closer examination. So far as practice is concerned, this includes not just the practice of a State but also of its courts and parliament. It includes what States say as well as what they do. Also practice needs to be carefully examined for what it actually says about

law. The fact that some (perhaps many) States practise torture does not mean that there is not a sufficient practice outlawing it. To quote from the ICJ's decision in the *Nicaragua* case:

> 'In order to deduce the existence of customary rules, the Court deems it sufficient that the conduct of States should in general be consistent with such a rule; and that instances of State conduct inconsistent with a given rule should generally have been treated as breaches of that rule, not as indications of the recognition of a new rule.' (ICJ in *Nicaragua* ICJ Reps, 1986, p. 3 at 98.)

Regarding opinio juris, the normal definition of a belief in obligation (see, e.g., the *North Sea Continental Shelf* cases (1969) above) is not entirely satisfactory. First, it ignores the fact that many rules are permissive (e.g. regarding sovereignty over the continental shelf), for which the real opinio juris is a belief not in obligation but in right. Secondly, and more fundamentally, there is something artificial in talking of the beliefs of a State. It might be better to consider opinio juris as the assertion of a legal right or the acknowledgment of a legal obligation.

Once there is sufficient practice together with opinio juris, a new rule of custom will emerge. Subject only to what is known as the "persistent objector" principle the new rule binds all States. The persistent objector principle allows a State which has persistently rejected a new rule even before it emerged as such to avoid its application.

b.Treaties

Treaties (sometimes called agreements, conventions, and exchanges of notes or protocols) between States – or sometimes between States and international organizations – are the other main source of law.

Strictly speaking a treaty is not a source of law so much as a source of obligation under law. Treaties are binding only on States which become parties to them and the choice of whether or not to become party to a treaty is entirely one for the State – there is no requirement to sign up to a treaty. Why is a treaty binding on those States which have become parties to it? The answer is that there is a rule of customary international law – pacta sunt servanda – which requires all States to honor their treaties. That is why treaties are more accurately described as sources of obligation under law. But many treaties are also important as authoritative statements of customary law. A treaty which is freely negotiated between a large numbers of States is often regarded as writing down what were previously unwritten rules of customary law. That is obviously the case where a treaty provision is intended to be codificatory of the existing law. A good example is the

Vienna Convention on the Law of Treaties, 1969. Less than half the States in the world are parties to it but every court which has considered the matter has treated its main provisions as codifying customary law and has therefore treated them as applying to all States whether they are parties to the Convention or not. In theory, where a treaty provision codifies a rule of customary law the source of law is the original practice and opinio juris – the treaty provision is merely evidence. But that overlooks the fact that writing down a rule which was previously unwritten changes that rule. From that time on, it is the written provision to which everyone will look and debates about the extent of the rule will largely revolve around the interpretation of the text rather than an analysis of the underlying practice.

Moreover, even where a treaty provision is not intended to be codificatory but rather is an innovation designed to change the rule, it can become part of customary law if it is accepted in practice. See, e.g., the *North Sea Continental Shelf* cases (1969):

> 'Although the passage of only a short period of time is not necessarily, or of itself, a bar to the formation of a new rule of customary international law on the basis of what was originally a purely conventional rule, an indispensable requirement would be that within the period in question, short though it might be, State practice, including that of States whose interests are specially affected, should have been both extensive and virtually uniform in the sense of the provision invoked; - and should moreover have occurred in such a way as to show a general recognition that a rule of law or legal obligation is involved.' (ICJ Reps, 1969, p. 43)

In reality the fact of a large number of States agreeing upon a treaty provision is itself an important piece of State practice. If those and other States subsequently apply the treaty provision – especially where they are not parties to the treaty – then it can quickly become part of customary international law.

This consideration has led some writers to distinguish between "traités contrats" (contractual treaties) which are only agreements between the parties and law-making treaties. In my view this confuses rather than assists. All treaties are contractual as between their parties. But some also have an effect on the general law.

In practice, it has been through the adoption of numerous treaties on different areas of international law (war, terrorism, and diplomacy, treaty-making) that international law has undergone its most important changes in the years since 1945.

c. General Assembly Resolutions

d. General Principles

While treaties and custom are the most important sources of international law, the others mentioned in Article 38 of the ICJ Statute of the ICJ should not be ignored. General principles of law recognized by civilized nations – the third source – are seldom mentioned in judgments. They are most often employed where the ICJ or another international tribunal wants to adopt a concept such as the legal personality of corporations (e.g. in the *Barcelona Traction Co.* case (1970)) which is widely accepted in national legal systems. But international law seldom adopts in its entirety a legal concept from a particular national legal system; instead the search is for a principle which in one form or another is recognized in a wide range of national legal systems.

e.Juristic Writings

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.

f. Other Sources

Judicial Decisions: Article 38(1) (d) refers to judicial decisions as a subsidiary means for the determination of rules of 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.

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.

The list of sources in Article 38 of the Statute is frequently criticized for being incomplete. In particular, it makes no mention of the acts of the different organs of the United Nations. Today there can be no doubting the importance of those acts in shaping international law, although they perhaps fit within the system of Article 38 better than is sometimes imagined.

The United Nations General Assembly has no power to legislate for the international community; its resolutions are not legally binding. However, many of those resolutions have 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). While it is the treaty which creates the legal obligation – and then only for the States which choose to become party to it – the importance of the United Nations in the process of creating that treaty should not be underestimated.

In addition, as I have already mentioned, the positions which States take in the United Nations is part of their practice and a resolution (or sequence of resolutions) which commands a sufficiently widespread acceptance and which is regarded by the States as embodying a rule of international law can have an important effect on the development of customary international law, so long as it is not contradicted by what States actually do.

Unit-III- Recognition, Extradition and Law of the sea

a. Recognition

Recognition is the formal acknowledgment of the status of an independent State by other existing states.

1. Every State has to have some essential features, called attributes of statehood, in order for other States to recognize the State as independent.

2. States are considered as the principal persons in International Law.
3. The recognition of a state is often a political act of a state.
4. Recognition is not a conclusive proof of the existence of the state.

Theories of Recognition

Recognition of a State is more of a political concept than a legal concept because there are no specific rules for recognition of a State. There are two popular theories laid down for the purpose of understanding the nature of recognition:

1. Constitutive Theory
2. Declarative or Evidentiary Theory

Constitutive Theory

According to this theory, recognition is a necessary condition for statehood and personality. It is a process by which a political community acquires personality and becomes a member of the family of nations. A State comes into existence through recognition only and exclusively.

Examples:

1. Poland and Czechoslovakia were recognized by the instrumentality of the Treaty of Versailles.
2. Germany was divided into two parts after the World War II by a treaty
3. Korea was divided into two parts

Disadvantages of the theory

1. Recognition is political and diplomatic but not legal. This theory imposes an obligation on all member states to recognize a State. Practically, no states want to do something on obligation.
2. There is no law the obliges established states to recognize new States.
3. Recognition of a State can be done by few States and others might refuse. According to this theory, the recognition should be done by all the States.
    a. Palestine is recognized as country by 80 nations thought it does not have a definite territory, population and a definite Government.
    b. Israel is formed in 1947 by the United Nations Organization. Within few hours, many countries too recognized it. However, India recognized it in 1992.

Declarative Theory or Evidentiary Theory

This theory states that declaration is a mere formality and has no legal effect as the existence of a State is a mere question of fact. Every new state becomes a member of the family of nations *ipso facto* by its coming into existence. Recognition only provides the evidence to this fact. This theory says recognition is not important.

Disadvantages: The theory fails to explain legal rights and consequent of a recognized state.

