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Public International Law PSC401

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INTRODUCTION TO INTERNATIONAL LAW

International law comprises of a set of rules that govern the international relations between sovereign states. It can be classified into two domains i.e. public international law and private international laws and both are distinguished from each other at all times. The former relates to the laws between states, and covers almost every aspect of inter-state activity, from the laws of the use of sea, outer space, carriage of goods, civil aviation, and postal services to the transfer of money. On the other hand, the latter, which is often dubbed as conflict of laws as well, concerns relationship between individuals of two different states; for instance, divorce issues and problems pertaining to trade between individuals of two different states.

International law is the vital mechanism without which an interdependent world can not function properly and within the bounds of law. It does not only control the states by overseeing their conduct in relation with other states, like the law prohibiting the use of armed force to settle dispute, but also maintains laws regarding individuals (e.g. human rights).

Furthermore, international law is intrinsically bound up with diplomacy, politics and conduct of foreign affairs; it is not, at all, based on an adversarial system of law, meaning thereby that many of the rules have been evolved from the practice of the states and do not bind the states in any course, which tends to make international law more flexible. Also, international law leaves a state with so many options rather than with merely one course of action, which serves as an advantage for a system so bound up with politics and diplomacy.

International law covers a wide range of laws which include the following:

- Refugee laws
- Narcotics/Drugs treaties
- Human trafficking
- Obscene publication
- World health treaties
- International trade development
- Agreement relating to independent guarantee and letter of credit.
- Protocol on road signs and signals 1947
- Contract of carriage of goods by roads.

As far as the scope of international law in Pakistan is concerned, it is expanding with the passage of time. Pakistan is under an obligation to follow its international commitments arising out of any treaty, convention or international agreement, ratified by it. Further, after having ratified a treaty, it is mandatory for Pakistan to incorporate it into domestic laws by enacting implementing legislations. For instance, Dangerous Cargos Act and Maritime Zones Act, 1996 of Pakistan aim at translating its international obligations into the domestic laws. Similarly, United Nations Convention on Law of the Sea has been ratified by Pakistan and to ensure its enforcement, corresponding domestic legislation is required.

Keeping in view the need of a stable and orderly international society, the relevance and pertinence of international law is all the more emphasized. In this age of globalization and an increased degree of interdependence between different countries of the world, international law can provide a viable regime to regulate intra state relations and activities. However, it is to be noted that international law has its limitations owing to concepts like state sovereignty - a sacred norm of international law. But recent developments in the arena of international law have proved that it can play a vital role in regulating international affairs through various treaties and conventions, which upon ratification, bind the state parties to observe the same. Although, as has

been said earlier, there does not exist an effective tool/forum to implement these international treaties (like the corrective measures that can be resorted to by a state against its citizens in an event of non compliance to the laws of the land), nevertheless, compliance can be ensured by means of sanctions (such as trade embargos or diplomatic cut off etc) which are of great relevance for life in the comity of nations, already becoming a global village. For example, UNSC issued 1373/01 resolution which prevents and suppress the financing of terrorist acts and 1566/04 further makes it mandatory for worldwide implementation. The importance associated to these sanctions can be traced to factors such as increased economic (trade) activity at a global level, free flow of information, formation of regional/global blocks pursuing a specific ideology/orientation, an ever increasing rate of immigration, natural as well as human resource sharing etc. All these factors have contributed to the growth of international law and at the same time highlighted the need of it. It may finally be said that starting from the limited inter state interaction between the Greek city states, international law and its need have become more relevant in the modern state system. It can help bridge the gaps of dissenting ideologies and divergent policies of sovereign states by bringing them together on a commonly agreed upon law (treaty/agreement/convention), so as to bind them into compliance and reduce friction to ensure a more orderly and peaceful world.

WHETHER INTERNATIONAL LAW IS A LAW OR NOT

It is debatable whether international law is a law or not. Law is defined as rules established by a governing authority to institute and maintain orderly coexistence. Sovereign states have three organs i.e. executive, legislature and judiciary in addition to other auxiliary bodies to enact, enforce/implement and interpret laws and are held up as the definitive model of what the law and legal system should be like. On the other hand, International law is said to lack all these three elements/organs and there is a pre-conceived notion that international law cannot be regarded as true law. There are two reasons for this misconception. Firstly, it is often believed by the people that states generally have little respect for international law because it does not have a world government, lacks an enforcement mechanism and no sanctions are imposed if it is not complied with or violated. Secondly, the political scientist views tend to challenge the very existence of international law. John Austin, a positivist, argued that international law is not really a law because it lacks sovereignty and defined laws as commands of a sovereign. Domestic law, however, consists of a legislature whose main aim is to enact laws, which later are enforced by the executive machinery and finally the enforcement is supervised and checked by the judiciary. For example, in Pakistan, there is an existing Pakistan Code which lists down all the various acts and then Civil Major Acts give the idea of the nature of laws.

It is therefore, a misconception as to whether international law is a law or not, the reason being that the afore mentioned functions which performed by the three organs of a state, the same functions are performed by various treaties and multilateral conventions, which show that even though there is no world Parliament, still the working is carried out properly. The procedure leading to the formulation/enactment of a treaty is the same as the establishment of a domestic law. Since international law consists of rules and principles which govern the relations and dealings of nations with each other, a treaty is formed by undergoing various negotiations between states. It is important to note that before a treaty is finally drafted, a series of readings takes place for scrutinization and finalization of a proposed draft. The first and second reading is the negotiation process, in which the states negotiate and come up with the conclusion of incorporating or deleting certain clauses. During this process, the opinion of experts and technocrats also plays a vital role in the making up of a treaty. A Standing Committee is also established which prepares the work of the Assembly (including various nations) between sessions, and ensures the efficient operation of the Assembly, along with the Adhoc Committees, which further address specific issues. Since international law, as it is today, comprises mostly of various international treaties and conventions, it is pertinent to note that all of these treaties and conventions are drafted after going through extensive negotiations and deliberations before they are finally opened up for accession or ratification. All these processes are undergone while drafting a domestic law as well, such as, the three readings of a bill which includes the committee stage as well, and its subsequent presentation for voting before the parliament, which if and when passed, is finally enacted and becomes a law/statute.

The second confusion regards to the enforcement mechanism in international law. Under the domestic law, the executive is responsible for the implementation and execution of various laws passed by the legislature. On the other hand, the main criticism relating to international law is that it is not properly enforced and no responsible body is established to ensure its application. However, states are influenced to follow the international law through the medium of diplomatic and political pressures. For instance, Yasir Arafat was invited by the United Nations (UN) in

New York to give his suggestions but, his visa was rejected by the United States (US). UN later issued a resolution condemning the said act of US, as their already existed a pact between US and UN clearly stating that anyone who is invited by the UN would be allowed a visit for official purposes. There are certain other methods of ensuring proper enforcement, foremost of which are the international treaties. The treaties when established further create agencies for the purposes of its enforcement. One such example is that of the Comprehensive Test Ban Treaty Organization (CTBTO) which implements the

treaty on the states that have ratified it. According to Professor Kelsen, an Austrian-American legal philosopher, international law does have machinery for enforcement. Furthermore, the system established under the UN Charter was designed to ensure that the member states obey and respect international obligations deriving from the Charter. The violations of certain treaties are also dealt by the United Nations Security Council (UNSC) and the scope of the enforcement actions taken by the UN is steadily growing.

The third debate regarding international law is that there is no international judicial forum controlling and responsible for the resolution of disputes between the states as compared to domestic law, where a proper judicial system is in place, sole purpose which is to resolve a dispute. However, that is not completely the case with international law. There are various examples within the treaties which focus on the implementation and provide a judicial forum to settle the disputes. For example, Indus Water Treaty between Pakistan and India entails a detailed mechanism to resolve any dispute that may arise between the state parties. Furthermore, an International Court of Justice (ICJ) is established within the framework of UN charter which hears and resolves a dispute between states, provided those states have agreed on it. The disputes can also be resolved by ICJ if a reference is made through United Nations General Assembly (UNGA). This shows that although the scope and jurisdiction of international law is different as compared to the domestic laws, but the procedure is there for settling disputes.

Thus from the afore mentioned discussion and keeping in view the various distinctions and similarities drawn between domestic laws and international laws, we may finally arrive at the conclusion that international law is a law, as it also comprises of all the three organs of a state i.e. the legislature, executive and judiciary, which is important not only for the formulation of a law but also for its implementation and interpretation. Also, the national laws should not be regarded as the appropriate standard for judging international law, especially when the rationale behind the former is fundamentally different, both in nature and purpose, from that of the latter.

THE SUBJECTS OF INTERNATIONAL LAW

Laws are the finest creation of human mind. They are intended not only to regulate our conduct and therefore our lives, but they also make possible the enjoyment and an uninterrupted provision of various rights as well, which are cardinal for the life of any individual, for instance, the right to life itself. It is evident from the afore mentioned that man is the ultimate subject of all the laws. Similarly, at an international level, where we have different state actors, there are certain laws to regulate their conduct and affairs with each other. So, in order to be a subject of international law, it is imperative for any entity to have an international personality which should be capable of exercising international rights and duties. Since, International law is concerned with the rights and duties of states, there are other legal persons, such as international organizations, pre independent territorial entities, and individuals.

It is important to determine the way in which an international personality is created or achieved. There are various criteria laid down by international law which must be fulfilled before a “state” can come into existence. International law is defined as rules governing the relations of states amongst themselves and State is further, defined in the Article 1 of The Montevideo Convention on the Rights and Duties of States as “the state as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with the other states. Meaning thereby, a state is a territory with a population, a government who is able to exercise effective control of that territory and independence in their external matters. It is not clear as to what counts as population, however, it appears that there must be some population linked to a specific territory on a more or less permanent basis and which can be regarded as its inhabitants. Further, a state must have some definite physical existence that marks it out clearly from its neighbors. In addition, the airspace superjacent to land territory and the territorial sea is, under the international law, a part of state territory, and as a consequence other states may only use such airspace for aviation or other purposes with the agreement of the state exercising territorial sovereignty over it. Moreover, for a state to function, it requires a government which should control the population and execute certain rights and obligations under the international law.

However, as has been mentioned in the preceding part of the discussion, states are not the only subject of international law. There are certain other territorial entities which may be classified as a subject of international law, created by an international treaty, depending on the acquiescence of the states involved in their administration. For example, Jammu Kashmir has unique features and is not regarded as a state. Similarly, Guatanamo Bay, as a non state entity is controlled by the US.

Moreover, international organizations are also considered as a subject of international law. They are fundamentally created by treaties and must satisfy certain criteria in order to attain legal capacity under international law. Firstly, there must be a permanent association of states in order to fulfill their objectives; must exercise some powers distinguished from that of the sovereign states and lastly, its must be exercised on an international level. For example, United Nations, World Health Organization and International Atomic Energy Agency (IAEA) are all considered to be international organizations.

It is important to note that if a state is extinguished through an illegal action of another state based on a right of self determination, it will remain a state under international law. For example, Iraq exists as a state, but there may be real doubts as to the claims of the US government to represent the said state internationally. On the other hand, it is possible for an entity to cease to be an independent state through lawful means. This may be done by voluntary submission to the



sovereignty of another state or by the merger of two states into one, for example the union of Gulf States to form United Arab Emirates.

In addition, before the Second World War, individuals were not regarded to have an international personality and were considered to fall under the heading of a state and not as separate subject of international law. But recently, individuals are responsible personally for certain crimes such as, war crimes, hijacking, crimes against humanity and genocide etc. The reason being that an individual is responsible behind a states' activity, so an individual should be tried for his own actions. Further, international courts have been established to hold individuals liable for their acts, for example, International Criminal Tribunal of Yugoslavia and International Criminal Tribunal of Rwanda. Similarly, international conventions and treaties have been formed in order to impose certain rights and obligations on them. For example,

Vienna Convention on Diplomatic Relations;

Convention on Prevention and Punishment of Crime of Genocide 1945;

International Covenant on Civil and Political Rights 1966;

International Covenant on Economic, Social and Cultural Rights 1966;

Convention on status of Refugees;

World Health Organization;

Convention against Torture;

Convention on Rights of Children;

Migration Conventions and

Convention on Suppression of Trafficking of Women and Children.

Thus, international law deals with States and non-States subjects (e.g international organization and individuals discussed above) alike. Even though the States possess a full measure of international legal personality, there are other entities in international law which possess a capacity to act as a legal person, provided it is conferred on them by the States.

SOURCES OF INTERNATIONAL LAW

International law does not possess formal institutions responsible for creating laws; however, there are certain rules and methods which can help in determining the sources of international law. In this connection, article 38 (1) of the Statute of International Court of Justice (ICJ) is accepted as the most authoritative regime containing the sources of international law stating:

“the court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

- a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting States;*
- b. international custom, as evidence of a general practice accepted as law*
- c. the general principles of law recognized by civilized nations;*
- d. subject to the provisions of article 59, judicial decisions and the teaching of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law”.*

There are different ways through which States create International law. International conventions mentioned under article 38(1) are referred to as treaties/conventions/pacts etc. Treaties may be bilateral (between two states) or multilateral (between more than two states) and are a product of long negotiations between the States. Once a state has signified its consent, it is bound by its terms vis-à-vis all other parties to that treaty. Thus, treaties are only binding and impose obligations on those states that have ratified it.

Treaties can be further categorized into three types:

Law making treaties;
Constituent treaties and
Codifying treaties

Law making treaties are those treaties which come into existence because of lack of customary laws related to a particular issue and in order to make people aware of certain provisions treaties are formulated. Law making treaties create general norms for the future conduct of the parties. For example, there were no customary laws on nuclear tests; therefore, a Comprehensive Test Ban Treaty (CTBT) was formulated, which prohibits nuclear testing. Similarly, World Trade Organization (WTO) can be classified as an example of a law making treaty.

The second type of treaty is the codifying treaty, meaning whereby, certain existing customary laws are codified in order to develop international law and make it binding between the states signatories to it and also bind the non-parties to it (e.g. the 1961 Vienna Convention on Diplomatic Relations and the 1969 Vienna Convention on the Law of Treaties).

The third type of treaty is the constituent instruments of international organizations, in which a treaty becomes a statute of an international organization, for example, International Criminal Tribunal for Rwanda (ICTR) and International Criminal Tribunal for Yugoslavia (ICTY) were established under the United Nations Security Council (UNSC) resolution. Moreover, the Universal Declaration on Human Rights (UDHR) is also considered as a source of international law because of its wide application.

The second important source of international law is the custom or international custom. Customs are referred to as a tradition which has been consistently practiced in a specific nation for a long time. Later, these customs mature into norms and achieve the status of law, for example, the

Geneva Convention of 1949. The controversial area regarding custom is that everything that a state practices or follows cannot be classified as a custom and it is not enough for the formulation of customary law that there is general, consistent and uniform state practice. It must be accompanied by a belief that the practice is obligatory rather than merely convenient or habitual. The belief in the obligatory nature is known as *opinio juris*—the opinion of States that they consider themselves bound by a particular rule. This element turns into a binding custom and is considered as an essential element in the formation of customary law. 

Therefore, both treaty and custom are the major sources of international law with separate existence and identity. In case of a conflict, a treaty may prevail over a custom; provided that the State has ratified the treaty or *jus cogens* (i.e. a fundamental norm of general international law from which no derogation is permitted) is involved. *Jus cogens*, being a customary rule of international law, overrides contrary treaties or customary rules. The criterion for identifying *jus cogens* is stated under the Vienna Convention on the Law of Treaties. Moreover, if a treaty is later in time than the custom, subject to the rules of *jus cogens*, the treaty will prevail because treaties are considered to represent deliberate and conscious act of law creation. The position is reversed where contrary customary law has developed subsequent to the adoption of the treaty. So non-parties to the treaties would be bound by the customary rules. Further, where treaty and custom are identical in content, States may be subject to parallel obligation under both: for parties to the treaty and non parties too.

Thus, these two are considered as the most important sources of international law, though certain ambiguity and uncertainty lies as to their application if conflict arises between them, but overall they are considered to be formal sources of international law.

SOURCES OF INTERNATIONAL LAW
PART II

Apart from Treaty and Customs, the Statute of International Court of Justice (ICJ) under its article 38 (1) mentions some other sources of international law. Treaty represents state consensus and custom are referred to as laws which are practiced by the states and which later evolve as a customary law. Both are formal sources of international law, whereas, there are various other informal, material and evidential sources mentioned in the Statute.

The General Principles of law in Article 38 (1) of ICJ Statute refers to those legal principles which exist in all or most domestic systems of law. Its purpose is to fill in the gaps left by the treaty and customs i.e. to apply principles which do not have their origin in either treaty or custom. For example India and Pakistan agreed on the general principle of the law and in front of the arbitrator on the basis of the principle of equity-principles of equity are considered to constitute a part of international law and rely on fairness and justice, and which have been applied by the ICJ and other international judicial bodies and it has resolved law of the sea disputes. Similarly, the Islamic concept of International law also includes the customary norms relating to prisoners and the treatment of prisoners after the war.

The next source of international law is the judicial decisions whereby, different decisions by various judges are used in order to understand the international law. They are law identifying or material sources of law. The ICJ is involved in the process of law making and its opinions are also referred to and are considered to resolve the uncertainty prevailing in a specific area of law. The decisions by the judges are very comprehensive and are used as an aid to interpret the international laws. For example, in 1996 ICJ gave a judgment regarding the illegality of the use of nuclear weapons because it relates to international Humanitarian law. However, it was argued by various publicists whether the usage of nuclear weapons is legal under self defence or not. The ICJ issued an opinion stating that the use of nuclear weapons amounts to a crime under international humanitarian law, thus, ignoring the debate regarding its legality under the banner of self defence. The judicial decision not only concerns the international court decisions, but also refers to the local court decisions. For example, 2002 SCMR 1694 relates to the treaty applications and its implications.

The writings of the publicists are also regarded as a subsidiary means for the determination of the rules of law. Writings of various authors and experts are considered to be significant. The textbooks and publications represent a quick and easy way to discover the content of law. They are only a material source, and do not have a tangible effect on state practice and are still the first references of the international lawyers. For example, the situation of Bangladesh and India in 1971 and Iran revolution in 1986 led to a lot of debate by the authors and publicists, resulting in clarity of the situation. Further, a British Yearbook of International Law is issued incorporating the articles of well known international lawyers and experts. Similarly, American Society of International Law is responsible for publishing American Journal of International Law.

Moreover, Resolutions of International Organizations are argued to be a new source of international law, although, the ICJ Statute does not include this as a source of international law. They are also considered as material and evidential source. Some States regulate their conduct through international organizations by issuing declarations and giving statements with reference to international law. For example, United Nations General Assembly (UNGA) passed a resolution defining aggression and developed a different approach towards it. This resolution later became an important source of international law in order to ascertain the acts amounting to aggression. The resolutions of the UNGA are not binding on the States, even if they are adopted

unanimously, except for those that are concerned with the internal matters of the United Nations, e.g. resolution on the admittance of new states or election of the Security Council. Similarly, Friendly Declaration was also issued by the UNGA stating that the sovereignty of the states must be kept intact and must not be destroyed by any other state. Further, Universal Declaration on Human Rights was passed by UNGA, entailing a comprehensive and detailed concept pertaining to rights of individuals and later a number of other conventions were followed by it, including:

International Convention on Civil and Political Rights (ICCPR) 1966;

International Convention on Economic, Social and Cultural Rights (ICESCR) 1966 and

Convention on Rights of Children (CRC).

UDHR is therefore, considered as a source of international law relating to human rights. Apart from UNGA-responsible for issuing resolutions, the decisions of the Security Council under Chapter VII have a binding effect as well.

Thus, international law exists and can be ascertained from various sources mentioned under article 38 (1) of the ICJ Statute. The working and importance of international law has grown extensively with time and to meet its requirements, some formal as well as material sources have been identified which play a vital role in determining and developing the field of international laws.



INTERNATIONAL LAW AND MUNICIPAL LAW

International law is defined as a law between sovereign states and it is implemented to certain subjects such as the States. There are various national/domestic/municipal laws prevailing in a certain state, regulating the relationship between the citizens within that State. It is the member states responsibility to ensure the correct enforcement of international laws within their state. The United Nations Security Council (UNSC) has passed various resolutions, thus creating an obligation on the States to enforce it under chapter VII of the United Charter. For example, UNSC resolution 1373, 1267, 1540, 1566 and 1617.

International law is the body which governs State actions and its effective implementation within the States depends on the way in which States treat their international law obligations within their own domestic legal systems, thus, depending on the nature of their relationship between international law and municipal law. There are two schools of thoughts describing the relationship between International law and municipal law: monism and dualism. According to monism, municipal law and international law are part of a universal legal order, with international law being part of the same system. Whereas, dualists states that there are two distinct systems of law each having its own sphere of application.

The major issue concerning the international law is its implementation within the domestic system. A State can enforce international law either by adopting the administrative measure or through legal measures, depending whether it is a civil law country or common law country. The jurisprudential approach regarding the civil law country is that whenever a state has signed a treaty, it automatically becomes a part of the domestic law and is incorporated in it. On the contrary, a common law country like Pakistan, India, Bangladesh, Srilanka and UK require formal incorporation of the international law into the national laws to ensure their applicability and compliance. The problem arises when the government is not ready to make laws in accordance with the international laws.

This further leads to the issue of implementation of the international law. There are certain ways through which the international law can become a part of domestic law: the government can identify an existing law that is in compliance with the international obligations of that country, amend the existing laws or enact new legislation in order to comply with the international law provisions. For example, judgement of SCMR 2002 1694 stated that if the provisions of a treaty are not incorporated through the legislation, then such provisions will have no effect and the treaty rights would not be enforced. Treaty is a specific commitment in which the state partially surrenders its sovereignty. If the international law concerns a new issue on which there is no legislation then the government has to make new laws covering that specific issue, or if existing law is there regarding it then it should be amended in order to bring it in accordance with the international laws. For example, Warsaw convention on carriage of goods by air has been ratified by Pakistan, and Pakistan passed a small legislation and incorporated it into the domestic law.