Example: Taiwan is a democratic country and is adjoining areas where Chinese territory. Only few countries recognize Taiwan yet it had business dealings with almost every country.

Forms of Recognition

1. Express Recognition
    a. An existing state recognizes another state by releasing a public statement by way of notification or a declaration announcing the intention of recognition
    b. Grant is expressed in written words
2. Implied Recognition
    a. Does not release a formal state but recognizes the state by some acts which imply that the state is being recognized.
    b. Unilateral Acts
        - State entering into bilateral treaty establishes diplomatic relations with an unrecognized state.
    c. Collective Acts
        - A new state is recognized collectively by the existing states.

(b) Modes of Recognition: There are two important modes of recognition: De Facto Recognition and De Jure Recognition

De Facto Recognition

This is provision recognition and not a permanent one. i.e. it can be withdrawn by other States at any time. It is the first step towards becoming a recognized country. Recognition is only by fact and not legal. State may have more than one Government. No exchange of diplomatic representatives takes places. State succession might not happen. Mere de facto recognition is not sufficient to get UN membership. Example: Israel, Bangladesh, Taiwan, Sahawi Arab Republic etc.

De Jure Recognition

This is a permanent recognition which one granted cannot be taken back or withdrawn by other States. It is regal and rightful. State will have only one Government. Exchange of diplomatic representatives takes places. State succession happens smoothly. De jure recognition by majority states his essential for UN membership.

(iii) Implied recognition

Implied recognition is very much a matter of the intention of the state said to have given recognition. The implication is made solely when the circumstances unequivocally indicate the intention to establish formal relations with the new state or new government. For example, by entering into some form of relations with it. Such conduct can usually amount to no more than recognition de facto, or recognition of an entity as an insurgent authority or indicate an intention to maintain through agents, informal relations without recognitions.
In practice, the only legitimate occasion for conclusively implying recognition de jure is:
1. The formal signature of a bilateral treaty by the recognized and recognizing States as distinct from mere temporary arrangements or agreements. It is not necessary that the treaty be ratified.
2. The formal initiation of diplomatic relations between the recognized and recognizing state.
3. The usage of a consular exequatur by the admitting state for a consul of an unrecognized state.
In certain circumstances exceptional circumstances, but no otherwise, recognition has been inferred from the following circumstances:
a. Common participation in a multilateral treaty.
b. Participation in an international conference.
c. Initiation of negotiations between a recognizing and a recognized state.

Recognition of the validity of the laws decreed or enacted by a particular entity, does not necessarily import recognition of the law-making entity.

(iv)Withdrawal of Recognition

In extraordinary circumstances, when a state League does not assume its responsibility to request that the LWVUS board withdraw recognition from a local League for recurring failure to fulfill the requirements adopted by the LWVUS convention, the LWVUS board may itself initiate the procedure to withdraw recognition from the local League. Union Recognition and Withdrawal of Recognition without an Election, focuses on how and under what circumstances an employer may recognize and bargain with a union without the benefit of an election conducted by the National Labor Relations Board. In cases in which a union demands bargaining based upon a showing of majority support in an appropriate bargaining unit, the employer may voluntarily recognize the union. In cases in which an employer's serious unfair labor practices make it unlikely that a fair election can be held or in which an employer takes affirmative steps to determine whether the union demanding recognition has majority support, the recognition may be involuntary, arising out of a NLRB order remedying unfair labor practices.
Because both voluntary and involuntary recognition require that the union enjoy the majority support of the employees in the unit, this chapter also examines the means by which a union may prove such support. Specifically the chapter addresses NLRB certification, involuntary recognition based on employer unfair labor practices including discussion of early NLRB decisions, the Joy Silk doctrine, the Supreme Court's decision in Gissel and the post-Gissel approach to bargaining orders, as well as its decision in Linden Lumber. Next, the chapter discusses voluntary recognition including majority representation and non-custody construction industry employers, construction industry employers, the elements of voluntary recognition, the distinction between bargaining obligations attendant upon voluntary recognition and that

attendant upon certification. Then, the chapter addresses waiver of the right to demand a NLRB election and withdrawal of recognition without an election.

(v)Retroactive Effects of Recognition

Sometimes states are recognized subject to a condition, generally an obligation which they undertake to fulfill. The effect of such conditional recognition is that failure to fulfill the obligation does not annul the recognition, as once given this is incapable of withdrawal. By breaking the condition, the recognized state may be guilty of a breach of international law, and it is open to the recognizing states to sever diplomatic relations as a form of sanction, or otherwise to proceed. But the status which the recognized state has obtained from the act of recognition cannot then be retracted. In practice states have repeatedly, as consideration for the grant of recognition, exacted from states or governments to be recognized some guarantee or undertaking or stipulation.

Collective recognition

The advantage of recognition taking place by some collective international act, or through the medium of an international institution cannot be denied. It would obviate the present embarrassments due to unilateral acts of recognition.

Recognition of a head of state or of a new government

This has nothing to do with the recognition of a state itself. In case of existing states, no difficulty in recognizing a government arises except when changes in the headship of the state or of its government take place in an abnormal or revolutionary manner. Where the change proceeds in a formal and constitutional way, recognition by other states is purely a matter of formality. The recognizing government should at least be satisfied as to the prospects of stability of the new government. In the case of nascent states, recognition raises many problems for the recognizing states; first, because of the merging of the new state with its new government and the difficulty of recognizing the one without recognizing the other; secondly, most states prefer, in the matter of recognition of nascent states, to be as non-committal as possible and to preface the date of recognition de jure by a stage of recognition de facto. There is no difficulty, of course, where the new state is a former dependency or trust territory, and the parent or tutelary state, itself already de jure recognized, has consented to emancipation. Recognition can be accorded automatically, and is essentially then a legal act of a cognitive nature.

b. Extradition

(i) State Jurisdiction

The consensus in international law is that a state does not have any obligation to surrender an alleged criminal to a foreign state, because one principle of sovereignty is that every state has legal authority over the people within its borders. Such absence of international obligation, and the desire for the right to demand such criminals from other countries, has caused a web of extradition treaties or agreements to evolve. When no applicable extradition agreement is in place, a sovereign may still request the expulsion or lawful return of an individual pursuant to the requested state's domestic law. This can be accomplished through the immigration laws of the requested state or other facets of the requested state's domestic law. Similarly, the codes of penal procedure in many countries contain provisions allowing for extradition to take place in the absence of an extradition agreement. Sovereigns may, therefore, still request the expulsion or lawful return of a fugitive from the territory of a requested state in the absence of an extradition treaty

The nature of obligation

By enacting laws or in concluding treaties or agreements, countries determine the conditions under which they may entertain or deny extradition requests. Common bars to extradition include:

1. Failure to fulfill dual criminality: generally the act for which extradition is sought must constitute a crime punishable by some minimum penalty in both the requesting and the requested states.
2. Political nature of the alleged crime: most countries refuse to extradite suspects of political crimes. See political offence exception.
3. Possibility of certain forms of punishment: some countries refuse extradition on grounds that the person, if extradited, may receive capital punishment or face torture. A few go as far as to cover all punishments that they themselves would not administer.
    - Death penalty: Many countries, such as Australia, Canada, Macao ,New Zealand, South Africa, and most European nations except Belarus, will not allow extradition if the death penalty may be imposed on the suspect unless they are assured that the death sentence will not be passed or carried out.
4. Torture, inhuman or degrading treatment or punishment: Many countries will not extradite if there is a risk that a requested person will be subjected to torture, inhuman or degrading treatment or punishment.
5. Jurisdiction: Jurisdiction over a crime can be invoked to refuse extradition. In particular, the fact that the person in question is a nation's own citizen causes that country to have jurisdiction.

(ii) Customary Law basis

When a State is approached with a request for extradition, one of the first questions arising is whether a duty rests on that State to extradite the fugitive sought. This paper deals with the duty to extradite from the South African point of view. It first distinguishes between extradition based on treaty provisions and extradition in the absence of treaty provisions. Possible forms of treaty include bilateral and multilateral treaties, regional arrangements employing municipal law, and multilateral conventions embodying extradition provisions. Extradition in the absence of a treaty can be based on the recognition of a duty or a right to extradite. Then the paper examines comity and reciprocity between nations as a basis for extradition without treaty. Other possible bases for extradition are morality, and a customary rule of public international law .The obligation to extradite or prosecute is found in numerous treaties; but there are different views as to whether there is such an obligation in customary international law. Treaties apply only to those states that are parties to them. But is there an obligation to extradite or prosecute under customary international law, binding on all states? If so, does it apply in respect of all or merely some crimes under international law? It has been argued that the prohibition of certain crimes under international law, including genocide, crimes against humanity and war crimes, derive their authority from a peremptory norm (*jus cogens*) from which no derogation is ever permitted. A violation of such a norm gives rise to a corresponding obligation *erga omnes* – an obligation owed by states to the international community as a whole – either to institute criminal proceedings or to extradite the suspect to another competent state. This view has been criticized by the argument that the *erga omnes* and *jus cogens* nature of the prohibitions do not as such give rise to the formation of customary international law and do not imply the recognition of a customary nature for the obligation to extradite or prosecute

(iii) Treaty Law

There are over 60 multilateral treaties combining extradition and prosecution as alternative courses of action in order to bring suspects to justice. As regards the core crimes the obligation *aut dedere aut judicare* relates only to those war crimes that constitute 'grave breaches 'of the Geneva Conventions. The Genocide Convention does not incorporate the obligation but does provide that persons charged with genocide are to be tried by a court of the state in the territory of which the crime was committed, or by an international court with jurisdiction.4 There is therefore no treaty-based obligation *aut dedere aut judicare* for genocide, crimes against humanity and, except in the case of grave breaches, for serious violations of the laws and customs applicable in armed conflicts of an international or non international character. A common feature of the different treaties embodying the obligation to extradite or prosecute is that they impose upon states an obligation to ensure the prosecution of the offender either by extraditing the individual to a state that will exercise criminal jurisdiction or by enabling their own judicial authorities to prosecute. Beyond that, the provisions greatly vary in their formulation, content and scope, particularly with regard to the conditions for extradition and prosecution, and the relationship between these two possible courses of action. The nature of obligation given the differences in the provisions in the various treaties, the precise content of the obligation to extradite or prosecute has to be assessed on a case-by-case
basis. The relevant provisions imposing this obligation must be read in connection with the rules relating to the criminalization of the offences, the establishment of jurisdiction, the search for and arrest of alleged offenders, the investigation, rules on cooperation in criminal matters and the regime of extradition. As regards the content of any emerging rule of customary international

law, the practice is not yet clear enough to enable a conclusion to be drawn, but the basic elements may perhaps be drawn from the mechanisms provided in the Draft Code and the Geneva Conventions.
(iv)Nature of obligation

(c) Law of the sea

(i) Territorial Sea

Earlier the powerful States laid extensive claims of sovereignty over specific portions of the open sea. Grotius championed the doctrine of the 'freedom of seas' because it is impossible for any nation to effectively possess them. The law developed out of well-settled usages culminating into customary law. The hallmark of this law, which was followed up to the half of the twentieth century, was essentially that of non-regulation and laissez faire and except that of territorial waters, the law essentially endorsed the doctrine of 'open sea'. But the United States declared proclamation jurisdiction over the continental shelf gave a new direction to the law of sea. Many nations made sweeping claims to protect their economic and military interests. These developments stressed the urgency for codification of law in order to strive uniformity and resolve maritime conflicts among nations. The matter was put on the agenda of the International Law Commission in 1949. On the basis of the drafts prepared by the ILC, in 1958, the First United Nations Conference on the Law of the Sea took place at Geneva, which adopted four conventions, viz., the Geneva Convention on the Territorial Sea and the contiguous Zone, on the High Sea, on the; Continental Shelf, and the Fishing and Conservation of the Living Resources of the High Seas. But the important issues related to the breadth of the territorial sea and the fishing rights of the coastal States beyond their territorial sea were left undecided. A Second Conference on the Law of Sea was held in 1960, at Geneva, but again no agreement could be found these issues. Together, both these conference on the Law of the Sea left many matters unsettled. Further, the interests of the landlocked States were also not adequately protected, except the High Seas Convention, which in Art. 3 explicitly and specially dealt with their problem of access to the sea. It was soon being realized that these conventions were inadequate to meet the new challenges put up by science and technology, which made it possible for States with sufficient resources and know-how to explore and exploit the underwater mineral resources at greater depth of the sea, and the consequential need to prevent the increasing pollution, and the conservation of the fishing resources of the seas.
This made it imperative to reformulate the law of the sea in composite form to make it conducive to the new interests and demands of all concerned and paved the way to hold the Third Law of the Sea Conference.
The initiative to hold a news conference came from Malta's representative to the United Nations at whose behest the General Assembly considered the item concerning the exploitation and uses of the seabed and ocean floor beyond the limits of the present national jurisdiction. He also pressed for the United Nations endorsement that deep seabed resources are the 'common heritage of mankind' and the same should be developed in the interests of all nations, with special regard to the needs of developing countries. The move was to secure the mineral wealth of the oceans as well as to avoid the militarization of the deep seabed. This led to the formation of a 42 member Ad hoc Seabed Committee in 190, the General Assembly adopted a declaration of Principles

Governing the Seabed and Oceans floor, and the Sub-soil thereof, beyond the limits of National Jurisdiction, which proclaimed that the exploitation of these areas should be carried out for the benefit of the mankind as a whole.

At the end of nine years in 12 sessions, the Conference adopted the Law of the Sea Convention in 1982. Though it was agreed in its second session that all the provisions as well as the complete text of the Convention would be accepted by consensus with a view to increase their acceptability and 'there shall be no voting until all efforts at consensus have been exhausted', the draft Convention was adopted through voting in the eleventh session of the Conference. The Convention consists of 320 Articles spread over 17 parts and nine annexes. Apart from these, there are four resolutions. The Convention comprises the ground covered by the four Geneva Convention of 1958, and creates some new regimes. In fact, many of the provisions repeat verbatim or in essence the provisions of the Geneva Conventions, or give more detailed rules on matters covered by them. It contains provisions on those matters on the new legal regimes of Exclusive Economic Zone and the deep seabed. It has laid down a 12 nautical miles limit for the territorial sea. The Convention contains a detailed machinery for the settlement of disputes, including an International Tribunal for the Law of the Sea. It also provides for the compulsory judicial settlement of most of the disputes that may arise under the Convention, at the request of one of the parties to the dispute.
In the case Concerning the Continental Shelf between Libya and Malta, the Court observed that 'the 1982 Convention is of major importance, having been adopted by an overwhelming majority of States; hence it is clearly the duty of the court to consider in what degree any of its relevant provisions are binding upon the parties as a rule of customary international law', and noted that the provisions on the continental shelf reflect the customary law of the continental shelf. Thus, the Convention is a major achievement and its ambit is very wide.
Maritime Belt or Territorial Sea: Maritime belt or territorial sea is that part of the sea which is adjacent to the coastal State and which is bounded by the high seas on its outer edge. The coastal State exercises its sovereignty over this area as it exercises over its internal waters. The sovereignty extends to the airspace over the territorial sea as well as its bed and sub-soil. This sovereignty accrues to a State under customary international law which no State can refuse. However, the sovereignty over this area has to be exercised subject to the provisions of the conventions and 'to other rules of international law', which provides certain rights to other States, particularly right of 'innocent passage' in the territorial waters of the State.
It is generally held view that at the turn of the century, there existed a three-mile limit as a rule of general application. The three-mile rule, popularly known as 'cannon-shot' rule, had a rationale that a State's sovereignty extended to the sea as far as a canon could reach or fire. Before the 1982 Sea Convention was concluded, States proclaimed varying breadth of the territorial sea, generally ranging from 3 to 12 miles, though in certain cases they had proclaimed wider areas than that, in few cases up to 200 nautical miles. But at the UNCLOS-III, claims wider than 12 miles did not find favor and the 12 miles rule was accepted by the Conference, which may be considered the present customary international law position.
Article 3 of the 1982 Sea Convention limits the breadth of the territorial sea to 12 nautical miles 'measured from baselines determined in accordance with the Convention'. Two methods have been laid down for measuring the breadth of the territorial sea: the low-water line and the straight baseline. The normal method used is the low-water line as marked on large scale charts officially recognized by coastal State. Where the coastline is deeply intended and cut into, or if there is a