The more appropriate method adopted is to make new laws in compliance with the international laws because it would not only help in better understanding but, would also lead to more efficient legislative measures, beneficial for implementation. For example, Pakistan Penal Code provision 302 relates to murder and is in compliance with the international genocide convention. However, there are several treaties in which implementation organizations are specifically made in order to ensure enforcement and create obligations on a State. For example, Chemical weapons Convention implementation order 2000 was ratified by Pakistan and made it mandatory to abide by it and refrain from the production, and transportation of weapons. Similarly, after 9/11, Anti Terrorism Act 1997 Section 11, (25) amendments were made regarding terrorism, entirely

changing the basic form of legislation, and the reason being to make domestic law in line with the international law. Furthermore, resolutions are passed by the UNSC to create an obligation on the States to follow certain international laws e.g. Resolution 1267 and 1373.

Therefore, it is difficult to justify the issue of compliance, as every State has its own domestic laws according to which they would determine their relationship with the international laws. The resolutions however, work as a watchdog, ensuring compliance of domestic law with the international laws and inquire into the implementation of laws by these various organizations. Thus, the traditional relationship of international law with the domestic law does create problems on the basis of either implementing it through administrative measures or legal measures.

LAW OF TREATIES

Treaties are an important and major source of international law. It is a convenient way by which the States deliberately enter into agreements with other States. A Treaty can be concluded between two states (bilateral) or more than two states (multilateral). The body of international law that governs their procedural and substantive aspects is referred to as the “law of treaties”. A treaty is a main source for the States to have a comprehensive, certain and stable legal body governing an issue or area of concern and the parties to the treaties are, therefore, legally bound by it, thus creating certain rights and obligations under the international law which they have to adhere to.

There are no obligatory formal requirements which must be fulfilled before a treaty can come into existence. The Vienna Convention on the Law of Treaties 1969 defines a treaty as:

“an international agreement concluded between states in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation”.

In other words, it means that the obligation to follow a treaty between states arises only when it has been concluded in a written form. Moreover, a treaty must be in a simple and understandable language for the States to comply and identify with. It also consists of a preamble which lays down the objective and rationale behind a specific treaty along with substantive and procedural provisions.

Further, a dispute resolving mechanism is also included in the treaty to ensure that the States abide by the correct procedure along with an amendment procedure and ratification method. For example, Non Proliferation Treaty article 1 and 2 constitute the substantive part and article 8 relates to the procedure regarding amendment, which is also known as review conference.

Moreover, a treaty may also be referred to as a Convention, Protocol, Agreement and Declaration. There are no legal reasons for using different names for it, rather political reasons are there. For example, Simla Agreement, Geneva Accord, Lahore Declaration, and Additional Protocol of Geneva Convention. It is evident that whenever a treaty is amended the new areas covered under it would be regarded or known as a Protocol. Further, the United Nations General Assembly (UNGA) determines the rules of negotiations between the States regarding the Treaties.

Another area/aspect that needs to be highlighted with regards to a Treaty is the difference between signing and ratifying a particular treaty. The effect of signature depends on whether a treaty is subject to ratification and approval, meaning thereby, the state signing the treaty has referred it to their government and waiting for their approval or ratification. It is an obligation on the states that have signed a treaty, to refrain from any state practice which is inconsistent with the treaty. It is important to note that the mere signing of a treaty only shows the intention of a state to take into consideration the formal adoption of that treaty at a later/subsequent stage. On the other hand, ratification means the approval by the head of State or government of the signature to the treaty. It is after the ratification that the treaty is actually formed and comes into existence. If a state has signed a treaty before it has been enforced then that state has simply signed it, whereas, if a state has ratified a treaty before it has been enforced then that state has merely ratified it. If a treaty has been enforced and then a state ratifies it then it would amount to as accession. Accession and ratification are distinguishable as accession indicates that a state is to become a party to the whole treaty. A treaty however, can not come into force until a specified number of states have ratified it.



Moreover, reservation and declaration should be differentiated. A reservation is defined as to reserve the operation of a certain specific provision of a treaty or in other words to limit a treaty in its application, whereas, a declaration is referred to as limiting the interpretation of a specific provision of a treaty. Also, a state is not allowed to reserve or limit the interpretation of any provision of a treaty that forms the core, spirit or fundamental/substantive part of the treaty. The United Nations publishes various names of the treaties formed and the names of the States signing or ratifying it. For example, International Covenant on Civil and Political Rights (ICCPR) was ratified by India but, India reserved a particular right regarding article 1, resulting in objection by three other states, including France and Germany.

Keeping in view therefore mentioned discussion, it can now be said that treaties are considered to be one of the major sources of international law. They derive their importance from various attributes such as their compulsory written form, their various kinds, voluntary and free option of states to join them and their subsequent rights and duties under any such treaty.

JURISDICTION

According to Peter Stephen Du Ponceau, an international lawyer from Philadelphia, Jurisdiction, in its most general sense means;

“The power to make, declare, or apply the law. When confined to the judiciary department, it is what we denominate the judicial power, the right of administering justice through the laws, by the means which the laws have provided for that purpose. Jurisdiction is limited to place or territory, to persons, or to particular subjects”.

Jurisdiction is an important and extensive concept referred to and used very frequently in international law. It provides clear norms as to what is the sphere of influence or authority of a state and also includes the subjects that formulate/constitute a part of such an in authority or influence. It can also include certain circumstances in which a state may assume jurisdiction in matters or over such subjects that do not form a part of its area of influence under ordinary course of events, for instance, International Court of Justice (ICJ) can only exercise its jurisdiction over a dispute when the states party to it have agreed to take the matter to ICJ. At a national level people are aware of the term “jurisdiction” but it creates ambiguity at an international law. As has been said earlier, Jurisdiction refers to as legal power of a state and specific functions given to an entity. For example, High Court is given the power and authority to decide matters falling within its jurisdiction as has been outlined under the 1973 Constitution of the Islamic Republic of Pakistan. Similarly, Banking Courts deal with the issues relating to banking. Jurisdiction is an important part of State sovereignty, since, it gives a state the competence to create, change or terminate legal relationships, rights and duties. It involves both the right to exercise it within the limit of a State’s sovereignty and the duty to recognize the same of other States (internal aspect of sovereignty and external aspect of sovereignty respectively).

State jurisdiction concerns essentially the extent of each State’s right to regulate conduct or consequences of events. A state has the competence to regulate and exercise jurisdiction by legislative, executive and judicial means. The jurisdiction to prescribe is the right of a State to make its laws applicable to the activities, relations, and the status of the persons or the interest of persons in things. The State of Pakistan cannot make laws with reference to individuals, property that is outside Pakistan or any other fact or event which takes place outside Pakistan through legislation, however, the government may show its concern about any particular event taking place outside its territory by means of foreign policy, which is a true reflective of the opinions and orientations of any country. This is an operational way to define the reach of law regarding individuals and property. It mainly refers to the power of the state to make binding laws within its territory.

Further, the executive jurisdiction refers to the capacity of the State to act within its borders. The executive jurisdiction, in essence works as an enforcement mechanism- meaning that the laws prescribed by the legislature would be enforced by the executive organizations. For example, the customs of Pakistan would exercise their power and ensure that the carriage of goods via aircrafts and vessels are following the correct procedure laid down by the legislation. Similarly, United States of America enacted a law relating the scrutiny of containers entering the US territory from outside US, in order to ensure safety at all times. The empowerment of this enactment lies within the executive. The third way in which a State can exercise jurisdiction is by using the judicial tools. The judicial jurisdiction refers to the power of the domestic courts to try cases in which a foreign factor is present. The judiciary handles the issues pertaining within Pakistan and outside Pakistan. For example, Pakistan can make an order to freeze assets of an individual even though if they reside outside Pakistan.

Domestically, there are two types of jurisdictions in a state namely the civil jurisdiction and the criminal jurisdiction. The former relates to the civil matters between individuals and resolving their disputes e.g. Dowry and Bride Restriction Act 1998 and Qanoon e Shahadat, on the other hand, criminal jurisdiction is regarding the criminal matters e.g. Anti terrorism Act 1997, National Accountability Bureau Ordinance 1999 and Pakistan Penal code. The criminal jurisdiction is exercised on the basis of the following:

1. Nationality
2. Territory
3. Universal jurisdiction and
4. Specific event (passive personality principle)

Firstly, nationality is the legal concept which provides a link between a State and persons living within that State. It determines the rights and obligations which the State and the individuals living within the State owe to each other. The problem pertaining to nationality arises in case of countries providing for dual nationality, such as Canada. This creates perplexity as to what laws would be applicable on the citizen, since he possesses dual nationality. The territorial principle on the other hand, provides that the courts of the State where a crime is committed may exercise jurisdiction over the alleged criminal even where the person accused is not a national of the said state. It permits a state to exercise its jurisdiction over all activities that are carried out within its territories and in some cases, even outside it. The main complexity arises regarding the areas where jurisdiction is curtailed, for example, in Pakistan there are different laws applicable to Federally Administrated Tribal Areas (FATA) and Provincially Administrated Tribal Areas (PATA).

There is another aspect of criminal jurisdiction of a state, often dubbed as the universality principle. It is concerned with the application of a State's criminal jurisdiction in respect of offences committed against the international community. Any state that captures the offender may prosecute and punish that person on behalf of the world community regardless of the nationality of the offender. The reason or logic behind the said aspect of jurisdiction of a state is that the nature of the rights violated are of concern to all States, for example, hijacking, genocide, violation of the Geneva Conventions and piracy etc. Where there is an extradition treaty, extradition to the State particularly affected may be resorted to, or a State with the custody of the alleged offender may be permitted to exercise jurisdiction.

Lastly, the passive personality principle states that jurisdiction may be exercised in respect of events occurring outside a State's own territory when these events harm/target the nationals of any state. Even though the jurisdiction rules and principles are identified, still there are some complexities regarding it as afore-mentioned. The civil and criminal jurisdiction does pose problems and even though the ingredients of criminal are defined but they still create ambiguities in certain matters. A lot more needs to be done both at domestic as well as international level so as to ensure a more comprehensive regime to deal with offences in a way that does not only hold the offender responsible but must also encompass some mechanism to deter its recurrence.

IMMUNITY FROM JURISDICTION

States are recognized as having authority over people, things and events within their own territory and therefore may exercise jurisdiction over them. However, there are certain cases in which the subjects of domestic laws of a country may be granted immunity from jurisdiction under the same laws. Similarly, international law also recognizes that certain people, things and events are entitled to immunity from its enforcement. It is important to note that the immunity is from the enforcement rather than from the law itself. There are various types of immunities, such as;

- The diplomatic immunity,
- Immunities of international organizations,
- Sovereign of state immunity and
- Acts of state doctrine.

Firstly, diplomatic immunity relates to the protection of the representatives of another state to ensure that they perform their international political functions without any fear of persecution or prosecution. Diplomats are immune from the domestic laws of the host country, meaning, they are not immune from the domestic laws rather the enforcement of the domestic laws against them. For example, in Pakistan the ambassador representing any other state and residing in Pakistan is exempted from paying taxes. Similarly, a Pakistani Ambassador residing outside Pakistan would be free from the imposition of local laws. Likewise, the police of the host country cannot raid an embassy, thereby; premises are immune from the jurisdiction. An example regarding the powers used by the host country against an embassy is that when Pakistan entered into the Iraq embassy in Karachi and confiscated all the weapons, was the act legal or did Pakistan possess the power to do so is debatable. This issue was critically analyzed and examined by international law and it is stated that Pakistan acted ultra vires and exceeded its powers. However, if a representative from another country has gone or conducted an illegal act then he would be declared persona non grata. Meaning thereby, the host state does not have the power to adjudicate and rather the sending State would recall the diplomat and would investigate into the matter itself. Vienna Convention on Diplomatic Relations demonstrates that diplomats are immune and state has to give them space through legislative, executive and judicial means. Relevant provisions of the said convention are as follows:

Article 2 states that there is no right of a State under international law to diplomatic relations; these exist by mutual consent. However, once established there are certain rights which must be guaranteed a permanent diplomatic mission.

Article 22 declares the premises of the mission as inviolable and agents of receiving State are not to enter them without the consent of the mission. This obligation extends to the receiving state having to take appropriate steps to ensure the protection of diplomatic missions, their staff, their archives, their means of communication and free movement of the members of their staff.

Article 29 states that a member of a diplomatic mission enjoys immunity from arrest or prosecution.

Article 30 further states that his or her private residence and papers, correspondence and property are all inviolable.

Apart from immunity granted to diplomats under international law, another subject that can achieve immunity is the international organizations. The immunities of international organizations are almost always specified in a treaty between the organizations and the host state in which the organization has its headquarters- the headquarters agreement. The headquarters and the offices of the international organizations in another country are immune from the municipal laws of the host State. The treaties entered into by two or more than two states would have legally binding effect on the states that have ratified it. Later, an enforcement mechanism would be adopted by the States and to achieve its purpose international organizations would be established in various states by entering into an agreement. Therefore, it is the responsibility of the host state to ensure the protection of these organizations in order to maintain and abide by the rules stated in the treaty. For example, United Nations High Commissioner for Refugees (UNHCR) and International Committee of the Red Cross (ICRC) offices based in Pakistan are entitled to receive full security by the Pakistani government. Furthermore, not only the organizations would be provided security but the staff and its employees would also benefit from such agreements.

The third type of immunity relates to the sovereign of state immunity and act of state doctrine. This is the most complicated immunity available and relates to the immunity given to another state. For example, Macedonia killed illegal immigrants from Pakistan thereby, violating the law and going against the principle of state immunity. The question pertaining to this was that whether it was an act of State and is it immune from the jurisdiction or not? Also it is difficult to ascertain the individual behind this whole act.

Moreover, the state immunity is categorized into two: absolute immunity and restrictive immunity. The traditional doctrine of state immunity was absolute in that immunity attached to all actions of foreign states-meaning the foreign states had an absolute immunity from the territorial jurisdiction of other states. However, with the increasing engagement of the states to the matters pertaining to commercial trading, the absolute immunity principle gradually eroded and restrictive immunity approach was followed. However, many developing countries remain opposed to restrictive immunity. The difficult issue in the case of restrictive immunity is the difference between acts *jure imperi*- acts in public authority in respect of which there would still be immunity and acts *jure gestionis*-commercial or private acts in respect of which there is no longer any immunity. Since a lot of overlapping exists, thereby, the States must take reasonable steps to ensure and be liable for their actions and should not enjoy the traditional immunity. Furthermore, the UN Convention on Jurisdictional Immunities of States and their Property stated that immunity must be given to the diplomats and Article 5 relates to absolute immunity.

Therefore, the afore-mentioned arguments clarify the confusion pertaining to the immunity from jurisdiction concept. There are various aspects of immunity from jurisdiction and state jurisdiction is often misunderstood with act of state and non *justifiability* is confused with it. Further, it tends to limit the scope of absolute immunity and reverting it to restrictive immunity. The concept of public international law and private international law is also perplexed. The former relates to the relationship between two nations whereas, the latter concerns disputes between individuals.

TERRITORY

State is the most important subject of international law. It can be defined as a population, living in a definite territory that has government which is supreme. The said definition brings forth four important elements of a state i.e. population, territory, government and sovereignty. It is important to note, if any of these elements is missing, there can be no state. Territory remains a cardinal element of state, as even a nomadic tribe fulfills all the three elements of a state, meaning thereby, it has a population, a leader (that can be termed as its government) who is supreme over all other individuals of the tribe (element of sovereignty) but even then it does not qualify as a state. The reason being the absence of a definite territory. For afore mentioned reasons, the concept of territory is one of the most important areas of international law. Other concepts of international law such as sovereignty and jurisdiction depend on the existence of territory. In this section we would examine territory as a concept, the way it is administered and acquisition of territory.

The territorial sovereignty includes the land territory, the territorial sea, the seabed and the subsoil of the territorial sea. It also includes the airspace above and the subsoil beneath it and the state has the right to assert its legislations over it. Where the air space ends, the rest of the area is known as the outer space and different set of laws are applicable to it. Territory is a more comprehensive term rather than limiting a state to the land. The reservoir and the mines are also part of the territory.

There are certain modes of acquiring territory. Before 1948, there were a lot of territories available and mostly areas were unknown and undefined, making it easier for one state to acquire another state. After 1948 and especially with the adoption of the United Nations Charter, the modes of attaining and acquiring possession of any piece of land have been made limited. The main modes of acquisition are categorized as follows:

1. Occupation
2. Accession
3. Adjudication
4. Accretion and
5. Prescription

The first mode of acquisition is occupation. It is a means by which a State can acquire territory which belongs to no other entity. The occupation must be effective and must be intended as a claim of sovereignty over the area. Initially, people used to acquire land by use of force and spread their boundaries gradually. A new norm was formulated under the UN Charter 2(4) which prohibited the use of force in order to occupy a territory. For example, Israel occupied a territory in west bank of Gaza. It was however, not given legal acceptability.

The second controversial mode of acquisition is accession. It involves the peaceful transfer of territory from one sovereign to another. The state which acquires territory in this way cannot gain more rights over the land than possessed by its predecessor. For example, at the time of independence of Kashmir, Lord Mountbatten promised a sector of land to be given to Pakistan but still the problems pertain regarding it whether it belongs to India or Pakistan. Similarly, Hong Kong was given by China on lease to Britain and at the expiry of the said lease agreement, it reverted back to China. Similarly, in 1965 Pakistan gave Ladaaq under a treaty to China.

The third way of acquiring rights over a territory is adjudication. It is a process in which the States consult an international forum; and the dispute is resolved by an arbitrator who is chosen with the consent of the states party to it. The decision of an arbitrator is known as an “award” and

is considered to be binding on the States. Adjudication is considered to be a sub species of accession, since treaty is required for adjudication as compared to accession in which the treaty is formulated.

The fourth way of acquisition is accretion. Accretion describes the geographical process whereby new land is formed and becomes attached to the existing land: for example, the creation of an island in a river mouth. No formal act of appropriation is necessary.

The last method of acquisition of territory is known as prescription (res nullius-an asset susceptible of acquisition but presently under the ownership or sovereignty of no legal person). Prescription is a mode of establishing title to territory. It legitimizes a doubtful title by the passage of time and the acquiescence of the former sovereign. For acquisitive prescription to be effective there must be a display of State authority and the absence of recognition of competing State. The possession must be adverse. The said adverse possession must be peaceful, uninterrupted and done publicly. It relates to a right which a State exercises over a number of years. If a particular territory is occupied by a State without interference from other States then automatically that piece of land becomes a part of that State. For example, Pakistan and India's dispute over Siachen Glacier relates to the problem of prescription. If Pakistan had not contested against the effective control by India over Siachen then following the principle of prescription, it would have become a part of India. Therefore, one State can assert its legal rights over a particular territory; provided it does not belong to any another state and can legally occupy it under the principle of prescription.

Similarly, in Clipperton Island Case, an award was made in the arbitration which resolved a dispute between France and Mexico, in 1887, on the subject of sovereignty over an uninhabited island in the Pacific Ocean. In this case, French plane flew over an island and found an unoccupied island and asserted rights over that island. After many years another state contested over it but the court found for France following the principle of prescription. Moreover, in 1948 the divisional line between India and Pakistan over Siachen issue was known as cease fire line. Later, under the Simla Agreement it was named as the line of control (LOC), meaning whereby, possession by India and Pakistan was seized. Both the nations had issues over the area above it and interpreted in their own favour thereby, ending up in a dispute. Considering the fact that Pakistani armies are controlling that area clearly embarks that it can be ascertained as Pakistan's territory.

Keeping in view the afore mentioned, it can finally be said that territory, its scope (as to what can be included in or concluded to form a part of it), various means and methods of acquiring territory, all form an important part of the subject of international law. It has given rise to many controversies in the past as well, and many of the much debated and hot issues of today's world owe their origin to this concept, such as the Kashmir and the Palestine dispute. It is an evolving area, and is synonymous with a state's security. The geographical or territorial security of any country is fundamental to its existence as a free and viable sovereign state. All other aspects of national security such as the security of its people, ideological security and economic security etc, can only be enjoyed if a state is territorially secure. This is the reason that there are specific modes of acquiring territory so as to ensure and regard the territorial sovereignty of a state and all other basic securities associated with it.

RECOGNITION

The term Recognition under international law means and involves the acceptance or acknowledgment of the existence by a State of any fact or situation occurring in its relations with other States. Recognition can be categorized into the following:

- To States,
- To Government and
- To Disputes

The first aspect relates to recognition of States. Recognition of States pertains to whether a state exists or not, meaning thereby, the participants of global community should recognize that the new State has fulfilled the criterion for the Statehood. As has been discussed previously, certain requirements should be satisfied in order to be classified under Statehood i.e. territory, population, government and sovereignty. Once, all these requirements are fulfilled, legal sanction is conferred upon that State and formal recognition is extended to it. There are two theories that regulate a State's framework, namely, Constitutive theory – wherein, a political act of recognition is required as a precondition for the existence of legal rights and the declaratory theory – wherein, the recognition of a new State is a political act, which is in principle, independent of the existence of the new State as a full subject of international law. However, there is an anti thesis involved in the theories which states that by virtue of mere non recognition of a state, it doesn't cease to exist, hence, emphasizing the inherent weakness of constitutive theory. In 1988, constitutive theory came into the frontline but after analyzing its flaws, most of the States reverted to the declaratory theory. For example, Palestinian Liberal Organization (PLO) created a State but, had no control over it. Later, a declaration was issued by other States and recognition was given to PLO even though an essential element was missing in the statehood requirements. The query pertaining to this was whether an act of recognition can make up for the deficiency of an essential element of Statehood.

For example, in 1971 after the Indo-Pakistan war, the issue was regarding the recognition of Bangladesh by Pakistan as an independent State. Similarly, the US recognizes Cuba and that it meets all the elements of statehood. The US along with other States never recognized the statehood of the South African homelands/Bantustans (Bophuthatswana, Ciskei, Transkei, etc.) that the apartheid government of South Africa tried to create in the 1970s and 1980s. Furthermore, most Arab countries refused to recognize the state of Israel, believing that the creation of that state was illegal under international law. Greece refused to recognize the state of Macedonia, created from part of Yugoslavia. Also, after the partition of India and Pakistan in 1947, the problem was to recognize two new States entities under international law. The first state to recognize Pakistan as an international entity was Iran.