fringe of islands along the coast in its immediate vicinity, the straight baseline method joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured.

The method of straight baseline was enunciated by the Anglo Norwegian Fisheries case, which had a decisive effect on the baseline issue. In this case, Norway which has a fringe coastline, by its 1935 Decree proclaimed exclusive fishery zone (meant territorial sea) along almost 1000 miles of its coastline. The zone which was four miles wide, measured not from the low-water mark but from straight baselines linking some 48 outer most points of island and lands, at a considerable distance from the coast By using the straight baselines, some of which were 30 miles long and the longest was 44 miles, Norway could enclose waters within its territorial sea that would have been the high seas, and hence open to foreign fishing. The UK, whose fishing interests were affected by this Decree, challenged the legality of the straight baseline system adopted by Norway and the choice of certain baselines used in applying it. The Court upheld the method applied by Norway in drawing the baselines and it also did not reject the criterion of low water mark. But the manner of application of straight baselines is 'dictated by geographical realities'.

It was propounded by the judgment that where a State has a rugged coastline, deeply indented, or if there is a fringe of islands in the immediate vicinity, the straight baseline, joining the low water at appropriate points, is admissible, provided: (i) the drawing of baseline must not depart to any appreciate extent from the 'general direction' of the coast; (ii) the areas lying within the baselines are sufficiently closely linked to the adjacent land domain; and (iii) the economic interests as evidenced by long established usage, peculiar to a particular region concerned, must be taken into account, before the straight baseline method is allowed to be followed by coastal State.

The principles laid down in the Fisheries case relating to straight baselines are to be followed in drawing baselines except those of low-tide elevations, unless the lines drawn in such circumstances have received 'general international recognition'. The system of straight baselines is not to be applied in a manner as to cut off the territorial sea or an EEZ of another State from the high seas. The delimitation of the territorial sea between two States opposite or adjacent to each other can take place in accordance with an agreement between them, failing which the median line, every point of which is equidistant from the nearest points on the baselines from which the breath of the territorial seas of each of the two States is measured. This rule is not applicable in the cases of 'historic title' or other special circumstance. In the territorial sea, the coastal State enjoys all the right and duties inherent in sovereignty, and the right to regulate this regime. Other States also enjoy certain privileges associated with the right of innocent passage. The customary international law recognizes the right of innocent passage for ships of all States through the territorial waters of a State but no such right exists for aircrafts in the airspace over the territorial waters. 'Ships of all States, whether coastal or not, shall enjoy the right of innocent passage through the territorial sea.' No right of innocent passage exists through internal waters. The passage to be considered innocent, of foreign fishing vessels, their conduct should be according to the laws and regulations made by the coastal State for fishing purposes in territorial sea. Under the Convention vessels entitled to innocent passage are 'ships of all states' without making a distinction between merchant, public or warships. The submarines, however, are required to navigate on the surface. Warships have the right of passage through international straits, as decided in the Corfu Channel case. The coastal States has the right to make laws to

regulate the territorial waters. It can adopt laws and regulations governing innocent passage, and to prevent passage which is not innocent. Foreign ships in innocent passage are required to comply with all such laws and regulations, framed by the coastal State, and other common international regulations for the prevention of collisions at sea. The costal State is required not to hamper or impair innocent passage or to apply rules and regulations in this regard in a discriminatory manner. Nevertheless, the coastal State is empowered to 'take the necessary steps' to prevent non-innocent passage. The Maritime Zones Act proclaims the sovereignty of India over the territorial waters of India and the seabed and sub-soil underlying and the airspace over such water. The limits of the territorial are the line every point of which is at a distance of 12 nautical miles from the nearest pint of the appropriate baseline. All foreign ships are given the right of innocent passage through the territorial waters. Passage is innocent so long as it is not prejudicial to the peace, good order or security of India. However, foreign warships, including submarines and other underwater vehicles, may enter or pass through the territorial water by giving prior notification to the Central Government. Submarines and other underwater vehicles are to navigate on the surface and show their flags when passing through such waters. The Central Government, if satisfied that it is necessary in the interest of peace, good order or security of India or any part thereof, may suspend the innocent passage, absolutely or subject to certain exceptions or modifications, by notification made in the official gazette. Thus, the position of India in this regard is in accordance with the 1982 Convention.

(ii) Contiguous zone

The contiguous zone is a band of water extending from the outer edge of the territorial sea to up to 24 nautical miles (44.4 km; 27.6 mi) from the baseline, within which a state can exert limited control for the purpose of preventing or punishing "infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea". This will typically be 12 nautical miles (22 km; 14 mi) wide, but could be more (if a state has chosen to claim a territorial sea of less than 12 nautical miles), or less, if it would otherwise overlap another state's contiguous zone. However, unlike the territorial sea, there is no standard rule for resolving such conflicts and the states in question must negotiate their own compromise. The United States invoked a contiguous zone out to 24 mm on 24 September 1999

(iii) Exclusive Economic Zone

The most significant contribution of the UNCLOS III was the creation of the new regime of EEZ. The zone, in fact, has its roots in the concept of Exclusive Fishing Zone and the doctrine of the continental shelf. It was actuated by the developments that had taken place after the Second World War, when many nations (particularly Latin American) started proclaiming 200 miles as their fishery zone. Such claims were motivated by a concern for the conservation of living sea resources and other considerations. The concept was finally incorporated in 1982 Convention and it has since become part of the customary law of the sea. The EEZ is an area beyond and adjacent to the territorial sea extending up to 200 nautical miles from the baselines from which the breadth of the territorial sea is measured. The zone is an intermediate area between the high seas and the territorial sea with a distinct regime of its own which a State can specifically claim. The zone comprises the area which was previously part of the high seas, and is not under the

sovereignty of the coastal State. Thought the Convention refrains from describing EEZ as a part of the high seas, other State generally continue to exercise the freedoms of the high seas in the EEZ, in particular, freedoms of navigation and over flight, lying of submarine cables and pipelines and other internationally lawful uses of the sea related to these freedoms. But the Convention does not specify whether foreign warships, which enjoy freedom of navigation through EEZ, can conduct naval exercises in the EEZ as the canon high seas. The regime of EEZ accords certain rights to the coastal State. One, it has sovereign rights for the purpose of exploring, exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and sub-soil, and with regard to 'other activities', such as the production of energy from the water, currents and winds. Two, the coastal State has the exclusive jurisdiction with respect to the establishment and use of artificial islands, installations and structures; marine scientific research; and the protection and preservation of the marine environment. While exercising its rights and performing its duties in relation to this zone, the coastal States has to give due regard to the rights and duties of other States. Foreign ships are required to respect these laws and abstain from illegal fishing. But imprisonment or any other corporal punishment for violation of fisheries legislation is excluded. While exercising this right, the coastal State is obliged to conserve and manage the living resources of the EEZ, and to determine the level of exploitation taking into account the environmental and economic factors. Any conflict on the unregulated uses of the EEZ between a coastal State and other States should be resolved on the basis of equity and in the light of all the relevant circumstances. The delimitation of the EEZ between States with opposite or adjacent coasts is to be effected 'by agreement on the basis of international law in order to achieve an equitable solution'. If no agreement can be reached within a reasonable time, the States concerned may resort to the procedures provided in the Convention. Section 7 of the Maritime Zones Act, in India, is in compliance of the 1982 convention, which prescribes 200 nautical miles as the limit of EEZ. The limit may be altered by the Central Government, giving due regard to international law and State practice, through a notification in the Official Gazette to this effect. The notification should have the approval of both the House of Parliament before issuance. No person, including a foreign government, can explore or exploit this area without an agreement with the Central Government or an authority granted by the Central Government. This provision, however shall not apply to fishing by an Indian citizen. The Central Government, by notification, declares any area as a designated area and makes laws with respect and also for the protection of the marine environment, or customs or other fiscal matters in relation to such designated area. While declaring any area of the EEZ a designated area, the government will ensure freedom of navigation, by taking into account the interests of India. The government may extend any law, imposing restrictions and modifications, temporarily on the EEZ or part thereof, and may make any provision for the enforcement of such law.

(iv) Continental Shelf

One of the important development after the second World War in relation to the law of the sea was the evolution and acceptance of the concept of continental shelf. The President of the United States, proclaimed that the natural resources of the continental shelf were 'beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States and subject to its jurisdiction and control'. The continental shelf was regarded 'as an extension of land mass of the coastal nation'. The main reason for this action of the United States was to

reserve for itself, the oil and mineral resources in the seabed which had become technologically possible to drill.

Proclamation soon became the trend setter and was immediately followed by similar unilateral declarations by many maritime nations which laid claims of exclusive jurisdiction control or sovereign rights over the resources of the continental shelf and associated offshore areas. These declarations led to the formation of customary international law giving coastal States jurisdictional rights over their shelves. These rights over the resources of the continental shelf were universally accepted by the 1958 Geneva Convention on the Continental Shelf. The continental shelf maybe defined as the zone around the continent extending from the low-water line to the depth, at which there is usually a marked increase of declivity to greater depth. What is commonly understood by the 'continental shelf' is a gently sloping platform of submerged land surrounding the continents and islands. It is a submerged bed of the sea, contiguous to a continental land mass, and found in such a manner as to be really an extension of, or appurtenant to this land mass. Normally, it extends to a depth of approximately 200 meters, at which point the first substantial 'fall off' of the seabed occurs. At certain places it continues beyond a depth of 200 meters. In 1958 Continental Shelf Convention used the term 'continental shelf' as referring 'to the seabed and sub-soil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth to 200 meters or beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas'. Thus, the shelf has been defined in terms of 'exploitability; and the depth of the sea. It means that if the exploitation of the resources could be made beyond the limit of 200 meters depth, that area could be claimed by the coastal State as its continental shelf. The requirement of the phrase 'adjacent of the coast' is not solely confined to the proximity, but provided the legal basis for the coastal State to claim jurisdiction over the continental shelf. The coastal State enjoys limited sovereign rights over the continental shelf for the purpose of exploring and exploiting its 'natural resources', and not sovereignty. These rights are exclusive in the sense that no one can undertake these activities without the express consent of the coastal State or make a claim to the continental shelf. They also do not depend on occupation, effective or notional, or any express proclamation. The 'natural resources' of the continental shelf consist of mineral and other non-living resources of the seabed and sub-soil, together with living organisms which at the harvestable stage, either are immobile on or under the seabed, or are unable to move except in constant physical contact with the seabed or sub-soil.
The coastal State also has the exclusive right to authorize and regulate drilling of the sub-soil for all purposes. Like the EEZ, the coastal State has the exclusive right to construct, maintain or operate the artificial islands, installations and structures on the shelf.
The above rights of the coastal State, however, are not to affect the legal status of the superjacent waters, or the air space above those waters. The exercise of these rights by the coastal State is not to impair navigation or other rights and freedoms of States. The delimitation of boundaries remained more contentious between the adjacent States as opposed to the opposite States where the median line was to be followed. In the case of adjacent States, 'equidistance principle' was not found to be inadequate to demarcate the continental shelf, nor did it represent the customary international law. The International Court of Justice, for the first time has the occasion to determine the adequacy of the rule enshrined in Art. 6 in the North Sea Continental Shelf cases. In the two separate cases against West Germany filed by the Netherlands and Denmark, the Court was asked to decide about the 'applicable' principles and rules of international law 'to the

determination as between the Parties of the areas of the continental shelf in the North Sea which appertain to each of them beyond the partial boundary. The two cases were joined by the Court. Denmark and the Netherlands argued that the 'equidistance/special circumstances rule' in Art. 6 would be applied. Germany, instead proposed 'the doctrine of the just and equitable share'. Germany's opposition to the 'equidistance rule' was based on the fact that the rule, if applied on a concave coastline, such as that of North Sea, shared by all the three States concerned, would result into giving the State in the middle, and in this case Germany, a smaller continental shelf than it might otherwise obtain. The Court rejected both these contentions and held that applying the equidistance principle will lead to inequitable results because of the peculiar coastline of the States concerned and opined that the notion of equidistance could not be logically be compulsorily applied in all situations. It is not consonant with certain basic legal notions, 'those principles being that delimitation must be the object of agreement between the States concerned, and the such agreement must be arrived at in accordance with equitable principles.' Thus, in the following the 'equitable principles', the factors to be taken into account are: the relevant circumstances, i.e., the geographical situation of the parties and natural configuration of the coast; proportionally, i.e., the extent of the continental shelf areas appertaining to coastal State and the length of the coast measured in the general direction of the coastline; and the concept of natural prolongation, i.e., shelf is an appurtenant to the land territory. The approach taken by the International Court of Justice on the 'equidistance principle' has been followed by the Court in the Continental Shelf case (Tunisia V. Libya) case, the Court was asked to specify principles and rules of international law which were applicable to the delimitation of continental shelf between Tunisia and Libya. They have a single continental shelf as the natural prolongation of their land territory, and hence no principle of 'natural prolongation' as such could be applied. The Court observed that since the two countries abutted on a common continental shelf, physical criterion was of no assistance for the purpose of delimitation. The application of the equidistance method could not, in particular circumstances of the case; lead to an equitable result, and in such a case, the delimitation can be affected on the basis of 'equitable principles', taking into account all the relevant circumstances. The Continental Shelf (Libya V. Malta) case was the first case decided by the Court after signing of the 1982 Convention. Though both the States were signatories to the Convention, they agreed for the dispute to be governed by customary international law. The Court, however, looked into the provisions of the Convention as a rule of customary international law, and observed that 'the principles and rules, applicable to the delimitation of continental shelf areas are those which are appropriate to bring about an equitable result.' In deciding the dispute, the Court placed great reliance on the 'equidistance principle'. But to achieve an equitable result, it will be necessary to first draw a line, every point of which should be equidistant from the coast of the two opposite States concerned and then to make adjustments in the light of all the relevant circumstances. The Court once again discounted the 'natural prolongation' factor propounded in the North Sea Continental Shelf cases, which was subservient to the equitable principle. Thus, the judicial practice has clearly established that equidistance is not an applicable rule in all cases of delimitation between adjacent States. The 'natural prolongation' criterion has similarly given way to distance criterion (i.e. 200 nautical miles from the coast). The emphasis on 'equitable solution' in the 1982 Convention, however, is without any accompanying procedure to be followed to achieve it. The application of equitable principle reduces the chances of settling boundary disputes without litigation. The Maritime Zones Act, states the Indian position. India has proclaimed 200 nautical miles from the baselines as its continental shelf. The rights and duties of Indian in this regime are similar to other States,

as specified in the international Conventions. However the government can declare the area of continental shelf and its superjacent waters as designated areas and make provisions to regulate it.