The second complicated aspect relates to recognition of government. It relates to recognition of a government of a particular State as the legitimate representative of the people of that country. The recognition of government does pose a unique challenge in the sense that it changes after a certain period and it is not necessary that it is in conformity with the regular constitutional requirements. In the political context of recognition of governments, the distinction must be made between *de jure* and *de facto* government. *De jure* recognition connotes that in the opinion of the recognizing State, the State or government recognized has fulfilled the requirements laid down in the international law for effective participation in the international community, whereas, *de facto* recognition is more provisional and temporary and with the reservation for the future, that the State or government has fulfilled those requirements in fact. The best relevant example is that of US where it refused to recognize the communist regime of United Soviet Socialist Republic and

mainland China after 1917 and 1949 respectively. The state continues to exist even when there is a change of government or even a revolutionary change in governments. While recognition of a government is normally a formal act, sometimes an informal act is sufficient.

Moreover, article 3 of Montevideo Convention states: *“The political existence of the state is independent of recognition by other States. Even before recognition the state has the right to defend its integrity and independence- and to organize itself as it sees fit. The exercise of these rights has no other limitation than the exercise of the rights of other states according to international law”*.

The United Kingdom in 1980 stated that it would no longer expressly accord recognition to governments. The United States of America in 1977 also issued a statement stating that recognition is nothing more than merely a means of approving or disapproving the existence of a government and further deemphasized the concept of recognition of government. For example, Azad Jammu and Kashmir (AJK) is a State under a constituent instrument given by Pakistan but, cannot enter into independent treaties itself because it has no bearing as a legal entity. United Nations Security Council Resolution 1267/1999 was passed under chapter VII imposing limited sanctions against the Taliban. It further strongly condemned the use of Afghan territory; especially areas controlled by the Taliban, for the sheltering and training of terrorists and planning of terrorist acts, and reaffirmed its conviction that the suppression of international terrorism is essential for the maintenance of international peace and security. 

The third aspect regarding recognition pertains to disputes which are related to self determination. Recognition of disputes relates to a State not recognizing a certain dispute. However, if the whole world acknowledges a certain dispute then it is necessary for it to be recognized by that particular State. For example, Kashmir dispute, since it is recognized by US government therefore, it should and has been recognized as a dispute by both the nations involved: Pakistan and India. The disputes are further categorized into two kinds: territorial and individual. Another way of classifying or recognizing a dispute is to look at the State practice from which it can easily be determined and inferred whether it falls under the heading of a dispute or not. It can further be demonstrated by the resolutions passed by the UNSC which clearly demarcates the legitimacy and recognition of a particular dispute. For example, UNSC Resolution 1172/1998 recognized the dispute between India and Pakistan and urged them to exercise maximum restraint and to avoid threatening military movements, cross-border violations, or other provocations in order to prevent an aggravation of the situation.

Thus, it appears from afore mentioned arguments that recognition is now no more than a formal obligation. Moreover UK and USA departing from the concept clearly embarks that it has lost its importance over the years. Recognition relating to states, governments and disputes are comprehensively complicated and confusing concepts, which now are inferred from the state practice. The recognition of States and Governments is a device for international law with legal and political implications.

STATE SUCCESSION

International law regulating state succession deals with the situation where there is a change in sovereignty over a particular territory. State succession occurs when a new state or group of states take the place of a former state or group of states. According to Akehurst, the term state succession is used to describe that branch of international law which deals with the legal consequences of a change of sovereignty over territory. When one state acquires territory from another what are the rights and obligations of the predecessor state that pass on to the successor state? What happens to the existing bilateral and multilateral treaties, to the membership of international organizations, to international claims to the nationality of the affected persons, to public and private property, to national archives, to contractual rights and to national debt? This problem is complicated because it can arise in several different forms. A state may lose part of its territory or it may lose all of it. Similarly, the loss of territory may result in enlargement of one or more existing states or may result in creation of one or more new states. These distinctions are vital because different rules of law apply to different types of situations. For instance, the legal effects of creation of new states are different from the enlargement of new states.

This further entails the complexities regarding state succession. When a new state acquires rights over a former state, a lot of problems and issues arise regarding the obligations of the new state towards the treaties, membership of international organizations, public property, private property, nationality and debts owed by the former state to others. For example, the landmark case of the partition of India and Pakistan in 1947 resulted in a calamity and the new government (Pakistan) suffered various tribulations as regards to the laws applicable to the new entity established. The most useful law applied to such a situation would be to follow the new laws formulated by the new government. Since, Pakistan was established as an independent state, it succeeded laws of India that were applicable before the partition, adopted few laws and amended some of them in order to run an independent state.

The first issue pertaining to state succession is treaties. The new state would have to embark upon with the treaties signed by the former state with various international organizations. The general rule on the subject of treaties are that new state would be bound to follow the treaties entered in to by the former state relating to boundaries. The new state would have no alternative but to follow the laws as regards the boundaries. For example, the Durand line was a quandary concerning Pakistan and Afghanistan. The Durand line was demarcated 100 years ago, so the question was that after partition in 1947 whether that law still applied on the newly independent state established or not. The answer was given in affirmative that Pakistan is bound to follow the principle since treaties relating to boundaries are applicable on the new states. Therefore, all those treaties not relating to boundaries are not enforceable on the new state. The new state would have a prerogative of whether or not to enter into the treaties signed by the former state, e.g. human rights treaties. Further, in 1978, with the signing of the Vienna Convention on the Succession of States in Respect of Treaties the ambiguity and uncertainty was clarified relating to state succession. Article 2 (1) (b) of the Convention defines state succession as:

“The replacement of one state by another in the responsibility for the international relations of territory”.

Moreover, Article 16, states that a newly independent State is not bound to maintain in force, or to become a party to, any treaty by reason only of the fact that at the date of succession of States the treaty was in force for the Predecessor State.

The second issue regarding state succession concerns international organizations. There are more than 30,000 treaties entered into between one or more states. For these treaties to be followed and to make them applicable, certain international organizations are established in order to ensure conformity with it. The states then become members of those international organizations and thus creating problems pertaining to state succession. For example, Union of Soviet Socialist Republics USSR, consisted of Russia and surrounding countries that today make up Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. Of the fifteen constituent republics of the USSR, three of these countries declared and were granted independence a few months preceding the fall of the Soviet Union in 1991. The remaining twelve did not become independent until the USSR fell completely on December 26, 1991. The issue after the fall of USSR was as to who would serve as a permanent member in United Nations Security Council (UNSC). In 1991, Russia, being the legal successor state to the Soviet Union acquired the originally-Soviet seat, including the Soviet Union's former representation in the Security Council.

The third issue relating to state succession deals with debts and loans. When a new state comes into existence, the question arises as to the payment relating to the debt owed by the former state. There is no general rule regarding the solution of this problem but the more followed and better approach taken is that the new state would have to pay off the loan. Both the states former and new undertake an agreement (bilateral) as to settle the issue and procedure for paying off the debt owed to other states.

The public property is another issue exposed and faced by the new state. When a new state takes over a former state then certain issues arise as to the public property, the property given to the embassies, railway tracks, roads and all those concerning immovable assets owned by the government. For example, the **Atlantique Incident** was an event in which a Pakistan Navy Breguet Atlantique patrol plane, carrying 16 people on board, was shot down by the Indian Air Force citing violation of airspace. The incident was the Pakistan Navy's only loss of an aircraft to hostile fire in its history, and the biggest combat-related casualty for the navy since the Indo-Pakistani War of 1971. Pakistan requested that the matter be taken up in the UN. On September 21, 1999, Pakistan lodged a compensation claim at the International Court of Justice (ICJ) in The Hague, accusing India of shooting down an unarmed aircraft. India argued that the court did not have jurisdiction, citing an exemption it filed in 1974 to exclude disputes between India and other Commonwealth States, and disputes covered by multi-lateral treaties. The dissenting argument put forward by Mr. Hafeez Pirzada, a prominent Pakistani lawyer, concerned the issue that since the League of Nations is succeeded by the United Nations therefore, India has deemed to have accepted its jurisdiction. On 21 June 2000, the decision was given in favour of India upholding its claim that the court did not have jurisdiction over the matter.

Moreover, there are certain legislations passed regarding state succession. For example,

The continuance of legal Proceedings Act 1950;

The Pakistan Currency Act 1950;

The Pakistan Citizenship Act;

The Pending Proceeding Indian Courts Act 1952;

The Transfer of Property Ordinance 1947;

The Pakistan Control of Entry Act 1947;

Therefore, it appears that state succession is a complicated, controversial area with a lot of uncertainty, in international law. The complexities regarding it have been to a certain extent been resolved by the Vienna Convention on the Succession of States. Furthermore, the issues and problems pertaining to it are also under scrutiny by the International Law Commission which shows that the law on state succession is improvising and progressive improvement is taking place regarding it. The United Nations General Assembly Sixth Committee-legal committee also reviewed laws relating to nationality of natural persons in relation to succession of states which greatly signifies the improvisation of the laws and issues relating to state succession.

LAW OF THE SEA

The sea and all areas of the sea are regulated by international law. The jurisdiction of international law extends from the right of passage over the open waters to the exploitation of sea resources and the corresponding rights and responsibilities. Historically, the sea has been used for multifarious purposes. These purposes include traveling, trade, military maneuvers etc. As the sea is of vital importance to man, there must undoubtedly be a set of rules in place to regulate its usage. The most important and all-encompassing treaty on sea is the United Nations Convention on the Law of the Sea (UNCLOS) 1982. This Convention regulates the boundaries and other issues relating to the seas globally. It has almost universal adoption and most states have implemented the Convention through domestic legislation.



The Law of the Sea Convention 1982 did not create a new area of law, as laws governing the sea date back to the dawn of maritime history. However, what the Convention did do was to codify the existing laws, norms and conventions into one document. It also served as a constituent entity as well as a norm establishing treaty. For example, the Convention codified the customary right to the freedom of the High Seas. As it is, the Convention functions as a framework which individual states use as a model to implement their own domestic legislation.

All coastal states will invariably attempt to maximize their control over the sea in order to gain control of its resources. However, this is no longer up to the individual states to decide, as it is regulated by international law; namely the 1982 United Nations Convention on Law of the Sea. This Convention established three regimes in order to standardize the measurement of naval territory belonging to the respective coastal state. The three regimes are as follows:

- i. *Right over Territorial Waters:* The right over territorial waters extends up to 12 nautical miles (NM) from the baseline of a coastal state. Territorial waters are deemed to be a part of the sovereign territory of a state, the same way the land and airspace of a country are. In other words, the state asserts nearly unqualified right over this territory. The reservation is that it is subject to the right of innocent passage. Foreign vessels are allowed to innocently pass through without any objection or intervention from the coastal state. However, many coastal states (Pakistan included) are of the opinion that all foreign vessels must seek prior approval from the coastal state when entering into their territorial waters. Many other states are of the contrary opinion.
- ii. *Exclusive Economic Zone:* The Exclusive Economic Zone (EEZ) is a self-explanatory term. Coastal states enjoy the lawful right over economic benefits from the EEZ, which extends 200 NM into the sea. However, it is important to note that the EEZ does not form part of the territorial limits of a state. Coastal states merely benefit from exercising the right to reap economic benefits from the resources available in the EEZ. These rights are confined to the water column.
- iii. *Continental Shelf:* There is a distinction between the geological and legal definition of a continental shelf. The geological term merely defines a feature of the sea bed where the continental slope reaches a certain depth. On the other hand, the legal definition is a precise measurement of area which confers upon coastal states limited rights over the area. It continues for a maximum of 150 NM from the EEZ. The difference between the rights of the state with regard to the EEZ and the continental shelf is that the state is not allowed to exploit (or grant permission to exploit) the aquatic resources of the continental shelf. They are, however, allowed to extract and exploit the resources that lie beneath the

sea bed (e.g. oil, minerals etc). There is a very complex body of rules governing the measurement of the continental shelf. As mentioned above, the continental shelf can extend up to 150 nautical miles from the EEZ (or 350 NM from the baseline), but this is not necessarily so. As per the 1982 Convention, wherever there is a depth of 2500+ meter (isobaths), the state is only allowed 100 NM further than that. Other criteria include certain countries submitting technical data to a specialized commission who will determine whether the states' claim to the continental shelf is sustainable. Pakistan is currently trying to obtain the right to a 350 NM continental shelf.

A question often raised regards as to what is the justification behind the right of innocent passage through territorial waters, when the waters actually form a part of the states sovereign territory? The rationale behind this controversial concession granted to foreign vessels when entering territorial waters is that prior to the 1982 Convention, all coastal states were granted only 3 NM from their coast as territorial waters. The Convention changed this to 12 NM. This meant that the traditional freedom of the High Seas was being curtailed, as every coastal state was adding 9 NM to their sovereign territory. As a compromise, the right to innocent passage was granted.

The UNCLOS 1982 does not stop at gauging the limits of the territory of coastal states. Other features of the Convention include the right of transit of landlocked states. The object of this provision is to provide sea access to landlocked states for the purposes of trade. This comprises of the right to deliver commodities to a transit state for shipment. Furthermore, the distribution of resources from the sea to their landlocked neighbors is also included in the 1982 Convention. Coastal states are under an obligation to enter into an agreement with adjacent landlocked states to negotiate the distribution of resources acquired from the EEZ.

Complex rules surrounding the demarcation of boundaries between adjacent and opposing states can also be found within the text of the Convention. The Sir Creek issue is an example of how conflict may arise over the delimitation of the EEZ between neighboring states. This involves determining the baseline of a state, which is the precise area of coastline where measurement into the sea will begin. Also, determining the baseline of archipelagic land masses (e.g. Malaysia and the British Isles) has suddenly made strategic locations out of islands formerly of little interest to anybody, as the 1982 Convention has granted them very extensive Exclusive Economic Zones.

Apart from providing states with a framework to protect their fundamental rights regarding the sea, the 1982 Convention has also set up several international organizations to regulate its various areas. A council akin to the United Nations General Assembly has been established regarding matters concerning the sea. The Secretariat Enterprise has also been established under Article 170 of the 1982 Convention. Institutions governing legal, political and technical matters as well as dispute settlement chambers and marine scientific research organizations are all context specific organizations that have been brought into existence by virtue of the Law of the Sea Convention 1982. Bearing these facts in mind, it becomes clear that the Law of the Sea Convention 1982 is a very comprehensive treaty that governs nearly all aspects of the sea.

AIR SPACE AND OUTER SPACE

The scientific advancements made by mankind in the past 100 years are a lot more than the overall scientific development of last 1000 years. Technology has made the flow of information faster than ever, where an event taking place in one part of the world can be seen and its impact felt even in another part of the world. It is said that information knows no boundaries. All the technological advancements, be it the robotics or genetics, bio chemistry or nuclear physics, have not only made life more livable but at the same time more complex. From “hot” wars to the cold wars, mankind has now ushered into an age of star wars. There was a time when states used to fight over land masses, and then with the development of navy and exploration of sea routes, humanity witnessed the spread and dread of colonization. States that had a more powerful navy ruled the history of 18th and 19th century. States in their quest of greater influence and a better claim over their territory (with exception of expansionist states that even wanted to claim control over other territories on the sheer dint of muscle in the pre World War II era) expanded their territorial boundaries from land into the oceans, and with the advent of modern aviation, this quest even ventured in the air space. All these aspects in a states life are very well covered by international law. In international law the importance of air and outer space lies in the fact that every state is given the sovereignty over the air space and outer space above their territorial area. The air above the territory of a state is considered to be part of that State and has full rights over it and intervention by any other State without permission would lead to the violation of the territorial boundaries. The air space must be distinguished from the outer space, the former relates to the area where there can be a positive executive control over aircraft flying in that airspace. On the other hand, the outer space is referred to as the relatively empty regions of the universe outside the atmospheres of celestial bodies.

The Chicago Convention on International Civil Aviation 1944 governs and regulates the laws of air space and outer space. Further, the treaty established an international organization for its implementation, known as International Civil Aviation Organization (ICAO). The main aim and purpose of this convention is to maintain and create laws regarding international civil aviation and to establish international air transport on the basis of equality of opportunity operating soundly and economically. The convention deals with the laws relating to air and outer space as follows:

Article 1 states that the contracting states should recognize that every state has complete and exclusive sovereignty over the airspace above its territory.

Article 2 states that for the purposes of this Convention the territory of a state shall be deemed to be the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection or mandate of such State.

Article 3 refers to the fact that the Convention would be applicable to the civil aircraft only and not to the state aircraft. Also, authorization and agreement between the states would be required for the use of the State aircraft over the territory of another state.

Article 6 states that no scheduled international air service may be operated over or into the territory of a contracting State, except with the special permission or other authorization of that State, and in accordance with the terms of such permission or authorization.

For example, in 1971, India suspended its rights for the use of airspace by Pakistan to reach Dacca. Pakistan filed a complaint against India and ICAO decided in favour of Pakistan.

Article 9 states that each contracting State may, for reasons of military necessity or public safety, restrict or prohibit uniformly the aircraft of other States from flying over certain areas of its territory.

Article 10 allows the aircraft to cross the territory of a contracting State without landing, and further states that every aircraft which enters the territory of a contracting State shall, if the regulations of that State so require, land at an airport designated by that State for the purpose of customs and other examination. On departure from the territory of a contracting State, such aircraft shall depart from a similarly designated customs airport.

Article 14 refers to the fact that each contracting State should agree to take effective measures to prevent the spread by means of air navigation of all communicable diseases such as cholera, yellow fever, small pox and many other.

Article 15 states that any charges that may be imposed or permitted to be imposed by a contracting State for the use of such airports and air navigation facilities by the aircraft of any other contracting State shall not be higher and all such charges shall be published and communicated to the International Civil Aviation Organization.

Article 16 states that the appropriate authorities of each of the contracting States shall have the right, without unreasonable delay, to search aircraft of the other contracting States on landing or departure, and to inspect the certificates and other documents prescribed by this Convention.

Article 17 relates to the nationality of the aircrafts.

Article 19 refers to the registration or transfer of registration of aircraft in any contracting State shall be made in accordance with its laws and regulations.

Article 20 states that every aircraft engaged in international air navigation shall bear its appropriate nationality and registration marks.

Article 22 states that all the States should prevent unnecessary delays to aircraft, crews, passengers and cargo, especially in the administration of the laws relating to immigration, quarantine, customs and clearance.

Article 24 states that the aircraft on a flight to, from, or across the territory of another contracting State shall be admitted temporarily free of duty, subject to the customs regulations of the State.

Article 25 imposes an obligation on every State to provide assistance to aircraft in distress.

Furthermore, there are other measures used to clarify the law regarding air and outer space apart from the Convention. For example, the Principles Governing the Use by States of Artificial Earth Satellite for International Direct Television Broadcasting plays a tremendous role in telecommunication, television and media. The UNGA passed a resolution on satellites focusing on a broad development of international co-operation in the peaceful uses of outer space in the interests of the development of science and the improvement of the well-being of peoples. It further prohibits the use of satellite for destructive and military purposes and holds the States responsible for their activities carried out by using it.

Moreover, the Treaty on Principles governing the activities of States in the Exploration and Use of Outer space, including the moon and other celestial bodies signed in 1967, states that the use of outer space would be in accordance with international law, and should be in the interest of

maintaining international peace and security and promoting international co-operation and understanding. Article 4 imposes an obligation on the States Parties to the Treaty to undertake not to, place in orbit around the Earth, any objects carrying nuclear weapons or any other kinds of weapons of mass destruction, install such weapons on celestial bodies, or station such weapons in outer space in any other manner. The State violating such laws would be liable to pay compensation to the innocent State. There are other legislations covering the ambit of air and outer space, as follows:

Convention on Registration of Objects launched into Outer Space 1975;

Convention on International Liability for Damage caused by Space Objects 1972;

Agreement on the Rescue of Astronauts, the Return of Astronauts and the return of Objects into Outer Space 1968 and

Principles relevant to the use of Nuclear Power in Outer Space 1992.

Therefore, international law relating to air and outer space is an extensive and important area. It regulates at global level and its significance cannot be undermined since it is useful in relation to telecommunication, media and other sources as afore mentioned. Its growth is both beneficial and at the same possesses the potential to be harmful for mankind.

HUMAN RIGHTS

Human rights are something which we frequently hear about, discuss, and have probably read a great deal on as well. Most political and social discussions revolve around the issue of human rights, especially with regard to international law. Often we hear highly emotive speeches on heinous violations of human rights in various parts of the world and the consequent silence of international law. But what exactly are human rights? What are its sources? In the absence of a supranational authority with unqualified administrative and judicial authority, how are they to be enforced? These seemingly straightforward questions are in reality multifaceted issues which cannot be grasped properly without a thorough understanding of the concept of human rights and its respective role in international law.

Perhaps, as old as recorded human history, certain fundamental human rights recognized to be inherent and integral to all human beings have always been at the pinnacle of societal values. A prime example of this is the right to life, as mankind would most likely have ceased to exist if this was not given utmost respect and importance. Along with this right came an entire package of corresponding procedure in case of a violation. Ancient texts such as Hammurabi's Code provide documentary evidence of a uniform set of human rights granted to the citizens of a state. Islam has traditionally bestowed a lot of these rights upon its followers. Islam has also made a solid contribution towards the evolution and jurisprudence of human rights. However, prior to the advent of documenting laws as customary practice, these rights were not very well articulated.

Under international law, treaties primarily serve three separate purposes, though any one treaty may perform more than one function. The first kind of treaty is a law making treaty. The second function of a treaty can be to establish an international organization. These treaties are referred to as constituent instruments. The third types are those treaties which codify existing laws. Human Rights treaties come under the classification of the third type of treaty.

In light of the abovementioned facts, an alarmingly common misconception that persists is on the origin of human rights. The prevalent view regarding this matter is that human rights are derived from the treaties that give them recognition. However, it is erroneous to assume that human rights were developed by these treaties, as the purpose of the treaties was simply to organize and codify pre-existing principles in a comprehensive, recognized language.

Locating the legal instruments governing human rights is a relatively simple exercise if done correctly. To begin with, the relevant international treaties must be looked at. Human rights are almost always enshrined within the constitutions of states as well, which is why they are another good starting point. After examining the primary sources of human rights, a great number of academic opinions, articles and other secondary sources are also available.

The Universal Declaration of Human Rights 1948 (UDHR) is the nucleus of all Human Rights legal instruments from which other human rights treaties and texts derive their language. The UDHR is not a treaty *per se*; it is actually a resolution passed by the United Nations General Assembly in 1948. It was deemed to be so important for the protection of civil rights and liberties that it did not need to be voted upon. The UDHR also serves as a benchmark from which the standards of human rights are measured.

By passing the Universal Declaration of Human Rights 1948, the United Nations unequivocally reaffirmed their purpose as an organization which was established not only to prevent war, but also to ensure that human rights were recognized, enforced and duly regarded all over the world. It was this deficiency in the objects of the League of Nations that had led to its dissolution. The League of Nations was the predecessor to the United Nations which was also established for the

purpose of preventing war in reaction to the atrocities witnessed by the world in World War I. However, with the commencement of World War II, the League of Nations disintegrated, as the rationale for its existence had ceased to be. This is why the founding members of the United Nations were very careful to list its purposes when it was being formed. To give it substance, this objective was explicitly stated in the Preamble of the United Nations Charter, which states:

‘We the Peoples of the United Nations determined to save succeeding generations from the scourge of war...and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person...to establish conditions under which justice and respect for the obligations...to promote social progress and better standards of life in larger freedom...’.

The Economic and Social Council (ECOSOC) is a specialized organ of the United Nations and was established, *inter alia*, to monitor and regulate human rights affairs. It in turn established the Human Rights Commission to deal exclusively with issues regarding human rights. It is this commission which is responsible for the negotiation of a lot of very important human rights treaties. However, the commission has recently been under heavy criticism (especially from the United States) for the inability to perform its functions properly. This is why one of the main topics of debate for UN reforms was the Human Rights Commission.

Apart from ECOSOC, human rights matters are also referred to other organs of the United Nations, such as the General Assembly and Security Council. These are usually matters regarding core issues of human rights (e.g. detention, principles of criminal administration, state responsibility etc), as the protection of human rights invariably overlap with these issues.

As mentioned above, the Universal Declaration of Human Rights is of paramount importance to human rights law. Whilst studying the UDHR, it is important to take notice of how it works to articulate human rights and how they have found an enforceable language. Also, it is worth drawing a comparison between the UDHR and the language adopted by the constitutions of most countries in the world. Below is a brief outline and exposition of the first ten articles of the Universal Declaration of Human Rights.

- i. Preamble: *‘Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.’* – This clause passes a judgment that until one does not recognize the inherent rights and dignities of all humans, the foundations of social justice cannot be established.
- ii. Preamble: *‘Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people.’* – This clause stresses the importance of respecting human rights by citing disturbing instances in the past that affected the entire world.
- iii. Article 1: *‘All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.’*
- iv. Article 2: *‘Everyone is entitled to the rights and freedoms set forth in this Declaration...’* – This clause identifies the impartiality of the rights set forth in the treaty.
- v. Article 3 – *‘Everyone has a right to life, liberty, and security of person.’* – National laws are enacted in order to safeguard these rights. As these are such important rights, the state holds itself responsible and takes measures accordingly in case of a violation.

- vi. Article 4 – *‘No one shall be held in slavery or servitude; slavery and slave trade shall be abolished in all their forms.’* – Slavery no longer exists in the true sense of the word. There may be relationships similar to a master/slave relationship on the surface, but they are different and come under the ambit of different treaties.
- vii. Article 5 – *‘No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.’* – Whenever action is taken against a person, they cannot be treated in an inhuman or degrading way. Punishment ought not to be administered in such a perverse manner that it is degrading to human dignity. An example of a violation of this article is the pictures released of the Guantanamo Bay prisoners who were shown to be treated in a very degrading manner.
- viii. Article 6 – *‘Everyone has the right to recognition everywhere as a person before the law.’*
- ix. Article 7 – *‘All are equal before the law and are entitled without any discrimination to equal protection of the law...’* – Article 6&7 emphasize equality before the law. People do not only expect to appear equal in the eyes of the law but also to be treated equally, affording the same opportunity and protection.
- x. Article 8 – *‘Everyone has a right to an effective remedy by the competent national tribunal for acts violating the fundamental rights granted him by the constitution or by law.’* – All Articles prior to Article 8 granted general human rights to individuals. Article 8 gives the right to a remedy in case of a breach of these rights. Creates an obligation on states to establish a forum for the purpose of adjudication on the violation of these rights. In Pakistan, the right to file a writ petition under Article 199 of the Constitution is available as a remedy for a violation of a human right. A writ petition is a mechanism for the enforcement of constitutional rights. It grants an individual direct access to the High Court to argue on the breach of a constitutional right.
- i. Article 9 – *‘No one shall be subjected to arbitrary arrest, detention or exile.’* – The reason this is so important is because arrest actually denies a person their right to freedom; therefore, it should not be exercised arbitrarily. There should be sufficient systemic safeguards in place as well as good reason to warrant the detention/arrest. The Criminal Justice System provides ample opportunities for this.
- ii. Article 10 – *‘Everyone is entitled to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.’* – Tribunals must conduct themselves fairly and equally.

The UN has further established treaties for the promotion and protection of human rights such as, International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights. The ICCPR and ICESCR concern the right of self determination and are considered to be powerful rights especially in case of Kashmir. The UDHR, however, is a more comprehensive text concerning human rights and plays a vital role in the determination of these rights.

NUCLEAR LAW (MAJOR TREATIES)

Nuclear Law is a branch of International Law that surrounds, regulates and administers issues regarding nuclear weapons. It is also associated with issues pertaining to the use of nuclear technology for peaceful purposes, as well as issues on the safety of various institutional operations (e.g. industrial, governmental etc) associated with nuclear technology. The scope of nuclear law is a lot wider in terms of coverage and regulations than what most people think (for instance, nuclear bombs etc). Some of the points to be taken under consideration are the relevant texts that govern the transfer of nuclear material for peaceful purposes and the prohibition of the use of nuclear weapons. The highly controversial and problematic issue of dual use of technology for peaceful and potentially military purposes will also be discussed.

The International Atomic Energy Agency Statute 1957 (IAEA) and the Nuclear Non-Proliferation Treaty 1968 (NPT) are two fundamental treaties that provide substantive law in the area of nuclear non-proliferation. These treaties work in tandem to provide a safe and expeditious means of transferring nuclear technology for peaceful purposes whilst preventing its proliferation for military use. For example, if State A wants to supply State B with nuclear material for peaceful purposes, the legal regime of the IAEA Safeguard Procedures cover it. If they attempt to transfer the technology for military purposes, the NPT explicitly prohibits them from doing so. The other way regulating the transfer of nuclear equipment is through the bilateral agreement of the states that are party to it.

The IAEA was the first global treaty regulating and facilitating the trade of nuclear technology through its provisions. Within the framework of the IAEA Statute is contained all the provisions and procedures governing the issue of nuclear technology trade. It also established its own agencies committed to the various tasks associated with safeguarding trade (e.g. weapon inspectors). The IAEA was very important in the development of nuclear laws, as it set up a basic global contact point for cooperative measures in the area of nuclear assistance.

The United States and Russia have accumulated a huge stockpile of nuclear arsenal as a result of the animosity between the two superpowers during the Cold War Era. However, they subsequently reached an agreement to curb their proliferation. This agreement was given substance by the Nuclear Non-Proliferation Treaty, as Article VII of the NPT provides:

‘to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control.’

There are some states that have ratified the IAEA Statute and others that have ratified the NPT. However, when a state ratifies the IAEA Statute they do not automatically come under an obligation to ratify the NPT, but the reverse is not true. This is because when a state ratifies the NPT, it is the IAEA that ensures that the nuclear equipment is indeed being used for peaceful purposes.

Some of the hallmark events in the evolution of nuclear law are:

- a. 1945 – The United States tested its first nuclear bomb.
- b. 1945 – Hiroshima and Nagasaki were attacked by the United States
- c. 1949 – The Soviet Union tests its first nuclear bomb.
- d. 1952 – The United Kingdom tests its first nuclear bomb.
- e. 1957 - The European Atomic Energy Commission (EURATOM) was formed.

- f. Statute of the International Atomic Energy Agency was formed
- g. 1959 – Antarctic Treaty was signed in Washington. This treaty prohibited the testing of nuclear weapons in Antarctica. It was hallmark in establishing the precedent that nuclear testing should not take place in habitated areas. Other countries soon followed suit to test their weapons in isolated locations (uninhabited areas, underground, below the sea etc).
- h. 1963 – Treaty Banning the Testing in the Atmosphere, Outer Space, Underwater etc.
- i. 1964 – China tested its first nuclear bomb.
- j. 1967 – Treaty on the principles governing the activities of the state in the exploration and use of outer space including the moon and other celestial bodies is open for signatures. This created the prohibition on the use of nuclear weapons in outer space.
- k. 1968 – UNSC Resolution 255 adopted to provide security assurances to non-nuclear weapon states who were parties to the NPT. This was to persuade non-signatories to ratify the treaty and secure the protection of non-nuclear weapon states from the nuclear capable ones.
- l. 1968 – NPT was open for signatures.
- m. 1971 – Treaty on the Prohibition of the emplacement of nuclear weapons and other WMDs on the sea bed and ocean floor in the subsoil thereof is open for signatures.
- n. 1972 – US-USSR sign two agreements to limit the growth of strategic arms. These two treaties were the Treaty of the Limitation of Anti-Ballistic Missile Systems, and the Interim Agreement of certain measures with respect to the limitation of strategic offensive arms. These two treaties are commonly known as SALT1.
- o. 1974 – India conducts a peaceful nuclear explosion.
- p. 1975 – 1st review conference for the NPT parties held in Geneva. NPT signatory states are under an obligation to convene once every five years to hold a review conference to discuss the implementation of the treaty and what steps states can take to ensure implementation.
- q. 1977 – 15 Nuclear Supplier Groups (NSGs aka the London Club) reached an agreement for setting up principles and guidelines governing the transfer of nuclear material, equipment and technology. NSGs were an informal arrangement of nuclear capable states that used to supply nuclear material for peaceful purposes. They set up these guidelines for the supply, sale and transfer of nuclear goods in order to prevent states from diverting the material for non peaceful purposes (dual use technology).
- r. 1979 – US-USSR SALT II Treaty on the limitation of strategic arms.
- s. 1980 – Convention on the physical protection of nuclear material is open for signatures. This treaty is important because it placed an obligation on all states possessing nuclear material to handle it responsibly.
- t. 1980 – 2nd NPT review conference held in Geneva.
- u. 1985 – South Pacific Nuclear Free Zone Treaty was ratified.
- v. 1985 – 3rd NPT review conference held
- w. 1987 – Missile Technology Control Regime.
- x. 1987 – United Nations General Assembly passes a resolution for the annual register of data for nuclear explosions.

Furthermore, UNSC adopted resolution 1540 stating to take appropriate and effective actions against any threat to international peace and security caused by the proliferation of nuclear, chemical and biological weapons and their means of delivery, in conformity with its primary responsibilities, as provided for in the United Nations Charter.

Therefore, the law pertaining to nuclear weapons is a complex concept yet continuing and evolving with time. Nuclear law is one of the most controversial and challenging area in

international law. The resolutions adopted by the UNSC indicate the growth of the law regarding nuclear law. Thus, NPT still stands the most appropriate and relevant treaty with regard to the prevention of nuclear weapons.

NUCLEAR LAW
(NPT and IAEA)

The importance of international law relating to nuclear law lies in the fact that it regulates, conducts and prohibits the use of nuclear weapons. The United Nations Security Council passed a resolution 1540 in 2004, relating to the use of nuclear weapons under Chapter VII of United Nations Charter. It says that all states should establish domestic controls to prevent the proliferation of such weapons especially for terrorist purposes by establishing appropriate controls over related materials, and by adopting legislative measures in that respect.

The treaty which regulates and limits the use of nuclear weapons is known as Non Proliferation Treaty (NPT), signed in 1968. The NPT lays down the legal structure and keeps a check and balance on the States who have ratified the treaty. The treaty identifies the legal corridors through which states regulate and maintain the distribution and use of nuclear energy. There are five States recognized by the NPT as nuclear weapon States (NWS): France, People's Republic of China, the Soviet Union, the United Kingdom and the United States. These five States are also member of the United Nations Security Council (UNSC). These five NWS agree not to transfer "nuclear weapons or other nuclear explosive devices" and "not in any way to assist, encourage, or induce" a non-nuclear weapon state (NNWS) to acquire nuclear weapons under Article 1 of NPT. Article 2 states that the NNWS parties to the NPT are under an obligation not to "receive," "manufacture" or "acquire" nuclear weapons or to "seek or receive any assistance in the manufacture of nuclear weapons". The main purpose of NPT as mentioned in the preamble indicates the aversion of nuclear war and to reduce it. Further in order to maintain peace and security, nuclear disarmament is required to be done.

Moreover, the Non-Nuclear Weapon State parties also agree to accept safeguards by the International Atomic Energy Agency (IAEA) to verify that they are not diverting nuclear energy from peaceful uses to nuclear weapons or other nuclear explosive devices as stated under Article 3. The treaty recognizes the inalienable right of sovereign states to use nuclear energy for peaceful purposes, but restricts this right for NPT parties to be exercised in conformity with Articles 1 and 2. Article 6 arguably imposes only a vague obligation on all NPT signatories to move in the general direction of nuclear and total disarmament. It does not strictly require all signatories to actually conclude a disarmament treaty. Rather, it only requires them "to negotiate in good faith."

The International Court of Justice (ICJ) issued a legal opinion on the legality of nuclear weapons, which says that the threat or use of force by means of nuclear weapons might be legal in extreme circumstances of self-defence. However, it would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law. The decision of ICJ did not outlaw nuclear war, and so many say it in fact legitimized use of nuclear weapons.

In addition, Article 8 concerns the amendments proposed by any party. Article 9 states that the Treaty shall be open to all States for signature and should be subject to ratification by signatory State. It also clarifies that for the purposes of this Treaty, a nuclear-weapon State is one which has manufactured and exploded a nuclear weapon or other nuclear explosive device prior to January 1, 1967. This leads to a much-hyped up debate of whether Pakistan and India who have done the nuclear explosions after 1967 would become a part of this treaty after amendment or not. The UNSC in this regard passed a resolution 1172 stating that Pakistan and India do not qualify for the status of NWS. Without being a signatory to the NPT Islamabad and Delhi have been fulfilling the obligations as laid down under Article I and II of the Treaty.

Furthermore, Article 10 concerns the withdrawal procedure from the treaty provided the supreme interest of the State has been jeopardized by being a member of the NPT. Even though the procedure for withdrawal is there, but there are examples where the right has not been given any importance. For instance, North Korea gave notice of withdrawal from the treaty on 10 January 2003 following the allegations by US regarding the illegal use of uranium for weapons program; but U.S subsequently stopped fuel oil shipments to North Korea. The withdrawal was suspended and negotiations started between the parties indicating that the treaty is not flexible regarding the withdrawal procedures.

The NPT also creates rights and obligations on the members of NPT to comply with the provisions of the treaty and to ensure its implementation in letter and spirit. To ensure the peaceful use of nuclear energy and inhibit its use for military purposes, a separate organization known as, International Atomic Energy Agency (IAEA) was established in 1957 under the IAEA Statute. For this purpose, a safeguards agreement under the aegis of IAEA has been established to verify whether a state is living up to its international commitments related to non-use of nuclear energy for nuclear-weapons purposes or not.

The function and structure of IAEA is defined in IAEA statute. IAEA has three main bodies: Board of Governors, General Conference and the Secretariat. It is a specialized agency of the United Nations (UN), but it is not controlled directly by the UN, but reports to the two important organs of UN -- United Nations General Assembly (UNGA) and United Nations Security Council (UNSC). Pakistan has been the member of the Board of Governors of IAEA.

Article 2 of the IAEA Statute lays down the objective of the statute stating that the Agency shall seek to accelerate and enlarge the contribution of atomic energy to peace, health and prosperity throughout the world. Article 10 refers to the assistance provided by the Agency to the members of the Agency working on projects of atomic energy for peaceful purposes.

Therefore, the impetus behind the NPT is to safeguard the states from the specter of nuclear holocaust, to promote universal disarmament and to maintain a peaceful environment; IAEA, on the other hand, is established to implement the goals envisioned by NPT. The future course of NPT would be determined by the fact that whether the Nuclear Weapon States go for disarmament or not. The Additional Protocol of NPT was adopted in 1997 and is a legal document granting the IAEA complementary inspection authority to that provided in underlying safeguards agreements. The afore-mentioned argument indicates and stresses upon the importance of NPT and its implications.

**INTERNATIONAL LAW ON TERRORISM
(FOR LECTURE NO. 18 & 19)**

The law on terrorism is a very controversial topic. Although, a lot of progress has happened in this area but it still remains as elusive as ever for the annals of humanity and international law alike. Terrorism has not been defined or described yet by international experts, their labors in this regard notwithstanding. The problem behind defining a concept is that it does not only stagger its growth but also limits the very scope of it. On the other hand, non-describing of a concept, leaves room for its growth and keeps it flexible enough for future deliberations.

The reason for terrorism being such a complicated issue is because of the following two approaches. First approach is the political scientist approach which examines terrorism on political basis, losing sight of its legal connotations and implications, whilst the second approach is the extensive approach and it sees the acts of terrorism in isolation and as a struggle with no regard to the political issues.

Law on terrorism is more of a sector oriented law rather than a complete law in itself; a particular act of terror results in a convention dealing specifically with that act or any other acts incident to it, but does not address the issue of terrorism as a whole by defining it comprehensively in its entirety. However, the Sixth Committee of the United Nations General Assembly (UNGA) is undergoing its 3rd reading and is trying to negotiate on the ways to resolve the complexities involved but the major hindrance is regarding the definition and the preamble. Therefore, the real issue still stands, that is the definition of terrorism. There are, however, ways to actually describe what acts are often dubbed as terrorism, which to a certain extent, also help in defining terrorism as well; such as, self determination, use of force and international humanitarian law.

Self determination is actually the foundation of United Nations (UN) Charter. It is defined as a right of people to determine and to choose their own state and its territorial boundaries. For this purpose, a UN trusteeship system was established. The states which were not able to run themselves were therefore, entrusted to UN and were given total independence. In other words people were empowered to determine their own destiny by their own will. International Covenant on Civil and Political Rights Art 1 (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), Universal Declaration on Human Rights (UDHR), United Nations General Assembly (UNGA) and United Nations Security Council (UNSC) -- all these conventions were based on the concept of self determination. Self determination is undisputedly a norm of *jus cogens* (the highest rules of international law and they must be strictly adhered to at all times). Self determination is accepted as a right but, it coexists with the law relating to terrorism. In order to obtain independence, a lot of strikes would take place which would lead to property being damaged and this clash further would create ambiguity and confusion on terrorism.

Use of force, on the other hand, was introduced by UN Charter and is resorted to secure the right of self determination e.g., in Kashmir, Palestine and areas under occupation. In some areas, use of force is permissible and therefore, legal under UN Charter e.g., self defence and reprisal but, under humanitarian law sanction is imposed for the use of force and it also prohibits the use of force against territorial integrity.

The third issue regarding terrorism is the international humanitarian law (IHL), often referred to as the law of armed conflict. It prohibits certain actions for water contamination, torture, usage of certain chemicals, biological weapons, and bullets which cause unnecessary suffering or superfluous injuries to the civilian and non-civilian entities. It further forbids the killing or

injuring of an enemy who has surrendered. This area has been codified by Geneva Convention, Additional Protocols and Hague Convention. According to IHL, civilians should not be attacked, whereas, in a terrorist attack mostly civilians are targeted, thus, creating a conflict between terrorism and IHL.

It is important to observe that IHL prohibitions should be identified and followed as their violations/breach may be considered as terrorism. In the event of a violation, the procedure to redress or rectify such breach with regards to IHL is dealt by a permanent court, International Criminal Court (ICC). A conflict between IHL and terrorism also arises regarding Non-International Armed Conflict (NIAC) e.g. the Kashmir situation. Therefore, Self determination, use of force and IHL are all related to law on terrorism.

There are, however, certain conventions which have defined specific acts that constitute an act of terrorism:-

Convention on Offences on Board Tokyo Aircraft 1963 relates to hijacking.

Unlawful Seizure of Aircraft in Hague 1973 relates to different stages of hijacking and states certain crimes that have universal jurisdiction.

Unlawful Acts against the Safety of Civil Aviation 1971

Protocol for Acts of Violence against Airports 1988, e.g., where three planes were destroyed and in consequence civil aviation was also damaged. So, after this case separate rules on aviations were adopted.

Convention on Crimes against Internationally Protected Person 1973

Convention against physical Protection of Nuclear Material 1979

Protocol on Safety of Platform and Continental Shelf 1988

Convention against taking of Hostages 1980 which states that no one shall be made hostage. Pakistan Anti terrorism Act, 1998 has successfully managed to cover most of the provisions of convention and states that if anyone breaches it, he would have to face sanction and can be tried under the statute.

Convention against Recruitment and Financing of Mercenaries 1978 concerns hiring and training of civilians and involving them in crimes and classifies it as an act of terrorism.

Convention on Safety of UN and Safety Personnel 1979 states that protection shall be available to people associated with UN.

Convention against Suppression of Terrorism Bombing 1997 and

Convention against Suppression and financing of Terrorism 1999:

Article 2

1. Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and willfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:

- (a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex; or
- (b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.

UNSC has also declared incitement as an offence. The interpretation of terrorism formulated by UNSC is alarming in terms of speed and nature. Before 9/11 there were very few resolutions which related to Afghanistan only, but after 9/11 UNSC has passed a number of resolutions relating to terrorism and condemned certain behaviour. The two very important resolutions which have had a great impact on description of terrorism are 1373 which “underlines the obligation on States to deny financial and all other forms of support and safe haven to terrorists and those supporting terrorism” and resolution 1566 “which declares terrorism to be one of the most serious threats to peace and security and calls upon countries to prevent terrorism and to punish or extradite those who participate in terrorist activities, as well as their supporters”.



There are further three things which lead to an act of terrorism, namely, the motive, the event itself and the results to be achieved.

The better interpretation being that focus should be on event alone, thus ignoring the motive and the result to be achieved and this form would help in explaining the complexity of terrorism.

Thus, there is no law which can justify terrorism. However, UNSC has successfully come up with laws to deal with terrorism and with the help of the theory of self determination, use of force and IHL, tried to resolve the complexities pertaining to an act of terrorism, but the problem persists regarding the definition and the description of terrorism which further leads to controversy and complexities.