(v) High seas

The terms international waters or trans-boundary waters apply where any of the following types of bodies of water (or their drainage basins) transcend international boundaries: oceans, large marine ecosystems, enclosed or semi-enclosed regional seas and estuaries, rivers, lakes, groundwater systems (aquifers), and wetlands. Oceans, seas, and waters outside of national jurisdiction are also referred to as the high seas or, in Latin, *mare liberum* (meaning *free seas*). Ships sailing the high seas are generally under the jurisdiction of the flag state (if there is one);however, when a ship is involved in certain criminal acts, such as piracy, any nation can exercise jurisdiction under the doctrine of universal jurisdiction. International waters can be contrasted with internal waters, territorial waters and exclusive economic zones. A tribunal instituted for the trial of peers indicted for treason or felony, or for misprision of either, but not for any other offense. The office is very ancient, and was formerly hereditary, or held for life, or; but it has been for many centuries granted pro hack vice only, and always to a lord of parliament. Wharton.

UNIT-IV-International Organisations

(a)UN

The United Nations is a unique organization of independent countries that have come together to work for world peace and social progress. The Organization formally came into existence on 24 October 1945, with 51 countries considered founding Members. By the end of 2008, the membership of the UN had grown to 192 countries. Since its inception, no country has ever been expelled from membership. Indonesia temporarily quit the UN in 1965 over a dispute with neighboring Malaysia, but returned the following year. The work of the United Nations is carried out almost all over the world and is done by six main organs:

1. General Assembly
2. Security Council
3. Economic and Social Council
4. Trusteeship Council
5. International Court of Justice
6. Secretariat

The General Assembly

All members of the United Nations (currently 192) are represented in the General Assembly. Each nation, rich or poor, large or small, has one vote. Decisions on such issues as international peace and security, admitting new members and the UN budget are decided by a two thirds majority. Other matters are decided by simple majority. In recent years, a special effort has been made to reach decisions through consensus, rather than by taking a formal vote. The General Assembly's regular session begins each year in September and continues throughout the year. At the beginning of each regular session, the Assembly holds a general debate at which Heads of State or Government and others present views on a wide-ranging agenda of issues of concern to the international community, from war and terrorism to disease and poverty. In 2005, world

leaders gathered at UN Headquarters in New York for the General Assembly High Level Summit and to commemorate the Organization's 60th birthday. Each year, the Assembly elects a president who presides over–that is, runs–the meetings.

Functions

- To discuss and make recommendations on any subject (except those being dealt with at the same time by the Security Council);
- To discuss questions related to military conflicts and the arms race;
- To discuss ways and means to improve the state of children, youth, women and others;
- To discuss the issues of sustainable development and human rights;
- To decide how much each Member country should pay to run the United Nations and how this money is spent.

The Security Council

While the General Assembly can discuss any world concern, the Security Council has primary responsibility for questions of peace and security.

Membership

The Security Council has fifteen members. Five are permanent members: China, France, the Russian Federation, the United Kingdom and the United States. The other ten non-permanent members are elected by the General Assembly for two-year terms and are chosen on the basis of geographical representation.

Functions

1. To investigate any dispute or situation which might lead to international conflict;
2. To recommend methods and terms of settlement;
3. To recommend actions against any threat or act of aggression;
4. To recommend to the General Assembly who should be appointed Secretary-General of the United Nations

The Economic and Social Council (ECOSOC)

The Economic and Social Council is the forum to discuss economic problems, such as trade, transport, economic development, and social issues. It also helps countries reach agreement on how to improve education and health conditions and to promote respect for and observance of universal human rights and freedoms of people everywhere.

Functions

1. Serves as the main forum for international economic and social issues;
2. Promotes higher standards of living, full employment and economic and social progress;
3. Advances solutions to international economic, social and health-related problems, as well as international cultural and educational cooperation.

The Trusteeship Council

In 1945, when the United Nations was established, there were eleven territories (mostly in Africa and in the Pacific Ocean) that were placed under international supervision. The major goals of the Trusteeship System were to promote the advancement of the inhabitants of Trust Territories and their progressive development towards self-government or independence.

Membership

The Trusteeship Council is composed of the permanent members of the Security Council (China, France, the Russian Federation, the United Kingdom and the United States). Each member has one vote, and decisions are made by a simple majority.

(b) The International Court Of Justice (ICJ)

The International Court of Justice was established in 1946 as the main UN organ for handing down legal judgments. Only countries, not individuals, can take cases before the Court. Once a country agrees to let the Court act on a case, it must agree to comply with the Court's decision. In addition, other organs of the UN may seek an advisory opinion from the Court. As of June 2006, the ICJ had delivered 92 judgments on disputes between states, including cases on territorial boundaries, diplomatic relations, not interfering in countries' domestic affairs, and hostage-taking.

Composition

The Court sits at the Peace Palace in The Hague, Netherlands. It has fifteen judges who are elected by the General Assembly and the Security Council. No two judges can come from the same country. Nine judges have to agree before a decision can be made. All the judgments passed by the Court are final and without appeal. If one of the states involved fails to comply with the decision, the other party may take the issue to the Security Council. On 6 February 2006, Judge Rosalyn Higgins (United Kingdom), the sole woman Member of the Court, was elected the first female President of the International Court for a term of three years.

Some recent decisions by the International Court of Justice

1. After the Court concluded public hearings in 2006; it decided to hear the case brought by Bosnia and Herzegovina alleging that Serbia and Montenegro had breached their obligations under the Convention on the Prevention and Punishment of the Crime of Genocide.
2. In 2004, the Court unanimously reaffirmed that Israel's construction of the wall in the Occupied Palestinian Territory violates international law.
3. In 2002, the Court ruled on the border dispute between Nigeria and Cameroon, placing the main territory under dispute, the Bakassi Peninsula, under Cameroonian sovereignty.

The Secretariat

The Secretariat, headed by the Secretary-General, consists of an international staff working at the United Nations Headquarters in New York, and all over the world. It carries out the day-to-day work of the Organization. Its duties are as varied as the problems dealt with by the United Nations. These range from administering peacekeeping operations to mediating international disputes or surveying social and economic trends and problems. The Secretariat is responsible for servicing the other organs of the United Nations and administering the programmed and policies laid down by them.

Functions

1. To gather and prepare background information on various problems so that the government delegates can study the facts and make their recommendations;
2. To help carry out the decisions of the United Nations;
3. To organize international conferences;
4. To interpret speeches and translate documents into the UN's official languages.

Composition

The Secretary-General is the chief officer of the United Nations. He or she is assisted by a staff of international civil servants. Unlike diplomats, who represent a particular country, the civil servants work for all 192 Member countries and take their orders not from governments, but from the Secretary-General.

How is the UN Secretary-General appointed?