LAW OF REFUGEES

Every year millions of people, feeling persecuted in their home countries/regions for their religious and socio-political beliefs, migrate to places where they expect favorable living conditions for them and their families. After all when their governments fail to protect their rights, people have the right to move to a country that, according to them, would protect them. These migratory people are known as refugees.

Under international law, refugees are individuals who are outside their country of nationality or habitual residence; who have well-founded fear of discrimination because of their race, religion, nationality, membership in a particular social group or political opinion and are unable or unwilling to avail themselves of the protection of that country, or to return there for fear of persecution (Art 6 of the Statute of the Office of the United Nations High Commissioner for Refugees 1959). For example, Pakistan confronted this problem during the partition of the Indian sub-continent in 1947, which resulted in the largest cross-border movement in history. Pakistan, being a newly born country at that time, had no legislative structure in place, and therefore, had to confront a lot of difficulties in making sustainable laws for this area. The second instance of large-scale refugee movements is dated back to the Soviet Union's invasion of Afghanistan in 1979 till 1992; more than six million Afghan refugees had to flee to the neighboring countries like Pakistan and Iran. During the peak of the Soviet invasion of Afghanistan, nearly seven million Afghan refugees sought refuge within Pakistan, making Pakistan the only country to have hosted such a huge number of refugees in the annals of the history.

Until a request for refuge has been accepted, the person seeking refuge is referred to as an *asylum seeker*. It is only after the recognition of the asylum seeker's request that he or she is officially referred to as a refugee and enjoys refugee status, which carries certain rights and obligations according to the laws of the receiving country. An 'Asylum seeker' means a person who has applied for asylum under the 1951 Refugee Convention on the Status of Refugees on the ground that if he is returned to his country of origin he has a well-founded fear of persecution on account of race, religion, nationality, political belief or membership of a particular social group. He remains an asylum seeker for so long as his application or an appeal against refusal of his application is pending. "Refugee" on the other hand, means an asylum seeker whose application has been successful. In its broader concept and also means a person fleeing due to, for instance civil war or natural disaster, but not necessarily fearing persecution as defined by the 1951 Refugee Convention. Also, it is not mandatory for an asylum seeker to return to his country, whereas a refugee can return to his home if he wants to. Unfortunately "asylum seeker" and "refugee" are frequently conflated, giving rise to much confusion

Refugee law encompasses international legal instruments including the following : The 1951 United Nations Convention relating to the Status of Refugee also referred to as the Geneva Convention is a treaty and Countries signing that Convention have an obligation to provide asylum or refuge to people fleeing persecution;

The concept of a refugee was expanded by The 1967 Protocol relating to the Status of Refugees which is also a treaty and binds its signatories.

United Nations High Commission on Refugees (UNHCR) is a resolution passed by the United Nations General Assembly (UNGA) and its provisions are only binding on the states that have actually ratified it. UNHCR is an organization of UNGA. The status of a refugee is,

however, determined by UNHCR and the state itself. The law thus, remains confused on the status of refugees if the state has not ratified UNHCR. In Pakistan, there is no law on refugees and the delegated legislation would take the decision through notifications.

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UNHCR provides protection and assistance not only to refugees, but also to other categories of displaced or needy people. These include asylum seekers, refugees who have returned home but still need help in rebuilding their lives; local civilian communities directly affected by the movements of refugees; stateless people and so-called internally displaced people (IDPs). IDPs are civilians who have been forced to flee their homes, but who have not reached a neighboring country and therefore, unlike refugees, are not protected by international law and may find it hard to receive any form of assistance.

The State practice of Muslims, however, is more advanced and it is a customary practice in Muslim civilization to give protection to refugees. Also, a Declaration on the Protection of Refugees and Displaced Persons in the Arab World was established which is based on the humanitarian principles (Art 2). Art 5 deals with all the situations which are not covered under 1951 Convention and 1967 Protocol by relying on humanitarian principles of asylum in Islamic law and Arab values.

The status of an asylum or refugee is not granted if the person claiming to be a refugee has a criminal record and is trying to evade criminal prosecution. There are, however, certain crimes which have universal jurisdiction, whereby states claim criminal jurisdiction over persons whose alleged crimes were committed outside the boundaries of the prosecuting state, regardless of nationality, country of residence, or any other relation with the prosecuting country. The state backs its claim on the grounds that the crime committed is considered a crime against all, which any state is authorized to punish, as it is too serious to tolerate jurisdictional arbitrage e.g piracy, hijacking, terrorism, genocide and war crimes.

Thus, when a person moves from his country to another, he is initially an asylum seeker and once the application procedures have been completed he attains the status of a refugee. However, refugees tend to face problems if their state has not ratified UNHCR, whose main aim is to protect and support refugees at the request of a government. Further, those who are involved in some kind of criminal activity are refused the status of a refugee.

USE OF FORCE AND UN CHARTER

The law concerning use of force is a contentious area in international law. In pre-modern times, the state territory was extended by occupying a certain area forcefully; the rights over that property of the occupied land vested with the state annexing the land. It was simple and easy to occupy a certain territory since there were no laws between the states. Now, with the UN Charter, the rights have been laid down and every state is under an obligation to respect the boundaries of other states and use of force against other state is prohibited. The most fundamental and significant contribution of law between states is exercised by the UN Charter 1945.

The UN Charter is a treaty established by the United Nations. There are three types of treaties: law making treaty; codifying treaty and constituent instrument treaty. The UN Charter has features of all the three treaties. It introduced new laws, it codified the previous laws and lastly it established new organizations so as to implement the laws enacted under it. Article 2(4) of UN Charter is the most important provision, prohibiting the use of force. It states that the use of force against any other territorial boundary should be considered as a violation and breach of international peace and security. It is to be noted that the Charter used the term “use of force” instead of “war”. There have been certain examples, where the states may not recognize each other, but still maintain a relationship of war. For example, the state of affairs between Arab and Israel. Similarly, during 1965, the arbitration handled the matter concerning dispute between India and Pakistan and stated it to be a situation of armed conflict rather than war, thus still considering the treaties to be valid between them.

Nowadays, if there is a conflict between two states, they prefer to use the term armed conflict between them as oppose to war. The reasoning being that it amounts to an illegal activity according to Article 2(4). Article 2(4) creates an obligation on the states to refrain from the use of force. For example, Israel, Saddam attack Kuwait. The ambiguity remains as to whether the term threat mentioned under article 2(4) should include and expand economic threat or not.

Moreover, Article 2(4) not only condemns the use of force, but also allows it to be used in certain circumstances. There are two events under which the use of force becomes legal: through regional arrangements and self-defence. Article 51 of UN Charter allows the use of force on the ground of self defence in case of armed attack. In other words, article 51 is an exception to article 2(4). This leads to the determination of the term armed attack. The writers have expanded the definition of the term ‘armed attack’ and state it to be different and distinct from the terms ‘use of force’ or ‘threat’ under article 2(4).

Furthermore, the controversy regarding the use of self defence is the ‘anticipatory self-defence’. Those with a restrictive view state that it no longer exists as oppose to the permissive view. The anticipatory self defence did achieve recognition; it states that lawful force can be applied. According to UK and USA, in situations where the threat of attack is eminent and overwhelming the use of force is allowed and legal. For example, Israel branded the attacks on Iraq as pre-emptive, which led to a controversy and, thus, their argument was turned down. The cumulative self defence on the other hand was not given importance and acceptability.

The issue regarding as to whether preemptive strike takes place in a political sense or a legal sense is debatable. It is presumed that a pre-emptive strike is actually an anticipatory self defence. Article 51 relates to self defence if armed attack occurs and it to a certain extent justifies the right of self defence. However, the right of self defence is only alive until the United Nations Security Council (UNSC) has not taken measures to remedy or to rectify the situation. It is the responsibility of the UNSC to take measures in order to maintain peace and security.

However, the controversy lies in state practice. It is argued that if the state practice is to use the right of self defence in case of an imminent threat, then it will, despite any measures taken by UNSC, follow this practice. Further, Article 51 imposes an obligation on the states to report to the UNSC in order to maintain peace and security.

The second way of using force legally is through Article 52 which relates to the collective action. It states that after Security Council, it is the responsibility of the regional set ups to address the issue. For example, the NATO. Further, the use of force becomes legal where UNSC and UNGA specifically authorize it.

Therefore, the use of force under article 2(4) is prohibited and states are under an obligation to respect other states' territorial boundaries. However, there are certain exceptions where the use of force is legalized. For example, under the situation of self defence as stated under Article 51, regional arrangements and if authorized by UNSC and UNGA, the use of force is allowed. The law regarding use of force has developed and plays an eminent role especially after the UN Charter.

USE OF FORCE (UNLAWFUL)

The Use of force is a controversial and complicated issue at international level. The United Nations (UN) Charter declared it unlawful to occupy a certain piece of land by use of force. The use of force plays an important part in the international law, especially with regard to the United Nations Charter. The UN Charter in its Article 2(4) forbids all UN members from the threat or use of force in their international relations. However, article 51 states that the use of force may be resorted to in case of self defence, thereby, allowing the use of force to a certain extent.

The use of force is categorized into two: lawful use of force and unlawful use of force. Article 51 of the UN Charter makes it lawful to use force under the circumstances of self defence. States are allowed to use force if an attack is anticipated. Also, Chapter VII creates an obligation on the States to abide by the rules laid down in it and empowers UN, thereby making the use of force legal in such circumstances. Similarly, the collective security also legitimizes the use of force via regional organization, for example, NATO.

The most important aspect regarding use of force is the UN. The UN Charter talks about maintaining peace and security, but there is no provision to authorize and maintain peace. It is one omission that is much debated and in order to combat such circumstances, the UN initiated a new chapter, which not actually being part of UN Charter, but is presumed to be associated with it- Chapter 6½. It is a speculative chapter which does not exist, but a practice is being adopted to authorize peace keeping mission. It lies between Chapter 6 and 7 because chapter 6 only directs and lays down the mechanism to maintain peace and security, whereas, chapter 7 enforces it. Therefore, chapter 6½ actually provides for steps to maintain peace and order.

Furthermore, there is an observer mission, for example, United Nations Security Council, whose main aim is to maintain peace and keep a check on any violations committed by the States. The UN is comprised of six organs namely, the General Assembly, the Security Council, the Secretariat, the International Court of Justice, the Trusteeship Council and the Economic and Social Council. The member states have the veto power and can paralyze the UNSC. Later, the UNGA discussed the issue and suggested that if the member states use their veto power, resulting in paralysis of UNSC, then the UNGA will step in and take over their work. Therefore, the UNGA resulted in the establishment of the Uniting for Peace Resolution in 1950. This requires that if the Security Council could not discharge its primary responsibilities because of the veto, then the GA would consider the matter immediately.

Furthermore, the use of reprisal should also be categorized under the heading of the lawful use of force. It is defined as a counter action taken by a state to protect itself after the attack made by the other State. There are three requirements which must be fulfilled to invoke the legality of use of force in such circumstances. Firstly, the reprisal must be made immediately. Secondly, use of force by the victim state must be in proportion to the force applied by the other state. Lastly, the use of force must be used against a military target. For example, during the Iraq and Iran war, sea mines were spread, which accidentally damaged the US merchant ship. In retaliation, the US destroyed the oil rig. The matter was considered internationally and regarded it to be an example of reprisal.

On the other hand, retortion refers to the threat of the use of reprisal. Therefore, the aforementioned concepts indicate the use of force in a lawful way, but departing from it would be considered to be a violation and amount to unlawful use of force.

However, there are notions which are regarded as unlawful use of force. Firstly, war is categorized as an unlawful use of force. Further, use of force in situation of aggression is also regarded as unlawful. The UN Charter clarifies that the use of force for occupying a territory is also regarded as an unlawful use of force. Lastly, intervention by one state into the affairs of another state tends to be unlawful and is prohibited in international law. The intervention is further categorized into three elements: hot pursuit; attack on terrorist camps and Self determination assistance.

In terms of the use of force, the alleged right of hot pursuit is used to justify armed incursions into the territory of neighbouring states for the purpose of destroying the military bases of guerrillas who have launched or will launch attacks against the State. The fallacy regarding hot pursuit pertains to that it is applicable on land, whereas, it is for the law of sea. For example, India when entered into Kashmir regarded it to be a hot pursuit. Similarly, in case of terrorist attack the use of force is considered to be unlawful. For example, the UK destroyed Harib Fort in Yemen, and relied on the argument that the terrorists were residing in the Fort and posed a threat to peace and security. The UNSC passed a resolution condemning UK for its act and stated it to be in violation of international law and unlawful use of force.

However, the right of self determination amounts to an exception in the sense that when fighting for self determination, the state can render assistance from the third country. Moreover, the intervention when used for the purpose of weapon of mass destruction is considered to be lawful. Similarly, if steps taken to rescue someone living abroad, third country's assistance can be acquired and would be regarded as legitimate use of force. So, any methods or means devised or adopted to use force outside the UN Charter are considered to be unlawful and amount to non compliance of international obligations of any state under the UN system.

INTERNATIONAL HUMANITARIAN LAW

International humanitarian laws (IHL) are the regulations concerning the conduct of war and armed conflicts. IHL or the laws of armed conflicts bring a humanitarian aspect to wars as opposed to the ancient times when wars were fought brutally and only for the reason to win, without any fear of the consequences or damages.

There are three main categories of international humanitarian laws:

- 1) The Hague conventions;
- 2) The Geneva conventions and;
- 3) The additional protocols.

These three sources comprise of various international conventions which are collectively called the international humanitarian laws. It is important to mention here that a very important clause was added to both, the Hague conventions and the Geneva conventions called the “martins clause” by the virtue of which both the conventions became applicable and binding universally. Therefore even if not codified by any country these conventions would apply to all countries universally in circumstances of international armed conflicts and non-international armed conflicts. Some of the relevant conventions making up the Geneva Convention and The Hague conventions are chemical weapons convention and the biological weapons convention.

International humanitarian law is not wholly based on the Geneva Convention and Hague convention. These laws have expanded and developed further through time and other conventions which are not even part of these conventions also have an impact upon international humanitarian laws and are also a part of it. The difference between human rights and international humanitarian law is that human rights give rights to people in peace and harmony whereas IHL’s application comes in time of war and armed conflicts and is in relation to the laws of war therefore a big difference exists between the two.

The main objectives/summary of the international humanitarian laws can be divided into a few parts which are as follows:

- Distinction: weapons and the armies of each state should differentiate between combatants and non-combatants.
- Proportionality: the attack and war must be proportional to the damage suffered by the attacking country.
- Military necessity
- Limitation
- Good faith
- Humane treatment

IHL does not recognize breach of IHL on the grounds of “commands from superiors”. It specifically states that all IHL conventions would also apply to non-international armed conflicts as well. The international criminal court is also enormously helping IHL laws to be implemented

through trials of people who have committed offences mentioned in the statute of Rome for example war crimes, genocide etc.

INTERNATIONAL CRIMINAL COURT

The International Criminal Court is considered to be an important area and a high point of International law regarding its developments. The International Criminal Court (ICC) was established under the Rome Statute of the International Criminal Court, in 2002, as a permanent court bearing the jurisdiction to examine and to carry out the prosecution of war crimes, crimes against humanity, genocide and crime of aggression. One of the main criticism and allegation imposed on international law concerns its implementation and mechanism procedures. Since, States are a legal fiction; the violations committed are by the natural persons for which the State is held accountable. The query relates to whether a punitive mechanism can be adopted or not? However, there are certain violations for which sanction could be imposed. For example, war crimes and genocide.

Therefore, sanctions are imposed for certain crimes and ICC has the power to exercise jurisdiction where the accused is a national of a state party; the alleged crime took place on the territory of a state party, or a situation is referred to the Court by the United Nations Security Council. The ICC as stated was enacted so as to impose sanctions on certain crimes. At the time, the Geneva Conventions were introduced in 1949, setting up methods for regulating war and its aftermath consequences, like, the ways to treat prisoners and treatment given to shipwrecked and wounded. Even though, the methods were enlisted under the Geneva Conventions to treat such people in detail, but it lacked the implementation framework. The violations were tried within the State leading to the discussion regarding the lack of a court at International level.

The ICC was much debated before it came into existence. In 1948, following the Nuremberg, the United Nations General Assembly recognized the need for a permanent international court to deal with atrocities of the kind committed during World War II. The Law Commission drafted two proposals for the establishment of a permanent court, but the recommendations were shelved.

Moreover, in early 1990s the International Criminal Tribunal for Yugoslavia (ICTY) was established under UNSC Resolution 808, resulting from the outburst of killings in the State, for the trial of war crimes at International level. Similarly, the International Criminal Court for Rwanda (ICTR) was established following the killings and war crimes prevailing at that time in the State. This led to the debate of introducing a permanent international court heading the responsibility of trying all the nationals engaged in war crimes, genocide and crimes against humanity at one forum. The International Law Commission drafted the proposal for the establishment of international court which was later debated and resulted in the enactment of Rome Statute of the International Criminal Court-multi lateral treaty. Finally, after 60 states signed and ratified the ICC treaty, the ICC came into force into 2002.

Furthermore, the ICC also complements existing national judicial systems by exercising its jurisdiction in such circumstances where national courts are unwilling or unable to investigate or prosecute such crimes. The primary feature of ICC being that it has universal jurisdiction over crimes such as genocide, war crimes and crimes against humanity. For example, hijacking is considered to be a crime bearing universal jurisdiction.

The Rome Statute of the International Criminal Court enlists the provisions regarding ICC.

Article 1 concerns the establishment of the Court and its power to exercise jurisdiction over persons for the serious crimes of international concern.

Article 2 deals with the relationship of the Court with the United Nations.

Article 3 states that the Court has its permanent seat in The Hague in the Netherlands, however, the court can sit elsewhere as desired.

Further, Article 5 of the Rome Statute grants the Court jurisdiction over four groups of crimes, which it refers to as the “most serious crimes of concern to the international community as a whole”: the crime of genocide, crimes against humanity, war crimes, and the crime of aggression. The statute defines each of these crimes except for aggression. It provides that the Court will not exercise its jurisdiction over the crime of aggression until such time as the states parties agree on a definition of the crime and set out the conditions under which it may be prosecuted.

Article 6 defines the term “genocide” as killing members of a group or causing serious bodily harm to the members of the group.

Article 7 describes crime against humanity including murder, extermination, enslavement, deportation, torture, rape and many other crimes of such extent.

Article 8 entails war crimes and describes it as grave breaches of Geneva Conventions. For example, the sexual and physical abuse of the Iraqi prisoners at Abu Ghuraib Prison was an infringement of Geneva Conventions. Since, US is not a party to the Rome Statute, it was only blamed for such activities, but there were certain court martial to hold them accountable.

Moreover, article 8 also covers willful killings; torture or inhuman treatment, including biological experiments; extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and taking of hostages.

Article 25 concerns the jurisdiction of the Court over individuals of the States.

Article 27 states that the Statute shall apply equally to all persons without any distinction based on official capacity.

Article 58 relates to the issuance by the Pre-Trial Chamber of a warrant of arrest or a summons to appear.

Article 98 concerns the cooperation with respect to waiver of immunity and consent to surrender.

Therefore, ICC is an integral part of International law, being the first permanent International Court that deals with the infringement of war crimes, genocide, and crimes against humanity, thereby holding an individual responsible and imposing sanction upon the national of a State. The ICC is headed by Judge Phillip Kirsch. The afore-mentioned overview, background and provisions clarify the role of ICC in International law. The ICC has fulfilled a major loophole of international law and indicated that international law has some kind of enforcement mechanism, through which it can impose obligations on member states and impose sanctions if violated.

STATE RESPONSIBILITY

State responsibility refers to the principle that a state is responsible for the actions of its citizens, officials and organs etc as it is in control of the acts of its individuals and organs and thus is under an obligation to uphold the International law.

State responsibility is an assumption that a state controls its organs and individuals and is therefore liable for any breaches of international law committed by any such organ/individual e.g. state responsibility of Pakistan towards the Diplomats from foreign countries living in Pakistan. It is the duty of Pakistan to protect them from being harmed under the International Treaty of Diplomatic Privileges. However, it is not always true that a state is responsible for every individual and their acts under international law.

While imposing state responsibility upon a state and holding it responsible for a violation of an international law, the element of “*attribution*” has to be taken into consideration. Attribution is the link between the act of the individual or organ and the actual responsibility of the state under International law.

The laws on state responsibility are derived from state practices and various other customs and practices. However the main text on the law of state responsibility is the “**Draft Article on State Responsibility**” drafted by the International Law Commission (ILC). Some of the important provisions are:

- **Article 1.** Whenever a wrongful act is done the state is responsible and not liable. Both are different from each other. Liability means those things which it has to do to correct the wrong whereas once it is held responsible for a violation of international laws.
- **Article 2.** This article lists down the elements of what constitute International wrongful act of a state. Means both wrongful acts and omission to act will hold a state responsible (if such an omission violates an International Obligation.) The Act should also be attributable to a state if it cannot be attributed then the state cannot be held responsible. For example the “*Nicaragua Case*”, 1986 and also the Pakistan India example given above where the acts complained of by the Indian army were not attributable to Pakistan or Pakistanis. A state should not be held responsible on the basis of a mere allegation.
- **Article 3.** This article is about the Characterisation of an act of a State as Internationally wrongful. A local law that results into violation of an international law is not an excuse to permit such a breach of international law. In other words a state cannot hide behind the excuse that its national law is in violation of an international obligation because it is the responsibility of the states to comply with their international obligations. Once a state becomes a part of an international law then it is under an obligation to revise any such local laws which may or are in contravention to the International law. Therefore if a state fails to revise all such laws then it shall be responsible under International law.
- **Article 4.** Under this Article a State shall be responsible for those territories in its jurisdiction which have different status under its domestic law. For example F.A.T.A in Pakistan. Secondly this article also mentions the fact that a state shall also be responsible for the actions or omissions of its Organs as well such as the legislature. The legislature should not pass a law which is in breach of an international obligation. So a state is responsible for all its organs like Legislature, Judiciary and Executives. E.g. the Hubco Case.

- **Article 5.** Acts of persons authorized by a state to act on their behalf then the state is responsible for the actions of that person. For example government officials and other government officers. In this situation the requirements of attribution of a wrongful International act melts down. In such situations the state is held responsible directly.
- **Article 8.** Act of person or group of persons are presumed to be acting on the instructions of a state therefore even in such a situation the state will be held responsible for the actions of those persons.

The Concept of a Continuing Breach is another important aspect which comes into play when a state is in a continuous breach of its international responsibilities and the loss suffered by the other state is of a continuous nature.

Other important articles are:

Article 28 explains the legal consequences of a wrongful act.

Article 30 states that a breach should not be repeated

On one hand the concept of responsibility of states is constantly growing, while on the other hand, the issue of attribution is expanding. Lastly and equally important, the issue or mechanism of compensation and forceful compensation is also developing, which creates a balance of state responsibility at the moment.

PACIFIC SETTLEMENT OF DISPUTES

International law is very different from domestic law because in domestic disputes there are Courts to adjudicate upon the rights and liabilities of individuals in the presence of both the parties in a particular case whereas under International law it is totally different.

International law being law of the states and involving bigger disputes between two or more states as compared to national disputes, the most important and biggest deterrent in the way of settlement of disputes between two or more states is the issue of Sovereignty. States cannot be coerced into doing something or accepting something. In order to resolve the issue of sovereignty we have to resort to treaties between states which may provide for a judicial mechanism to find a solution to any dispute. When a state ratifies a treaty, it limits its sovereignty to the extent of that treaty alone and not otherwise.

International law gives certain rights to states and corresponding duties with it therefore whenever rights are conferred upon a state, as a part of human nature, the possibility of disputes cannot be ruled out. So whenever such a dispute arises of an international character then what document or set of laws deals with the means to settle a dispute of an international nature? The main source of international dispute resolution can be found in the United Nations Charter.

Article 1 states the purposes of setting up the U.N and the main purposes that are enlisted are to maintain international peace and security, to develop friendly relations between states and to achieve international co-operation. Article 2 specifically states that all member states shall resolve their disputes through peaceful means without having recourse to use of force. Article 14 (U.N General Assembly), Article 33 lays down that when a dispute reaches a point where it may disturb world peace then the states involved in the dispute shall try to resolve the matter through arbitration, conciliation, mediation etc. and that the Security Council may intervene and call upon any state to resolve the matter peacefully. Article 33 is basically the threshold of pacific dispute resolution and lays down a number of ways in which disputes between states may be resolved in a peaceful manner. Article 38 states that the Security Council, may if all the parties to any dispute so request, make recommendations to the parties with a view to a pacific settlement of the dispute.

In Article 33 the meaning of Negotiation is the same as in domestic law. It is a preferred mode and third party intervention is not needed. Representatives of states meet for their purpose for example U.S officials meet Iranian counterpart and negotiate on any disputed issues. Negotiation is in fact an art for example how to extend your standpoint on a given issue in a convincing manner.

Enquiry takes place where there is a misunderstanding between states on issues of facts. Then an enquiry committee is constituted and appointed to carry out independent enquiry over the issue.

Mediation essentially means that there is an involvement of a third party between the states, which acts as a mediator between the parties. Mediation is not formal as the process of arbitration therefore in mediation there are no precedents for future reference unlike arbitration which can create legal precedents which can be subsequently referred to. An important example of mediation is that of Camp David, between Israel and Egypt, mediated by Jimmy Carter. The absence of legal precedents as in mediation is both good and bad because no remedy is available if it halts in midway. A mediator may be any individual, a state or an organisation. It depends on the parties as to whom they appoint in their confidence.

Conciliation is close to mediation. A conciliator has more responsibility as compared to a mediator. He has to document, memo or note everything at the end of conciliation. The U.N may appoint representatives to act as conciliators for example in the Kashmir dispute between India and Pakistan U.N appointed representative to give a report to the U.N over the gap of understanding between India and Pakistan. Therefore the process of conciliation is somewhat more formal than the process of mediation. UNCITRAL provides certain guidelines for conciliators but these are not binding. It is on the state to appoint a conciliator under these guidelines and make it binding on him/her.

Arbitration is a more formal process than mediation and conciliation. Arbitration can take place between two states or individuals of two states or between a state and an individual of another state. An example of arbitration between two states is the “*Rann of Kach*” boundary dispute for demarcation of borders between India and Pakistan. Both countries opted for ad hoc arbitration. Arbitration between individuals is usually in matters of trade and the parties normally decide in advance through incorporation in a contract that any disputes shall be resolved through arbitration and as to what rules would apply and the venue of such arbitration proceedings as well. Liverpool is known for Cotton Arbitration.

Judicial Settlement means those legal and formal forums or venues that already exist such as the ICJ. The judgments of this court are an important source of International Law.

Other modes of settlement of disputes are through exchange of official correspondence or through regional arrangements and organisations.

Pacific settlement of disputes means to resolve disputes to avoid threats to International Peace and security so that such disputes do not become a cause of endangerment to the cardinal aims of the United Nations i.e. the up keeping of world peace. None of the above modes are enforced upon any state because of the issue of State Sovereignty, but by its own choice, a state may impose upon itself any of the modes listed in Article 33. Article 33 is indicative in nature not exhaustive.

INTERNATIONAL LAW ON SIACHEN ISSUE

The Siachen issue is very well known as many soldiers, both Pakistani and Indians, have lost their lives in continuing the war against each other.

The examination of the legal side of this issue will include:

1. Facts relevant to the issue
2. Applicable Legal Texts
3. Legal Arguments of both sides based on that text
4. Placement of their arguments

Factually, Siachen is a glacier which is situated towards the North of Pakistan some 50-55 Kilometres away from K-2. It is a very difficult terrain and life in ordinary circumstances is not possible.

The armed conflict between India and Pakistan in 1948 resulted in the demarcation of a ceasefire line under the Karachi Agreement 1949.

Both countries interpreted the Agreement differently. India took the literal meaning that the line should go up towards the north whereas Pakistan was of the view that the line should northwards but it should follow its natural course.

The applicable law is the Karachi Agreement of 1949 Clause B(2)(d) which states that, “From the Dalunang eastwards the cease-fire line will follow the general line Point 15495...*thence north to the glaciers*. This portion of the cease-fire line shall be demarcated in detail on the basis of the factual position as of 27 July 1949 by the local commanders, assisted by the United Nations Military Observers”

It can be clearly seen from the text of the Karachi Agreement that it demands for the inclusion of U.N in Siachen/Kashmir issues, which clearly defeats the Indian stance that the U.N has nothing to do with the dispute.

The second applicable law is the Tashkent Declaration which is a bilateral agreement between India and Pakistan. Article 2 of the Tashkent Declaration states that, “The Prime Minister of India and the President of Pakistan have agreed that all armed personnel of the two countries shall be withdrawn not later than 25 February, 1966, to the position they held prior to 5 August, 1965, and both sides shall observe the ceasefire terms on the ceasefire line”

The third text that is applicable to this issue is the Simla Agreement of 1972. The important characteristics of this Agreement are that it states that the principles of the UN Charter will govern the relations between two states thereby meaning that the UN should be involved in the Pakistan India Siachen dispute. Secondly Article 4 of the agreement is the relevant article relating to the Siachen issue. In this article the LOC word has specifically been used to describe the Pakistani territory.

Pakistan's stance is that the LOC should follow its natural and existing course, a principle derived from the law of sea and various precedents stating that while demarcating sea lines, the line should follow its original course and not deviate totally differently from its original path. Another fact going in favour of Pakistan is that the mountain climbing expeditions always started from the

Pakistan. Therefore it is clearly established that Pakistan has superior control over the area and has better access to it.

Even the world famous and recognised “*Britannica Atlas*” of 1984 depicts the LOC to be exactly where Pakistan has argued it to be making Pakistan’s stance much more tenable than the stance forwarded by India. Pakistan can fully support its arguments based upon precedents and other settled principles of law whereas India has very less room for any argument.

INTERNATIONAL LAW ON SIR CREEK ISSUE

The issue concerning Sir Creek is of great importance for both India and Pakistan. The dispute does not concern the division between the States rather the focal point of the Sir Creek issue is the boundary of the sea including all the natural resources attached to it.

The facts of the issue are that the coastline between India and Pakistan is concave in shape and certain creeks have developed with the passage of time e.g. the emergence of new islands which can result in complications. To resolve the dispute, there must be some way of demarcation and delimitation e.g. the Run of Kutch was settled through an arbitration process. Similarly, in the 1914 map made by the British government clearly demonstrated the line/creek between the two nations and named it as Eastern Reband (ER). Later in 1939 map, the situation was reasserted and endorsed by the Surveyor General.

The dispute concerns the different approach and stance adopted by both the sides. On one hand, Pakistan claims the boundary to be the ER as demonstrated in the map whereas on the other hand, India asserts the map to be obsolete and claims the opposite side of the creek to be the boundary. The reason for the dispute relates to the boundary of sea rather than the dividing line between the nations, thereby, resulting in the dispute between India and Pakistan as to Sir Creek.

The rights over the sea were extended by the United Nations Convention on the Law of the Sea (UNCLOS) adopted in 1982. The UNCLOS conferred rights to the countries over the sea. The states were given rights up to 12 Nautical miles over the territorial sea, right of safe passage from air and sea above the territorial sea. Further the exclusive economic zone was extended up to 200 Nautical miles, giving rights over the resources within that area to the particular state. The continental shelf was also extended up to 350 Nautical miles. The law pertaining to sea states that the division between the two nations should be extended in the continuation of the line of direction. Therefore, the precedent followed relates to the passing of the rights to the coastal land to determine the extension of the sea. This gives the right to the State to exercise its sovereignty and title over the resources under the sea. The matter could be resolved but the implications and the complexities pertaining to it are enormous.

However, there are certain provisions for resolving the matter. The dispute could be resolved by the following approaches proposed: delimitation; demarcation; administration and allocation. Since 1969 various talks have been communicated between the two sides, but none resolved the issue. Pakistan suggested that the issue should be handled by the international arbitration but India adopts a different stance and asserts that a 3rd party should not intervene and the matter should be resolved by bilateral agreements. The UNCLOS plays an important role in the extension of the rights over the sea

Furthermore, delimitation is important in the aspect of Article 38 of the ICJ Statute. It is stated that delimitation must be done in accordance with the Principles of Article 38 of the ICJ Statute. Article 38 of ICJ statute relates to the equitable principles/ways of resolving the matter between the two nations. However, if the equitable agreement is not possible, then Article 74 of UNCLOS states that the parties should refer to part 15 UNCLOS, thereby, enlisting the nature and various forms available in order to resolve the issue.

Thus, the dispute pertaining to Sir Creek between India and Pakistan can be resolved, by the aforementioned ways discussed. The stance adopted by India is to settle the matter by bilateral agreements which have been exhausted several times. At present, the issue is highly important to both the nations due to the importance given to the law concerning sea by the UNCLOS 1982. It

is because of the several rights and resources available to the State under UNCLOS due to which India and Pakistan have not been successful in settling the matter.

INTERNATIONAL LAW ON KASHMIR DISPUTE

The festering issue of Kashmir, despite the concerted efforts by all the stakeholders including the United Nations, has been a source of serious tensions and bloody wars between India and Pakistan. Notwithstanding the development of human rights and self-determination covenants and all the tall claims for universal independence by the world community, this issue has lingered on for the past sixty years as a scar on human conscious. Pakistan, on the one hand, maintains that the issue should be resolved according to the wishes of the people of Jammu & Kashmir. India, on the other hand, considers this territory as being an indispensable part of its dominion, in spite of the various resolutions of United Nations Security Council saying to the contrary. This explains India's reluctance to even discuss this issue till the recent past; but now, owing to the international pressure, both countries have started a composite dialogue on, inter alia, the issue of Jammu & Kashmir. This lecture would consider the legal aspects of the issue, ignoring the political analysis.

There are different ways of discussing the issue of Jammu & Kashmir. One such way is to study the issue with respect to each party's stance in different time zones; other is to examine different legal document related to the issue; yet another way is to discuss the matter irrespective of any time zones: like issue of self-determination versus terrorism, violations of human rights, International Humanitarian law etc. So it's not easy to describe the issue of Kashmir.

Following are different time zones in which the issue of Jammu & Kashmir could be divided:

1. 1947: when the dispute came up
2. 1948-1957: when the matter goes to UN, the subsequent UNSC resolutions.
3. 1957 - 1971: when India tries to integrate Kashmir in India territory through legislation.
4. 1971: Simla agreement
5. 1998: UNSC resolution 1172 on nuclear explosions, which also referred to the Kashmir issue.

We would start by discussing the historical perspective of the issue which essentially started in 1947, after the division of Indian sub-continent into two sovereign countries, India and Pakistan. The sub-continent consisted of a number of princely states, which were given an option to join either nation; one such state was Jammu & Kashmir. The maharaja of Jammu & Kashmir opted for India and for this purpose, executed an instrument of accession, dated 26th October, 1947 in India's favour, despite the fact that Jammu & Kashmir is pre-dominantly a Muslim majority area. The interesting thing about the instrument is that it nowhere mentions that the maharajah took the consent of the people of the Jammu & Kashmir or not, or that what religious faith the majority of the population holds; it only says that "I, hurry Singh, the ruler of Jammu & Kashmir, in the exercise of my sovereignty in and over my said State do hereby execute this instrument of accession.....".

In response to this instrument, Lord Mountbatten made the accession conditional on ascertainment of wishes of the people of Jammu & Kashmir in a letter dated 27th October.

Meanwhile, India after sending its troops to Jammu & Kashmir, takes the matter to United Nations under chapter VI of its charter in 1948, where the title given to the issue is "India-Pakistan question". Several years later, India asserted that this is not an issue between India and

Pakistan and thus the title is wrong; but it was too late by then as UNSC had taken up the matter by then. UNSC passed a number starting from 1948 to 1957.

One such resolution dated 20th January 1948 created United Nations Commission on India and Pakistan (UNCIP), which was composed of representatives from India and Pakistan. Another resolution dated 21st April 1948 provided the manner for conducting the plebiscite and that how peace and order could be restored in the region; this resolution further asked India to gradually withdraw its troops from Jammu & Kashmir enabling the conduct of plebiscite. But that withdrawal never took place by India on the premise that the circumstances have changed now. The plebiscite, therefore, never took place. In the meanwhile, four special representatives of UNSC visited both countries and Kashmir to resolve the issue. They failed in realizing the objective of UNSC.

Thus, despite all efforts by U.N, it has not been able to implement its own resolutions, owing mainly to the change of strategy by India, who had by now decided to put in concerted efforts to make the disputed territory a part of its dominion. Herein starts yet another phase of the issue. In order to make the territory a part of India, a constituent assembly was formed in the Jammu & Kashmir, which was presented with the instrument of accession for ratification. After the ratification, India categorically declared that it has fulfilled the mandate of the UNSC resolutions by seeking the wishes of the people of the state through the constituent assembly; it, therefore, no longer needs to hold a plebiscite.

This argument of India was not accepted by Pakistan as well as by the United Nations, which passed two resolutions to condemn it. One such resolution dated 20th March 1951 stated that the constituent assembly did not serve the purpose of holding the plebiscite. Yet another resolution was passed on 24th January 1957, which also affirmed the previous resolution. Despite the clear condemnation by UNSC, India went on with its plan and amended Article 370 of its constitution to incorporate the disputed region into the dominion of India.

The fourth phase of the issue commenced after the disintegration of East Pakistan in 1971, when the Simla Agreement was signed by India and Pakistan. India, in pursuance of its new policy that Kashmir formed its part, has by now started to dissociate U.N from the issue, and it no longer reported violations of the cease fire to U.N. India has interpreted the Simla agreement in the similar manner as well so as to make the UNSC resolutions no longer applicable; it says that by virtue of the agreement, both countries have opted out of the UNSC resolutions, and have decided to solve the issue bilaterally. Pakistan, on the other hand, has put a different interpretation on the agreement by holding that UNSC resolutions still hold the field and are not obsolete. Pakistan also says that it's nowhere mentioned in the agreement that UNSC resolutions are over now and that no state can dissolve the UNSC resolutions by bilateral agreement.

The fifth and final phase started after both India and Pakistan exploded nuclear bombs in 1998. By this time, India was really reluctant to even discuss the Kashmir issue, due to its intransigent stance that Kashmir formed an indispensable part of its dominion. But Indian stance was jolted when UNSC passed the resolution 1172 after the nuclear explosions condemning both the countries; but this resolution also mentioned Kashmir and said that it needs to be resolved. So after period of several decades, matter returned to UNSC. Thereafter, in 2006, the on-going composite dialogue started, which has Kashmir issue at the top. The composite dialogue is still going on without any progress on all the eight issues including the Kashmir problem.

There are several aspects irrespective of the time frames already discussed that also need to be discussed, like the self-determination versus terrorism. Pakistan says that there could be no compromise on the right of self-determination and that it should not be equated with terrorism.

India, on the other hand, has tried to restrict the right of self-determination and has equated it with the issue of terrorism. International law also gives right to people going for self-determination if followed with certain conditions and doesn't refer them as to be terrorists.

Besides the issue of self determination and terrorism, another issue of human rights violations in the state of Jammu & Kashmir by the Indian army is of utmost concern. Moreover, the issue can also be looked in from the angle of Non-International armed conflict, where Geneva conventions and customary laws of international law are applicable. Despite all these treaties and conventions, the human rights violations go on the behest of the Indian State.

INTERNATIONAL LAW AND ISSUE OF NON-STATE ACTORS

The concept of Non-state actor is a recent political development, which has, so far, eluded a concise definition. There are no treaties or conventions that have tried to define this concept so far. However, a non-state actor could be loosely described as some one who is refusing to accept the authority of a state; one who thinks that he is not bound by the laws of the state or any international treaties the state has ratified. But this description is not enough, and concerted efforts are needed to actually define this term. The reason it is not easy to define this concept is that it is an evolving concept, and every effort to define it would become obsolete sooner than later; further a non-state actor may have varying identities: he could be some one who is a national of the state, or some one who is not a national and is only using the territories of a state for his wrongful acts; or he could be an official working for the state who has transferred an official document to an unauthorized person or an ordinary person trying to blow up a bomb.

More importantly, the concept of non-state actor needs be discussed vis-à-vis the concept of state responsibility, that is to say how and to what extent a state could be held responsible for the acts of non-state actors. For this purpose, International Law Commission (ILC), which is an institution of universally renowned lawyers who codify the international law as it evolves, has tried to describe the responsibility of a State for its internationally wrongful acts. Even though when these draft laws by ILC were evolved, the concept of non-state actor had not fully evolved; but nevertheless, it these draft law are relevant as they link up the responsibility of a state with the acts of persons known as non-state actors.

The theme of these draft laws is mentioned in Article 1, which says that every internationally wrongful act of a State entails the international responsibility of that State. Then an act of a state under international law is defined in Article 4, 5 8 and 11. Article 4 says that any conduct of organs of the state or of persons working officially in these organs is an act of a state; article 5 states it is the conduct of persons or entities that though are not working in official capacity but are empowered by the government to exercise the elements of governmental authority; article 8 declares that an act of state is the conduct of a person of group of persons who are acting on the instructions of the state; lastly section 11 says that a conduct which is not attributable to a State under the proceeding articles shall nevertheless be considered an act of that State under international law if and to the extent that the State acknowledges and adopts the conduct in question as its own.

Furthermore, according to Article 7, the conduct of an organ of a State or of a person or entity empowered to exercise elements of the governmental authority shall be considered an act of the State under international law if the organ, person or entity acts in that capacity, even if it exceeds its authority or contravenes instructions.

Article 28, 30 and 31 state the legal consequences of an internationally wrongful act. They are as follows:-

Article 28: *Legal consequences of an internationally wrongful act*

The international responsibility of a State which is entailed by an internationally wrongful act in accordance with the provisions of Part One involves legal consequences as set out in this Part.

Article 30: *Cessation and non-repetition*

The State responsible for the internationally wrongful act is under an obligation:

- (a) To cease that act, if it is continuing;
- (b) To offer appropriate assurances and guarantees of non-repetition, if circumstances so require.

Article 31: Reparation

1. The responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act.
2. Injury includes any damage, whether material or moral, caused by the internationally wrongful act of a State.

Moreover, according to article 32, the responsible State may not rely on the provisions of its internal law as justification for failure to comply with its obligations under this Part.

Besides the efforts of ILC in defining a link between the state responsibility and non-state actors, some UNSC resolutions have tried to define the non-state actors and the issues of the state responsibilities of their acts. UNSC Resolution 1540 on Weapons of Mass Destruction was passed under Chapter VII of Charter of the United Nations on 28 April 2004, which linked the Non-State Actors with a State.

This resolution defined a non-state actor as “*individual or entity, not acting under the lawful authority of any State in conducting activities which come within the scope of this resolution.*” The preamble of the resolution also tries to define the non-state actors in the following manner: “Gravely concerned by the threat of terrorism and the risk that non-State actors such as those identified in the United Nations list established and maintained by the Committee established under Security Council resolution 1267 and those to whom resolution 1373 applies, may acquire, develop, traffic in or use nuclear, chemical and biological weapons and their means of delivery,..”

UNSC Resolution 1373 which is mentioned in the above resolution was passed one day after the September 11, 2001 attacks on the world trade centre in U.S. It is the main resolution so far against international terrorism which was passed under Chapter VII of the U.N Charter.

Its para 2 says: “*Decides also that all States shall:*

- (a) Refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists;
- (b) Take the necessary steps to prevent the commission of terrorist acts, including by provision of early warning to other States by exchange of information;
- (c) Deny safe haven to those who finance, plan, support, or commit terrorist acts, or provide safe havens;
- (d) Prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens;
- (e) Ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that, in addition to any other measures against them, such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts;...

Para 5 states as following:

“*Declares that acts, methods, and practices of terrorism are contrary to the purposes and principles of the United Nations and that knowingly financing, planning and inciting terrorist acts are also contrary to the purposes and principles of the United Nations;* “

Yet another resolution of UNSC, **UNSC Resolution 1390** states in its Para 2”

- “2. *Decides that all States shall take the following measures with respect to Usama bin Laden, members of the Al-Qaida organization and the Taliban...*
- (a) Freeze without delay the funds and other financial assets or economic resources...