The Secretary-General is appointed for a period of five years by the General Assembly on the recommendation of the Security Council. There have been eight Secretaries-General since the UN was created. The appointment of the Secretary-General follows a regional rotation. The UN Charter describes the Secretary-General as the "chief administrative officer" of the Organization, who shall act in the capacity and perform "functions as are entrusted" to him or her by the General Assembly, Security Council, Economic and Social Council and other United Nations organs. The Charter also empowers the Secretary-General to bring to the attention of the Security Council any matter that threatens international peace and security.

1 To propose issues to be discussed by the General Assembly or any other organ of the United Nations;

2 To bring to the attention of the Security Council any problem which the Secretary-General feels may threaten world peace;

3 To act as a "referee" in disputes between Members States;

4 To offer his or her "good offices".

(C) IMF and IBRD

The IMF is controlled by its 187 member-countries, each of whom appoints a representative to the IMF's Board of Governors. The Board of Governors, most of whom are the finance ministers or heads of the central bank of the members, meet once per year to discuss and possibly achieve consensus on major issues. In the meantime, day-to-day operations are managed by a 24-person Executive Board. The world's major economic and political powers—the United States (the IMF's largest shareholder), Great Britain, Japan, Germany, France, China, Russia, and Saudi Arabia—each have permanent seats on the executive board, while the 16 other directors are elected for two-year terms by groups of countries divided roughly by geography, e.g., Caribbean, Africa, Southeast Asia, etc. The executive board, in turn, is run by the managing director, who is elected for renewable five-year terms. The IMF also has an International Monetary and Financial Committee of 24 representatives of the member-countries that meets twice yearly to provide advice on the international monetary and financial system to the IMF's staff. In all of its operations, voting power is weighted based on the size of the economy and therefore the quota allocation of each country. Decisions are usually taken by consensus, but the United States, as the IMF's major shareholder, has the most influence in the institution's policy-making.

Organization

Each members of the executive board runs a particular department of the IMF. There are offices devoted to

a) Particular regions of the world, such as Europe, Africa, Middle East, Western Hemisphere, and Asia/Pacific;

b) Functions, such as finance, technical assistance, fiscal planning, capital markets, research, and statistics; and,

c) Administrative functions of the IMF itself. The goals are to:

1) Facilitate the cooperation of countries on monetary policy, including providing the necessary resources for both consultation and the establishment of monetary policy in order to minimize the effects of international financial crises.
2) Assist the liberalization of international trade by helping countries increase their real incomes while lowering unemployment.
3) Help stabilize exchange rates between countries. Especially after the global depression of the 1930s, it was considered vital to establish currencies that could hold their value, serve as mediums of international exchange, and resist any speculative attacks.
4) Maintain a multilateral system of payments that eliminates foreign exchange restrictions. Countries are thus free to trade with each other without worrying about the effects of interest rates and currency depreciation on their payments.
5) Provide a safeguard to members of the IMF against balance of payments crises, i.e., when governments cannot balance the money they have with the money they owe to other countries. IMF members can have the confidence to adjust the imbalances in their national accounts without resorting to painful measures that would hamper their prosperity, such as devaluing their currency in relation to other countries'.
6) Try to reduce the effects of volatility in countries' balance of payments accounts, the IMF helps assure that global trade and financial relationships can continue at a steady rate without the risks of global depressions like that of the 1930s.

IBRD

The International Bank for Reconstruction and Development (IBRD) works with middle income and creditworthy poorer countries offering loans, guarantees, risk management products, and analytical and advisory services. IBRD borrowers include countries at widely different stages of development, from emerging markets, such as Mexico and Indonesia, to countries struggling to find a foothold in the global economy. Established in 1944 as the original institution of the World Bank Group, IBRD is structured like a cooperative that is owned and operated for the benefit of its 187 member countries. IBRD raises most of its funds on the world's financial markets. The income that IBRD has generated over the years has allowed it to fund development activities as well as to ensure the financial strength that enables it to borrow at low cost and offer clients good borrowing terms.

IBRD Works for Development

• Developing countries are becoming key poles of growth in the global economy. Investing in development is an investment in global prosperity and jobs.

• Almost two-thirds of the world's poor people live in middle-income countries. Even fast-growing, emerging economies still have large numbers of poor people and real challenges to be tackled in meeting the Millennium Development Goals (MDGs).

• Many middle-income countries still face large development challenges and risk being trapped in the middle-income status. Working with IBRD, they can pursue development solutions to help them move to the next level.

• Some countries use IBRD financing as a means to innovate and experiment with small projects, which they then adapt, customize, and scale up. Others use IBRD's global knowledge to help build institutions, legal frameworks, and capacity for managing a modern, globalized economy.

• Middle-income countries are critical to efforts to tackle global challenges, from infectious diseases to climate change.

• Middle-income countries are important markets for and sources of development ideas for both the poorest countries and advanced economies.

(d)WTO

The front-page treatment of the Seattle Ministerial Conference in 1999 symbolized the profound changes that had taken place in the scope and politics of trade over the preceding half-century. At the founding of the GATT system trade policy was confined to tariffs and quotas, and this field was the province of a very small set of decision-makers and stakeholders. The one global institution that dealt with the topic was so obscure that it could not even be described as an international organization; there were only a handful of countries that made significant commitments in GATT; those commitments concerned only a few government ministries, especially finance and foreign affairs; and the only domestic interests that cared were firms and workers in the affected industries. By 1999, the subject matter of trade negotiations and disputes had encompassed a far wider and growing array of laws and policies; the work of the WTO impinged on that of several other international organizations and vice versa; nearly every country in the world was in or seeking to get in; the operations of almost all government ministries were concerned by WTO rules, with commitments affecting their revenues, regulations and procurement; and ministerial became magnets for reporters, labor leaders, religious activists, "black bloc" anarchists, children adorned with butterfly wings and policemen in riot gear. The tear gas and the media scrums did not become permanent features of WTO meetings, but the larger point remains: the days when this community was isolated and low-profile has long since passed. Trade ministries and the WTO Secretariat have had to learn how to communicate with the many other policy-makers, stakeholders and opinion leaders whose interests are affected by what they do. The changes and challenges come not just in the widening of the WTO but in the general proliferation of international organizations. This is a process that accelerated in the 1960s, which saw the transformation of the post-war Organization for European Economic Cooperation (principally a Marshall Plan administrator) into the Organization for Economic Co-operation and Development (OECD) in 1961 and the first United Nations Conference on Trade and Development (UNCTAD I) in 1964. Other global institutions have become more involved in trade policy, partly in response to the expanding subject matter and partly as a post-Seattle realization that they needed to address the development dimension of trade. This multiplicity of bodies, coupled with the widening scope of trade policy, creates both problems and opportunities. Despite the fact that all of these organizations are beholden to their members, and the memberships of these organizations are nearly identical, each of them has its own character and is prone to adopt conflicting policies, a problem that is usually defined as "coherence". To the extent that the WTO can draw upon the expertise that is housed in another body, however, the two organizations might be able to devise a working relationship that takes best advantage of their respective strengths and capabilities. The problem often looms larger than the opportunity. At its worst, a lack of coherence could pawns an outright conflict of laws. The commitments that countries make in one international organization could directly contradict those that they make in another. The International Monetary Fund (IMF) might oppose tariff cuts that threaten to reduce government revenue and contribute to budget deficits, for example, just as the World Health Organization (WHO) might promote restrictions on trade in tobacco and the United Nations Educational, Scientific and Cultural Organization (UNESCO) may be friendlier to a "cultural exception" for trade in motion pictures. A less severe but ever-present danger is

that the multiplicity of institutions, meetings and agreements will lead to uncertainty or confusion over the objectives that countries seek and the proper forum in which they will pursue them. When the WTO handles issues affecting such diverse topics as, for example, agriculture, health care and tourism, and there already exist other specialized organizations that do so as well, which institution should take the lead? The WTO and its counterparts have other options for promoting coordination and avoiding clashes. One is to provide observer status, with each institution allowing the other to witness its deliberations and, in some cases, to have a voice in them. Organizations sometimes take the further step of negotiating a memorandum of understanding that lays out the terms by which they might cooperate in such areas as the sharing of documents and the provision of technical assistance to their members. Another approach is either to incorporate the other's laws within one's own, or even to negotiate joint agreements on topics of shared interest and expertise. There are several WTO agreements that take the first of these routes, but the only example of the second dates from the early GATT period.