- (b) Prevent the entry into or the transit through their territories of these individuals, provided that nothing in this paragraph shall oblige any State to deny entry into or require the departure from its territories of its own nationals and this paragraph shall not apply where entry or transit is necessary for the fulfillment of a judicial process or the Committee determines on a case by case basis only that entry or transit is justified;
- (c) Prevent the direct or indirect supply, sale and transfer, to these individuals ... or training related to military activities; “

The most-recent such resolution is **UNSC Resolution 1624** passed in the year 2005. It states:

“1. *Calls upon* all States to adopt such measures as may be necessary and appropriate and in accordance with their obligations under international law to:

- (a) Prohibit by law incitement to commit a terrorist act or acts;
- (b) Prevent such conduct;
- (c) Deny safe haven to any persons with respect to whom there is credible and relevant information giving serious reasons for considering that they have been guilty of such conduct; “

Keeping both the ILC draft laws and the UNSC resolutions in perspective, it can easily be said that the latter take broader view as compared to the former. ILC gives some leverage to states to take the plea of non-liability, but UN enhances this burden by making persons who are planning of committing an offence also responsible.

INTERNATIONAL CRIMINAL LAW

Crimes like murder and theft have been the oldest crimes faced by mankind. As societies have progressed and evolved, the nature of the crimes committed has also changed. Acts which were a threat to international relations have been criminalized and elevated to the status of International Crimes e.g. high jacking, genocide (crime against humanity), drug trafficking etc.

International Criminal Law does not refer to the traditional crimes like murder and theft. A crime of an international level relates to the effect of that crime on different countries e.g. the effect of smuggling and distribution of drugs from one country to another. International Criminal Law differs from the conventional criminal law in various aspects. The most important of these differences is that the traditional criminal law usually consists of codified substantive and procedural laws whereas International Criminal Law consists of various conventions and treaties and there is no codified document containing all the laws and procedures.

There are numerous conventions and treaties which fall within the ambit of International Criminal Law including the conventions on international corruption, money laundering, drug and human trafficking, international bribery etc. These crimes have developed recently as they are linked with the economical development of all the countries.

One of the most important conventions is the **United Nations Convention against Transnational Organized Crime (UNTOC)**. Some of the important provisions of the convention are discussed below:

UNTOC identified the concept of an organized crime. A crime is termed as an “*Organized Crime*” when people in different countries and/or of different nationalities plan to commit a crime in an organized manner. UNTOC defines an “Organized criminal group” as a “structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit” UNTOC has even criminalized the laundering of the proceeds of crime and defines the “*Proceeds of crime*” as “any property derived from or obtained, directly or indirectly, through the commission of an offence”.

Similarly this convention legalized the act of Controlled delivery and defines “*Controlled delivery*” as “the technique of allowing illicit or suspect consignments to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of their competent authorities, with a view to the investigation of an offence and the identification of persons involved in the commission of the offence”

UNTOC has also laid down the liability of Legal Persons in Article 10 of the convention which states that, “Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in serious crimes involving an organized criminal group”.

With regards to the enforceability of UNTOC there are no courts at the international level formed by this convention. Every state that has ratified UNTOC has to incorporate this convention into the laws of that state through local legislation to enforce the provisions of this convention. At the international level *International Criminal Court (ICC or ICt)* was established in 2002 as a permanent tribunal to prosecute individuals for genocide, crimes against

humanity, war crimes, and the crime of aggression, The Court can generally exercise jurisdiction only in cases where the accused is a national of a state party, the alleged crime took place on the territory of a state party, or a situation is referred to the Court by the United Nations Security Council. The Court is designed to complement existing national judicial systems: it can exercise its jurisdiction only when national courts are unwilling or unable to investigate or prosecute such crimes. Primary responsibility to investigate and punish crimes is therefore left to individual states.

UNCTOC gives the right of *Confiscation and Seizure* to individual states. It states in the Article 12 that,

“ 1. States Parties shall adopt, to the greatest extent possible within their domestic legal systems, such measures as may be necessary to enable confiscation of:

(a) Proceeds of crime derived from offences covered by this Convention or Property the value of which corresponds to that of such proceeds;

(b) Property, equipment or other instrumentalities used in or destined for use in offences covered by this Convention.

2. States Parties shall adopt such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.”

UNCTOC has also developed the concept of *Mutual Legal Assistance* between the states. It is stated in the Article 18 of the convention that, “States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention”

UNCTOC has also criminalized the act of *Obstructions of Justice* and it is stated in the Article 23 that. “Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences covered by this Convention;

(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences covered by this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public officials.

Along with UNCTOC there are two more conventions called the protocols of UNCTOC namely; 1) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime; and 2) Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime

INTERNATIONAL LAW OF THE SEA AND PAKISTAN

In this lecture we will be discussing the International Law of the Sea and how it is being adopted by Pakistan. The most important convention that codifies the International Law of the Sea is the **United Nations Convention on the Law Of The Sea (UNCLOS) 1982**. This convention codifies all the laws that confer rights to countries over water and the sea.

We will be dividing this lecture into three parts:

- 1) Basic features of the Law of the Sea Convention 1982;
- 2) Comparison between the Pakistani law and the law of the sea;
- 3) Further developments and improvements that might be required in the law of the sea

- 1) Under the Law of the Sea Convention 1982, sea is divided into three parts:

- a) Territorial Sea/Territorial Waters;
- b) Exclusive Economic Zone;
- c) Continental Shelf

a) **Territorial Sea/Territorial Waters:** The first 12 nautical* miles from the coast are termed as the Territorial Sea or Territorial waters. The title of the territorial sea vests in the coastal country which means that the coastal country has the ownership rights of that area. All the natural resources and the marine life belong to the coastal country. Territorial Sea is basically the extension of the territory of the coastal country and no ship/vessel is allowed to enter this area without the permission of the coastal country. Even the airspace above this area belongs to the coastal country. The LSC 1982 gives the right of free passage to all the vessels passing through the Territorial Sea.

b) **Exclusive Economic Zone (EEZ):** a distance of 200 nautical miles from the coast is termed as the EEZ. The ownership rights do not vest in the coastal country however the rights of the all the natural resources and the marine life vests in the coastal country. In this zone there is traditional freedom of high seas which means that the waters after the first 12 nautical miles are called the high seas and all the vessels in the sea and the air have the freedom to enter this area at their will. However if anyone of these vessels interferes with the economic rights or the resources and marine life in this area, then this act of interference by the vessel triggers a right of the coastal country to legally proceed against that vessel in their own courts.

c) **Continental Shelf:** a distance of 350 nautical miles from the coast is termed as the continental shelf. There are two types of continental shelves: (i) Geological Continental Shelf (ii) Legal Continental Shelf. Geologically speaking the Continental Shelf refers to the seabed till it becomes really deep and that area is termed as the Deep Sea Bed. Continental shelf is actually the earth under the seabed. There are different ways of ascertaining the continental shelf. The area after the exclusive economic zone till the area awarded as the continental shelf legally confers some rights in the coastal country. In this area the coastal country has no right over the marine life however the country does have the right over all

the resources under the seabed and can even issue licenses to other countries for extraction.

The Pakistani authorities need to work on policies regarding the use of these are in Arabian Sea in light of the UNCLOS 1982. It can prove to be very fruitful for the country in the sense that it can provide a lot of resources and finances through the issuance of licenses to other countries for the extraction of resources. UNCLOS 1982 was incorporated Pakistan Territorial waters and Maritimes Zones Act 1976 (PTWMZA) and Exclusive Fisheries Zones Regulations Act 1975. There are visible deficiencies in this incorporation as the covering area is very less; LSC 1982 has 305 articles which give rights to the countries where as PTWMZA 1976 has only 14.

INTERNATIONAL HUMANITARIAN LAW AND PAKISTAN

International humanitarian law (IHL) refers to armed conflict (AC) or non-international armed conflict (NIAC). It is considered to be a controversial subject and obscure with regard to its interpretation. IHL is applicable in war situations and regulates conflicts between parties. It is often misinterpreted and confused with the International Human Rights Law (IHRL). IHL and IHRL must be differentiated since they operate and are relevant in distinct circumstances. The former is pertinent in war state, whereas the latter deals with the fundamentals rights of individuals.

There are various laws responsible for the determination of IHL, such as: Geneva Convention 1949; Additional Protocol to Geneva Convention; International Court of Justice (ICJ); Hague law; Biological Weapons Convention (BWC); Chemical Weapons Convention (CWC); United Nations Security Council (UNSC) resolutions and (ICJ) judgement. On the other hand, HR law refers to the fundamental rights such as, right to life, freedom of speech, right to protection of family, right to privacy etc.

However, certain IHRL activists do not have high regard for IHL because at conceptual level, there are certain conflicts between the two. For example, IHL is concerned with the right to kill a combatant, whereas, according to IHRL, right to life is considered to be a paramount right. Similarly, the Geneva Conventions concerns the treatment of prisoners as opposed to HR law, where right of dignity is deemed to be compromised in such circumstances. However, Pakistan observes these fundamentals rights under the Constitution of Pakistan.

There are certain ways in which the use of force (UOF) is considered to be legal: UN Charter Article 51 legitimizes the armed conflict used in self defence and under regional organizations (RO) can resort to use of force. If, however, the two states engage into conflict, then one State must give justification for the use of force under self defence or must be authorized by the UN Charter to do so. This determines the legality of use of force. The reason behind a war initial comprises of various issues like self defence, UOF, RO and UN Charter and once the war has started IHL is applied. Therefore, IHL does not support the legality of conflict; it only applies once the war has started.

Moreover, the difference between an armed conflict and a war has been elucidated by the UN Charter. Now, “war” is considered to be illegal, since UN Charter replaced the term war with “armed conflict”. Armed conflict is defined as a state of hostility between two parties. The states evade from using the term war and instead refer it as armed conflict. However, the political scientists can refer to the term war, but cannot displace the concept at international level. For example, President Bush’s stance on ‘war against terror’ can be used in a lay man language but legally circumvented.

Further, the term war does not necessarily relate to actual combat, it can be identified by looking at the hostile relationship between the parties. For example, the relationship between Arab and Israel indicates war without combat. There is no diplomatic relations between the parties or no treaties entered into by the parties. Similarly, according to Islamic concept of international law there are certain areas which are classified as Dar-ul-Harab (azans not allowed) and Dar ul Amaan (azans allowed).

The effect of war is that it ends all kinds of treaties between the states, whereas, in armed conflict situation the relationship does not come to an end. For example, during 1965 war, the conflict between India and Pakistan led to the determination by the arbitration whether it was war or

armed conflict. The issue concerned the contract between the parties regarding cement. The arbitration after carefully scrutinizing the situation, issued an award stating that it was an armed conflict, thereby, subsisting the treaties between the parties. Similarly, the Indus Water Treaty signed in 1960 continued to subsist even after the war.

The next issue pertains to the implementation of IHL in Pakistan. The law regarding IHL concerns Geneva Conventions 1949. It has been a state practice that Pakistan has been complying with the Geneva Conventions, even though no legislation has been enacted for its enforcement. For example, after 1971 war, Pakistan treated its prisoners in a manner consistent with the Geneva Conventions. The Red Cross assessed the compliance of Geneva Conventions and stated Pakistan to be in conformity with it, but without adequate legislation. Pakistan enacted the Geneva Convention of Implementation Act in 1936, before the enactment of Geneva Conventions in 1949.

Moreover, IHL not only applies to AC situation, but also covers NIAC-meaning internal armed conflict within a state. For example, the Kashmir issue, concerning the situation where Indian army took control over the areas for a long time is considered to be NIAC. The International Committee of the Red Cross (ICRC) has played a vital role in the development of IHL and has been assessing whether the Geneva Conventions reflect the reality of armed conflicts and internal disturbances.

Thus, IHL is of considerable importance and holds significance in the modern world. In Pakistan there is a substantive implementation of IHL, evident from the way the army conducts it. Even though, Pakistan has not specifically enacted legislation, but it appears from the state practice that Pakistan operates in conformity with the Geneva Conventions. Furthermore, specific law making needs to be done for the implementation of IHL.

INTERNATIONAL COURT OF JUSTICE DECISIONS
(CASE OF NUCLEAR WEAPONS)

The International Court of Justice plays an immense role in the growth and implementation of International law. It is also known as the “World Court” and is a creation of a multi-lateral treaty. The International Court of Justice (ICJ) is one of the six organs of United Nations. It is based in The Hague, Netherlands. The ICJ is composed of 15 judges elected to nine year terms by the UN General Assembly and the UN Security Council. It is stated under Article 93 of the UN Charter, that all the state parties (192) to the UN charter are automatically parties to the Court's statute. Its main functions are to settle legal disputes submitted to it by member states and to give advisory opinions on legal questions submitted to it by duly authorized international organs, agencies and the UN General Assembly.

An advisory opinion is a function of the Court open only to specified United Nations bodies and agencies. In principle, the Court's advisory opinions are only consultative in character, though they are influential and widely respected. So far, ICJ has given over 115 decisions and resolved issues between states along with some advisory opinions. On 8 July, 1996, The ICJ handed down its Advisory Opinion on the request made by the General Assembly of the United Nations concerning the “Legality of the Use by a State of Nuclear Weapons in Armed Conflict”.

The initial request for an advisory opinion by the ICJ was put forward by the World Health Organization (WHO) on 3 September 1993, but the ICJ did not render an opinion on this request because the WHO was Ultra Vires (acting outside its legal capacity). Later another request was presented by the United Nations General Assembly in December 1994 which was accepted by the Court in January 1995. The General Assembly or the Security Council has the power to request advisory opinion from the ICJ under Article 96 of the UN Charter. The opinion provides one of the few authoritative judicial decisions concerning the legality under international law of the use or the threatened use of nuclear weapons.

Previously, there was no substantive theory or concrete debate over the issue of use, possession and legality of nuclear weapons. It was after the request made by the UNGA, the ICJ gave a detailed opinion regarding nuclear weapons. Apart from the 15 sitting judges, international lawyers from different states were called upon to put forward the arguments concerning nuclear weapons. The lawyers came from various states like, Australia, Egypt, France, Germany, Mexico, Iran, Italy, Japan, Malaysia, Qatar, Philippines, Russian Federation, Martial Island, Solomon Island and Costa Rica.

The foremost concern initiated by the ICJ was to examine whether it has the competence to deliver an opinion regarding nuclear weapons and as stated under article 96 of the UN Charter, the UNGA has a right to request an opinion from ICJ as opposed to WHO. The first issue dealt with by the ICJ concerned “the right to life”. The use of nuclear weapons posed a threat to life as under article 6 of International Covenant on Civil, Political Rights (ICCPR). The ICJ ruled that the use of nuclear weapons do not affect the Covenant. It is only in case of emergency, that the fundamental rights are suspended for that particular time period. However, Judge Higgins asserted that nuclear weapons were "not monolithic in all their effects" and that they included a variety of weapons.

Furthermore, under paragraph 30 of the decision, the ICJ ruled that the use of nuclear weapons has an adverse affect on the environment and could be considered harmful to use. The Court then returned to the question of the right to resort to force in self-defence under Article 51 of the UN Charter. The ICJ came to a conclusion and reiterated under paragraph 91 that "it cannot reach a

definitive conclusion as to the legality or illegality of the use of nuclear weapons by a State in an extreme circumstance of self-defence, in which its very survival would be at stake". The ICJ also argued that the usage of nuclear weapons is morally wrong, since it is catastrophic in nature and has unique characteristics. However, the court stressed upon the fact that the decision should be made solely on the grounds of law rather than morality.

Moreover, article 2(4) was also referred by the ICJ, as it prohibits the threat of or use of force and regards the acquisition of territory by use of force as illegal. The ICJ stated that the mere possession of the weapons did not constitute a threat, thereby, not declaring it illegal. The ICJ ruled that the use or threatened use of nuclear weapons was generally illegal, but could not determine whether there would be an exception to this general finding in the extreme circumstance of self-defense, when the very survival of a state was at stake.

Further, the ICJ in paragraph 48 clarified that the possession of nuclear weapons is per se not a threat to the use of force. The court also considered whether the use of nuclear weapon is permitted or prohibited by the treaty (paragraph 53). For example, the Non-Proliferation Treaty (NPT) legitimizes the possession of nuclear weapons. On the other hand, the Antarctica Treaty along with other treaties prohibits the use of nuclear weapons and forbids nuclear testing in some parts of the States. The important aspect regarding the nuclear weapons is that there is no single treaty directly prohibiting the use of nuclear weapons. Therefore, the retention of nuclear weapons is per se not an illegal act.

Moreover, the international lawyers argued that since most of the States condemns the use of nuclear weapons, thereby, evolving a custom, therefore, the use of nuclear weapons should be made illegal. The ICJ reiterated that custom is classified as the conduct of the State as opposed to the saying of the States. Therefore, the States still retain the nuclear weapons rather than prohibiting it. The Court concluded that there was no comprehensive and universal prohibition on the threat or use of nuclear weapons in conventional international law

The last issue discussed by the ICJ relates to the use of nuclear weapons as contrary to the principles of International Humanitarian Law (IHL). The IHL regulates the conduct of the war, armed conflict. The key limitations relevant to the present case are the principle of distinction and the prohibition on the infliction of unnecessary suffering. The principle of distinction provides protection to civilians caught up in armed conflict. Therefore, parties to a conflict are not permitted to make civilians the object of an attack or to use weapons that do not distinguish between military and civilian targets. The court gave the decision regarding the point affirmatively-use of nuclear weapons lead to the violation of IHL. The judgement of the ICJ also creates an obligation on the States regarding the disarmament in good faith.

Therefore, the advisory opinion issued by the ICJ embarked upon a new realistic view regarding the usage of nuclear weapons. It did not, however, excelled in giving a firm view over the legality or illegality of the nuclear weapons, but managed to clarify the principles governing it. In 2006, the UNGA passed a resolution requiring information from the States over the steps taken by them for the implementation of the advisory opinion. The findings of the ICJ created a chaos amongst various academics and states. The much controversial argument and debate was over the legality of use of nuclear weapons under the circumstances of self defence. The lawyers argued that this will further the growth of use of nuclear weapons by the states who are not member of NPT. Thus, the debate over this still continues and no conclusive decision is yet given on its usage.

LEGAL ASPECTS OF THE ATLANTIC CASE

A Pakistan Navy Aircraft on reconnaissance mission was shot down by Indian Air Force near the area of Ran of Kach. The Pakistani Naval Aircraft was not armed and it had not conducted any hostile activity which could have provoked the Indian Air force to shoot it down. This incident created a very tense and hostile situation between the two countries as the Indian Air Force had no legal justification or explanation to shoot down the aircraft. It was a severe loss for Pakistan as it lost one of the best officers in the navy. The government of Pakistan took this matter to the International Court of Justice (ICJ) where it was pleaded that the act of the Indian Air Force should be declared illegal and that the government of India should be directed to compensate for the loss suffered. However, the ICJ did not examine the merits of the case as it was decided that the ICJ did not have the jurisdiction to examine this issue. ICJ cited several laws which formed the basis of ICJ's refusal to examine this matter.

There are several laws and rules which were applicable to this situation:

- Paris Convention on Aerial Navigation of 1919
- Havana Convention on Civil Aviation 1928
- Draft Hague Rules on Aerial Warfare 1923
- Chicago Convention 1944
- ICAO – International Civil Aviation Organization (formed by the Chicago Convention 1944)
- Annexure “L” to Chicago Convention of 1944 - Aircraft Accident and Incident Investigation.
- International Air Transport Agreement of 1944.
- International Air Service Transit Agreement of 1944
- ICAO Rules for Settlement of Differences under the Chicago Convention.
- ICAO – Manual Concerning Safety Measures Relating to Military Activities Potentially Hazardous to Civil Aircraft.
- San Remo Manual on International Law Applicable to Armed Conflicts at Sea 1994.
- International Law Commission (ILC) Draft Articles on State Responsibility
- Article 2(4) of the UN Charter
- Statute of the International Court of Justice (ICJ)
- Agreement Between Pakistan and India on Prevention of Air Space Violation 1991.

At first this issue was considered in the light of the Agreement Between Pakistan and India on Prevention of Air Space Violation 1991. However there were several disagreements between the two countries. The Indian government argued that no prior notice was given by the Pakistani Authorities about the flight as they should have under the agreement and that the agreement did not apply to this situation as it was not an aircraft of the Pakistan Air force. Whereas the government of Pakistan objected by saying that even if no prior notice was given, the Indian Authorities had no right to shoot down the aircraft and they should have complained to the Air headquarters of Pakistan.

As this dispute could not be resolved by this treaty it was decided by the government of Pakistan to take this matter before the ICJ. The government of Pakistan filed a petition before the ICJ but the government of India opposed this. The Article 36(1) of the Statute of ICJ confers the jurisdiction upon the ICJ to resolve the dispute only if both the states agree. Under the Article 36(2) of the Statute of ICJ any member state can give a declaration that in any case that state will not contest the jurisdiction of ICJ. In this case Indian government had

given a declaration but by the virtue of Article 36(3) of the Statute of ICJ, this declaration did not stand as Pakistan was a member of the Commonwealth Countries. Thus this case was not decided on merits but was decided in light of procedural issues.

Apart from the remedy available with the ICJ, government of Pakistan had the option of taking this matter to the International Civil Aviation Authority under the Article 3 Chicago Convention 1944. In addition this matter could also have been taken up to the Security Council.

It is pertinent to mention in conclusion that Pakistan had various remedies available in this regard and that the mere fact that ICJ ruled in favor of the government of India over some procedural issues does not mean that Pakistan had a weak case.

THE INTERNATIONAL COURT OF JUSTICE AND THE LEADING JUDGMENTS

The local courts of a state cannot be compared to the International Court of Justice. A local court is formed under the constitution of that state and is binding on all the individuals of that state, whereas, the ICJ is the result of multilateral treaty and the subject of the ICJ are the individual member states.

ICJ came into being with the UN charter. Prior to the ICJ there was a Permanent Court of International Justice which was formed under the League of Nations. UN charter is a multilateral treaty which consists of 111 articles which includes the Statute of ICJ. It was decided that any state which ratifies the UN charter will also have deemed to ratify the Statute of ICJ. The member states were reluctant to forego their legal sovereignty because of which the role of ICJ was very restrictive.