(e) ICAO

The International Civil Aviation Organization (ICAO) is a UN specialized agency, created in 1944 upon the signing of the Convention on International Civil Aviation (Chicago Convention).ICAO works with the Convention's 191 Member States and global aviation organizations to develop international Standards and Recommended Practices (SARPs) which States reference when developing their legally-enforceable national civil aviation regulations. There are currently over 10,000 SARPs reflected in the 19 Annexes to the Chicago Convention which ICAO oversees, and it is through these provisions – as well as ICAO's complementary policy, auditing and capacity-building efforts – that today's global air transport network is able to operate close to 100,000 daily flights, safely, efficiently and securely in every region of the world. The constitution of ICAO is the Convention on International Civil Aviation, drawn up by a conference in Chicago in November and December 1944, and to which each ICAO Contracting State is a party. According to the terms of the Convention, the Organization is made up of an Assembly, a Council of limited membership with various subordinate bodies and a Secretariat. The chief officers are the President of the Council and the Secretary General.

The Assembly, composed of representatives from all Contracting States, is the sovereign body of ICAO. It meets every three years, reviewing in detail the work of the Organization and setting policy for the coming years. It also votes a triennial budget.

The Council, the governing body which is elected by the Assembly for a three-year term, is composed of 36 States. The Assembly chooses the Council Member States under three headings: States of chief importance in air transport, States which make the largest contribution to the provision of facilities for air navigation, and States whose designation will ensure that all major areas of the world are represented. As the governing body, the Council gives continuing direction to the work of ICAO. It is in the Council that Standards and Recommended Practices are adopted and incorporated as Annexes to the Convention on International Civil Aviation. The Council is assisted by the Air Navigation Commission (technical matters), the Air Transport Committee (economic matters), and the Committee on Joint Support of Air Navigation Services and the Finance Committee.

The Secretariat, headed by a Secretary General, is divided into five main divisions: the Air Navigation Bureau, the Air Transport Bureau, the Technical Co-operation Bureau, the Legal Bureau and the Bureau of Administration and Services. In order that the work of the Secretariat reflects a truly international perspective, professional-level personnel are recruited on a broad geographical basis.

ICAO works in close cooperation with other members of the United Nations family such as the World Meteorological Organization (WMO), the International Telecommunication Union (ITU), the Universal Postal Union (UPU), the World Health Organization (WHO), the World Tourism Organization (UNWTO) and the International Maritime Organization (IMO).

Non-governmental organizations which also participate in ICAO's work include the International Air Transport Association (IATA), Airports Council International (ACI), the Civil Air Navigation Services Organization (CANSO) the International Federation of Air Line Pilots' Associations (IFALPA) and the International Council of Aircraft Owner and Pilot Associations (IAOPA

(f) IAEA

The International Association for Educational Assessment (IAEA) grew out of an International planning conference held in Princeton, New Jersey, U.S.A. on April 19-21, 1974.Some 35 individuals representing 18 countries met on that occasion to consider the desirability and feasibility of establishing an organization to foster intercommunication among agencies throughout the world which are concerned with the application of assessment techniques for the improvement of educational processes and to provide a framework within which such agencies could undertake cooperative projects. It was decided that the Association, if established, would fill an important need and that an effort should be made to bring it into being. On May 27, 1975 an organizing meeting was held in Geneva, Switzerland, with logistic assistance from the International Bureau of Education, and the participants then decided to set up the Association. The Association believes that international cooperation in educational research and assessment is essential if education throughout the world is to be improved and if its benefits are to be extended to increasing numbers of people. It encourages the establishment of closer ties among individuals, agencies, and institutions that influence and serve educational systems and processes, to the end that nations may learn from each other, may help each other, and may do so with no diminution of their cultural autonomy. Constitutions and Bylaws were adopted and officers and executive committee members were elected and in 1976 the IAEA held its first conference. Since then IAEA has grown and developed and now has about 160 members ranging from Individuals, Primary and Affiliate Organizations. An Executive Committee whose officers and members are elected by the Primary Organization members governs IAEA, ensuring a wide geographic range is represented on the committee. The International Association for Educational Assessment offers a global forum for all those involved in all forms of educational assessment – in primary or secondary schools, colleges or the workplace. Its members include examining bodies, university departments, research organizations and government agencies from more than 50 countries on all continents. The broad purpose of IAEA is to assist educational agencies in the development and appropriate application of educational assessment techniques to improve the quality of education. IAEA believes that this is best achieved through international

cooperation and seeks to facilitate the development of closer ties among relevant agencies and individuals around the world. IAEA believes that such international cooperation can help nations learn from each other without any diminution of their cultural autonomy. Its primary objectives are:

1. to improve communication among organizations involved in educational assessment by sharing professional expertise through conferences and publications, and by providing a framework within which cooperative research, training, and projects involving educational assessment can be undertaken.
2. to make expertise in assessment techniques more readily available for the solution of educational problems.
3. to cooperate with other agencies having complementary interests.
4. to engage in other activities for the improvement of assessment techniques and their appropriate use by educational agencies around the world.

IAEA has consultative status with UNESCO in the achievement of mutual goals. As a non-governmental organization (NGO), IAEA plays an active part in UNESCO activities which are increasingly addressing assessment and evaluation issues.

(g) UNEP

UNITED NATIONS ENVIRONMENT PROGRAMME (UNEP) UNEP is the United Nations system's designated entity for addressing environmental issues at the global and regional level. Its mandate is to coordinate the development of environmental policy consensus by keeping the global environment under review and bringing emerging issues to the attention of governments and the international community for action. The mandate and objectives of UNEP emanate from: • UN General Assembly resolution 2997 (XXVII) of 15 December 1972; • Agenda 21, adopted at the UN Conference on Environment and Development (the Earth Summit) in 1992; • the Nairobi Declaration on the Role and Mandate of UNEP, adopted by the UNEP Governing Council in 1997; • the Malmo Ministerial Declaration and the UN Millennium Declaration, adopted in 2000; and • recommendations related to international environmental governance approved by the 2002 World Summit on Sustainable Development and the 2005 World Summit.

UNEP'S RESPONSIBILITIES INCLUDE:

1. Promoting international cooperation in the field of the environment and recommending appropriate policies.
2. Monitoring the status of the global environment and gathering and disseminating environmental information.
3. Catalyzing environmental awareness and action to address major environmental threats among governments, the private sector and civil society.
4. Facilitating the coordination of UN activities on matters concerned with the environment, and ensuring, through cooperation, liaison and participation, that their activities take environmental considerations into account.
5. Developing regional programmed for environmental sustainability.

6. Helping, upon request, environment ministries and other environmental authorities, in particular in developing countries and countries with economies in transition, to formulate and implement environmental policies.
7. Providing country-level environmental capacity building and technology support.
8. Helping to develop international environmental law, and providing expert advice on the development and use of environmental concepts and instruments.

to approach similar topics in dissimilar ways. There is a potential for conflict between international organizations that have overlapping jurisdictions and that might encourage countries

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3. Brownlie – Principles of International Law

4. Shaw - International Law