Some important provisions of the UN charter are the Article 92, which makes the ICJ an integral part of the UN charter, Article 93, which makes all the members of the United Nations parties to the Statute of ICJ, Article 94, which binds the member states to the decisions of the ICJ, Article 95, which states that nothing in the UN charter shall interfere with agreements already in existence, Article 96, under which ICJ can give an advisory opinion on any legal question to the General Assembly or the Security Council, Article 96(2), which authorizes some other organs and special bodies of the UN to seek advisory opinion of the ICJ some of which are:

ILO – International Labor organization,
FAO – Food and Agriculture Organization,
UNESCO - United Nations Educational, Scientific and Cultural Organization, WHO – World health Organization,
IBRD – International Bank for Reconstruction and Development,
IFC – International finance Corporation,
IMF – international Monetary Fund, ICAO – International Civil Aviation Organization etc.

The procedure that the ICJ follows, in respect of a complaint by a state, is that, after the issue of jurisdiction of the court is resolved under the Article 36 of the Statute of ICJ, the Registrar, upon receipt of the application, marks the opening of the proceedings before the court which includes the written phase of the proceedings. In the written phase the parties file and exchange pleadings containing a detailed statement of the points of fact and of law on which each party relies. This is followed by the oral phase which consists of public hearings at which agents and counsel address the Court. After the oral proceedings the Court deliberates in camera and then delivers its judgment at a public sitting. The judgment is final, binding on the parties to a case and without a right to appeal.

Some of the important provisions of the Statute of ICJ are:

Article 34 which states that only states and not the individuals would be parties for the purposes of this court,

Article 36 states that the jurisdiction of the ICJ comprises all cases which the parties refer to it, Article 36(2) which refers to the fact that states can recognize as compulsory the jurisdiction of the court in all legal disputes concerning certain factors Article 38 states the rules and conventions to be applied by the court in deciding the disputes,

Article 61 states the factors to be considered when applying for the revision of a judgment, etc.

Over a period fifty years the ICJ has decided over a hundred cases and about nineteen advisory opinions. Each of these judgments and advisory opinions are considered to be a source of

international law. Some of the important advisory opinions are the Advisory Opinion on legality of nuclear weapons, the 1949 Advisory Opinion of Compensation in service of UN, the 1962 Advisory Opinion on the Expenses of UN etc. Some of the important judgments of the ICJ are the Libya VS USA case (Lockerby Case) in favor of Libya, the case Yugoslavia VS USA on the legality of the use of force issue, the Wall case in which Israel built a wall, in occupied territory, was declared as illegal. However these decisions are not in the true sense enforceable and this is greatly affected by the influence of politics.

ISLAMIC CONCEPT OF INTERNATIONAL LAW

The basis of Islam is justice and the social sense of justice which is “Adl”. We are deemed to do justice in all the circumstances. Law is instrument through which justice is given to people making the understanding of law very critical in Islam. When we apply this notion to International Law it is a fact that principles of International Law in Islam 1400 years ago are applicable even today.

Sources of Islamic Law are:

- 1) The Quran
- 2) Sunnah
- 3) The Opinion of the Ulema.

Islam stresses greatly on the concept of the rule of law and the concept of the supremacy of law. Islam does not discourage the development of law as the creation of law is important on certain occasions e.g. control over a territory was the factor that amounted to a state however now a state can only exist through treaties. Secondly, even in Islam, expansionism was an acknowledged and legitimate mode of acquiring territories. Islam gives the concept of Dar ul Harb (place of war) and Dar ul Aman (place of peace) which made law in line with that time.

The bedrock of Islamic Jurisprudence is the fulfillment of promise both individually and collectively with Muslims and non Muslims. The importance of the fulfillment of promise forms the basis of the law of contract and the writing down of contracts. This principle also applies to International Treaties. As the modern concepts of trade existed even in the early days, Islam provides a frame-work to uphold the importance of the fulfillment of promises in these concepts. Therefore it is in order to say that Islam is not in contradiction with International Law as it is adopted through treaties and if it is signed for or the commitment is made, it has to be honored. Thus there is no ideological conflict in the Islamic International Law and the Modern International Law.

Not a lot of work has been done in this respect. Shahbani wrote a book on this comparison and in the most recent times, Dr. Hameed Ullah wrote a book as well. The concept of the relation between the state and the individual and the concept of diplomatic immunity are very important in Islam of which Bait-e-Rizwan is an example. 

Law of human rights and Islam are also very closely connected. The “Khutba e Hujat ul Wida” is called the de facto charter of human rights in Islam. Today there exist numerous conventions and treaties e.g. the Human Rights Convention 1948 and none of them are in conflict with the modern international law.

There are various other examples where the modern international law is in line with the Islamic International Law e.g. environmental law, transit laws, laws relating to the sales of goods, laws of arbitration, the concept of state responsibility, humanitarian laws etc.

To sum up, Islamic international law had a futuristic vision as it aimed at the growth and development of law according to the developing world.

INTERNATIONAL TRADE LAWS

The laws controlling and regulating International trade have become one of the fastest growing areas of international law. International trade laws concerns rules and customs for handling trade between States or between private companies at an international level. There are two types of trade laws: substantive trade laws and procedural trade laws. The former gives rights and imposes obligations on the States regarding trade laws, for example World Trade Organization (WTO). While the latter deals with the procedure regulating trade laws between the States. In other words, the procedural trade law focuses on the legal steps taken by the States to follow and attain the aim specified under substantive trade law.

The enforcement of international trade laws between States is done through establishment of certain entities, having sole purpose of imposing rights and obligations on States. The trade is facilitated by various entities at international level. For example, United Nations Conference on Trade and Development (UNCTAD), which was established in 1964 as a permanent intergovernmental body, is the principal organ of the United Nations General Assembly dealing with trade, investment and development issues. While the UNCTAD covers the procedural aspect of trade laws, the United Nations Commission on International Trade Law (UNCITRAL) deals with the legal aspects of international trade laws and formulates and regulates international **trade** in cooperation with the World **Trade** Organization.

Similarly, International Institute for the Unification of Private Law (UNIDROIT) is an independent intergovernmental organization. Its purpose is to study needs and methods for modernizing, harmonizing, and coordinating private international law and in particular commercial law between states. International Chamber of Commerce (ICC) is also an intergovernmental organization with its head office in Paris. There are several other bodies responsible for making laws regarding trade.

The reason behind the growth and need for international trade laws dates back to 2nd World War, when the socio-economic conditions of the people became severe and peace was affected in the States. The idea was then laid down by scholars that it is not necessary to have peace alone without satisfying the socio-needs of the rank and file. It was propagated that in order to maintain peace, certain rights concerning children, women and labourers should be recognized. This led to the establishment of World Health Organization and UNICEF, being the first step toward maintenance of peace. Further, it was stressed that the trade should be facilitated in order to keep peace in States. In this regard, the United Nations, after reviewing the effect of social satisfaction theory, decided to facilitate trade via legislation, thus resulting in the establishment of trade laws and their enforcement between States.

United Nations Convention on Contracts for the International Sale of Goods (CISG) and Carriage of Goods by Sea Act was established in 1980 in Vienna. It deals and covers the aspect of sale of goods between states. In order to carry out smooth trade between States, certain criteria need to be fulfilled, like a legal relationship between the consignor and consignee must exist; laws relating to carrier regarding shipment and its liability towards the consignee and lastly existence of laws to deal with the customs and its clearing through customs. So, it appears that there is a liability owed by the sender to the receiver of the goods including the customs and the carriers' liability towards the receiver of the goods.

Article 1 of CISG states that the Convention applies to contracts of sale of goods between parties whose places of business are in different States:. Article 8 elaborates that statements made by and other conduct of a party are to be interpreted according to his intent where the other party knew or

could not have been unaware what that intent was. In other words it states that intentions will dominate the interpretation. Article 9 refers to the rule that parties are bound by any usage to which they have agreed and by any practices which they have established between themselves. Article 11 states that a contract of sale need not be concluded in or evidenced by writing and is not subject to any other requirement as to form. It may be proved by any means, including witnesses. Article 14 defines offer as a statement of willingness to enter into a contract on stated terms if accepted by the other party. Article 18 refers to acceptance and defines it as a statement made by or other conduct of the offeree indicating assent to an offer is an acceptance. It also reinstates that silence or inactivity does not in itself amount to acceptance.

Moreover, article 30 states that the seller must deliver the goods, hand over any documents relating to them and transfer the property in the goods, as required by the contract and this Convention. Article 31 refers to the mode of delivery. The CISG also suggests that the delivery time could be extended and the buyer can demand compensation if the goods are not in compliance with the specifications mentioned in the contract.

Moreover, the selling of goods also carries the burden of passing the risk and title of the property. The general rule being that once the contract has been entered into between the parties and the goods are separated, then the risk passes from the seller to the buyer. For example, Pakistan had to pay for the F 16 placed at Arizona because the title vested with Pakistan.

The United Nations Convention on the Carriage of Goods by Sea Act (the Hamburg Rules) was established in 1978, governing the rights and responsibilities between shippers of cargo and ship operators regarding ocean shipments. Since the basic rules on the carriage of goods were incredibly constant for the past 54 years, there was a dire need for a proper legislation creating awareness regarding carriage of goods by sea. As navigation developed, the safety requirements pertaining to carriage of goods via sea were given more importance and the debate was intensified creating greater responsibility, thereby, resulting in the Convention.

One of the major changes that the Hamburg rules adopted was that goods included live animals. Also, under article 4 of the Convention the responsibility of the carrier for the goods covers the period during which the carrier is in charge of the goods at the port of loading, during the carriage and at the port of discharge. The carrier is also under Hamburg rules liable for the damage occurring at the deck Cargo.

Therefore, shipping and trading under the laws established by the UN marks a new difference in the business world and creates greater responsibilities owed by the seller and the carrier towards the buyers. The Conventions play a vital role in the enhancement of the laws pertaining to the Carriage of goods. The laws also benefit and are in the interest of the States and lead to an effective trading system between the States. Even though in Pakistan the laws regarding the carriage of goods are primitive, but at international level the scope of sales of goods laws is growing wider with time and brings enormous benefit to all the States.



CONCEPT OF IMPLEMENTING LEGISLATION

Various treaties have been established under International law, which tend to create rights and impose obligations between different States. These treaties may be known by different names, like international agreements, covenants, conventions, protocols, or accords. Regardless of the terminology, there are three types of treaties: law making treaties; constituent instrument treaties and codifying treaties. Besides, the treaties are divided as being bilateral or multilateral.

There are two schools of thought regarding the implementation of international law, once a treaty has been signed and ratified. The first approach, also referred to as the civil law jurisdiction approach, states that once a treaty has been ratified by a State, it automatically becomes a part of the municipal/domestic law; these treaties may be seen as 'self-executing'. For example, the International Labour Organization (ILO) once signed by civil law countries like America and France automatically became part of their domestic laws.

On the other hand, the second approach, also known as the common law jurisdiction approach, holds that after signing and ratification of a treaty, it needs to be incorporated into the municipal law for it to create right and obligations, meaning thereby that these 'non-self-executing' treaties require 'implementing legislation'. For example, in Pakistan, the Industrial Relations Ordinance incorporates the ILO in the municipal laws of Pakistan.

For incorporation of an international law into municipal law, a lot of detailed examination needs to be done before enacting a Statute. For example, International Criminal Court (ICC) Statute created ICC and Pakistan needs to look at all the domestic laws prevailing in the State before ratifying it. The major problem, however, pertaining to the implementation of the international laws is that in Pakistan and India, the decision to ratify a treaty is taken by the Cabinet, whereas, the implementation procedure rests with the Parliament, thereby creating a legislative disconnect between the two organs of the state.

The implementing legislation, as a general rule, should be in conformity with the treaty law. In this regard, there are three choices available for a State once a treaty has been ratified:

- a. The State could make a new law, if no existing law of the state covers the law of the treaty; like the enactment of Maritime Zones Act 1976, which incorporated the Convention on Law of the Sea (CLOS) into the municipal laws of Pakistan.
- b. Identify an existing law as being already in compliance with the treaty. For instance, when UNSC passed a resolution 1624/2005, whereby it made incitement as a stand alone Act, Pakistan did not have to implement new legislation for it as, incitement was already an offence under Pakistani law under section 153, PPC. Or
- c. Amend an existing law to bring it in conformity with the law of the treaty.

The Convention on Law of the Sea creates rights and imposes obligations on all those who have ratified the treaty; it extends the right of the territorial water up to 12 Nautical miles, exclusive economic zone up to 200 Nm and continental shelf up to 350 Nm. There are 14 sections in the Maritime Zones Act as compared to the 304 articles of CLOS, thereby resulting in insufficient articles in the former law to impose rights and obligations on the State. Similarly, Geneva Conventions Implementation Act was adopted in 1936 by Pakistan, but it does not implement all the laws prevailing under the Geneva Conventions 1949. The implementation of international

laws via state practice in Pakistan is considerable, but the incorporation of these laws is not sufficient.

Moreover, Chemical Weapons Convention established in 2000 is a law making body pertaining to nuclear weapons under international law. Pakistan ratified the convention and it was implemented in Pakistan by way of incorporating it under the domestic law, resulting in the enactment of Chemical Weapons Convention Implementation Ordinance. Similarly, Carriage of Goods by Sea Act was adopted by Pakistan in 1925 following the Carriage of Goods by Sea Convention. There are, however certain treaties and conventions ratified by Pakistan, but no implementing legislation has been enacted in order to incorporate them; this results in non-implementation of international law.

On the other hand, there are certain domestic legislations that go beyond the laws stated under the international law. For example, Pakistan enacted Anti Money Laundering legislation in compliance with the Financial Action Task Force Regulatory Framework. The Financial Action Task Force on Money Laundering (FATF) is an inter-governmental body, whose purpose is the development and promotion of policies, both at national and international levels, to combat money laundering. The domestic law created an impact totally different from international law by using the term “conceals/uses”. A special court was formed under the domestic law, although it was not mentioned in international law. So, when implementing issues are made, an assessment must be made by Parliament based on their own insight regarding domestic laws.

In short, the incorporation of the international law into municipal law is one of the most important yet ignored areas of international law. It is the implementing legislation that strengthens the relationship between international law and municipal law, so it needs a lot more significance. To achieve this purpose, there is a dire need to develop expertise regarding the issues of ratification of international treaties and then their incorporation into the municipal law of the individual states.



INTERNATIONAL LAW ON MONEY LAUNDERING

An International crime is one that has its source in more than one country. A crime could be planned in one country, actually committed in other country, and then the criminal might run away to a third country. In order to hold all the persons involved an international crime, a prosecutor has to reach out to all the countries where any stage of the crime was committed. For this some kind of Mutual legal assistance (MLA) is needed between all the countries where any state of the crime was perpetrated. These crimes beyond the jurisdiction of one state are very difficult to handle and control.

One such crime of international nature is the crime of money laundering. It can be defined as the stealing the source of money generated from a crime. Fiscal offences like evasion of tax etc do not come within the purview of the crime of money laundering. The crime whose proceeds are being laundered is called predicate offence, which could be murder, drug dealing, terrorism, theft, fraud etc. Thus the crime of money laundering can be defined as the act of laundering money generated from predicate offences. A Prosecutor can either frame the charge for predicate offence or for only money laundering or for both the crimes. Both charges are tried in the same trial as both are committed in the same transaction.

Money laundering is declared a crime in Pakistan under Anti-money laundering ordinance, 2007, which was enacted in order to implement Financial Action Task Force (FATF) recommendations. FATF was tasked by the G-8 countries to work on the crime of money laundering and recommend specific measures for states and financial institutions to control it. G-8's consideration was that if money laundering is curtailed, it would discourage the criminal from committing the predicate offences as well, as they will not have money to continue to commit the predicate offences.

FATF came out with 40+9 recommendations, which have now become a de facto law on money laundering. FATF took the definition of money laundering from United Nations Convention against Transnational Organized Crime, 2000 (UNTOC), and gave recommendations to stop the crime of money laundering besides defining predicate offences. FATF recommendations have also found mentioning in a number of UNSC resolutions as well.

Recommendation 1: "Countries should criminalize money laundering on the basis of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 (the Vienna Convention) and the United Nations Convention against Transnational Organized Crime, 2000 (the Palermo Convention)"

As already mentioned, FATF described money laundering on the basis of United Nations Convention against Transnational Organized Crime, 2000 (UNTOC). Article 6 (Criminalization of the laundering of proceeds of crime) of UNTOC states:

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a)

- (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;
- (ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

(b) Subject to the basic concepts of its legal system:

- (i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;
- (ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counseling the commission of any of the offences established in accordance with this article.

2. For purposes of implementing or applying paragraph 1 of this article:

- (a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;
- (b) Each State Party shall include as predicate offences all serious crime as defined in article 2 of this Convention and the offences established in accordance with articles 5, 8 and 23 of this Convention. In the case of States Parties whose legislation sets out a list of specific predicate offences, they shall, at a minimum, include in such list a comprehensive range of offences associated with organized criminal groups;
- (c) For the purposes of subparagraph (b), predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;

FATF Recommendation 2:

Countries should ensure that:

- a) The intent and knowledge required to prove the offence of money laundering is consistent with the standards set forth in the Vienna and Palermo Conventions, including the concept that such mental state may be inferred from objective factual circumstances.

FATF Recommendation 5 suggests that a financial institution and other related institutions should know their customers, that is the customer due diligence and record keeping should be done. It further suggests enhanced threshold for due diligence for politically exposed persons.

FATF Recommendation 10

Financial institutions should maintain, for at least five years, all necessary records on transactions, both domestic and international, to enable them to comply swiftly with information requests from the competent authorities. Such records must be sufficient to permit reconstruction of individual transactions (including the amounts and types of currency involved if any) so as to provide, if necessary, evidence for prosecution of criminal activity.

Financial institutions should keep records on the identification data obtained through the customer due diligence process (e.g. copies or records of official identification documents like passports, identity cards, driving licenses or similar documents), account files and business correspondence for at least five years after the business relationship is ended.

The identification data and transaction records should be available to domestic competent authorities upon appropriate authority.

WORKING OF SELECTIVE UNITED NATIONS BODIES

International bodies are formed as a result of certain bi lateral treaties, multi lateral treaties or a resolution of an international organization. UN was created under the UN charter and it consists of six organs namely, United Nations Security Council (UNSC) , United Nations General Assembly (UNGA), Trusteeship Council (TC), Economic and Social Council (ESC), Secretariat and the International Court of Justice (ICJ). The bodies affiliated with the UN are not mentioned in the UN Charter, however they are linked with the concept and the preamble of the UN Charter e.g. UNICEF – The United Nations Children’s Fund, WHO – World Health Organization, ILO – International Labor Organization, IAEA – International Atomic Energy Agency etc. There are different committees formed under the UN system which draw their mandate from the Charter/Organs of UN e.g. Counter Terrorism Committee formed under the United Nations Security Council (UNSC), United Nations Commission for India and Pakistan (UNCIP) formed by the UNSC to resolve the territorial dispute etc.

There are various provisions in the UN charter. Some of the important provisions of the Charter are, the **Preamble** of the UN Charter which defines the objects and purposes of the UN charter which is to maintain peace, **Art. 2(4)** of UN Charter refrains the member states from the use of force against the territorial integrity of any state, **Chapter III** of the UN Charter defines the organs of the UN, Chapter IV talk about the General Assembly and the **Article 9** states that the UNGA shall consist of all the members of the UN, **Chapter V** talks about the UNSC and the **Article 24 (1)** confers primary responsibility on the UNSC for the maintenance of international peace and harmony, **Article 29** states that the Security Council may establish such subsidiary organs as it deems necessary for the performance of its functions, Art. 35(1) of the UN Charter states, “Any Member of the United Nations may bring any dispute, or any situation of the nature referred to in Article 34 to the attention of the Security Council or of the General Assembly”, Chapter VII of the UN Charter **Art. 39** states that the Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security, **Art. 51** states that nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, **Chapter X** talks about the Economic and Social Council, **Chapter XIII** refers to the Trusteeship Council, **Chapter XIV** refers to the ICJ, **Chapter XV** refers to the Secretariat and its competence, **Article 98** lists the duties of the Secretary General.

CASE OF A MULTI-LATERAL TREATY

Treaties are one of the most important sources of Public International Law. They can be classified into three main categories, depending upon their nature and scope. These are;



- 1) Bi-lateral treaties,
- 2) Tri-lateral treaties, and
- 3) Multi-lateral treaties,

Some prominent examples of such treaties are the South Asian Association for Regional Corporation (SAARC) which is a multi lateral regional treaty and as such a country outside this region or the subject matter of this treaty cannot join it. Similarly there are Universal Multi-lateral Treaties which are open for any state to ratify and join, globally, such as the United Nations.

The general format in which treaties are negotiated and drafted is that a treaty, that is open for all states to join to become a member, first needs to be ratified by an entrusted state meaning thereby that when a state is a member party to a treaty it would mean that the said state has ratified it.

One of the most important steps during the formulation of a treaty is that of negotiations e.g. if a new law relating to sea is to be formed the relevant venue is International Maritime Organisation (IMO). After the concerned parties have contacted the relevant venue a debate is followed and subsequently a committee is formed which forms the Terms of Reference (TOR) that are to be sent to IMO. Another debate on these terms takes place and once they are finalized, either the concerned body negotiates the convention or another committee is formed. It is important to know that states engage in extensive argumentation/ deliberations and a position is achieved where all the parties agree and this whole process is called negotiations. It is often said that the negotiation phase/ process is even more important than the drafting of the treaty itself. It's a lengthy process, for instance United Nations Convention on the Law of the Sea took 10 years. In addition to the afore-mentioned sometimes a member state voluntarily prepares a draft and roles it. It is then deliberated upon and additions are made from time to time, followed by the formation of sub committees and side committees.

UNCAC is a multi lateral treaty, negotiated by the United Nations general assembly, through a resolution directing/ seeking efforts to curb corruption. Subsequently some member states felt that a convention on the said subject is needed, as prior to it, corruption was a subset of United Nations Convention against Trans-national Organised Crime (UNTOC). An ad hoc committee was formed which is a replica of UNGA, only for the purposes of this convention. The committee prepares TORs through debates/discussions and the finalized document is sent back to UNGA which then orders the formation of a treaty based on TOR. This is followed by the volunteering by a member state to prepare a draft, just as a starting point of the convention.

UNCAC started negotiations that continued for two years and included three readings. Certain side meetings were also held in which members informally clear their position and muster support of their stance. These negotiations are carried out by those representatives of the state who are experts in the relevant field. A country can take a position either in writing or on the floor of the house. If a proposal is signed by a country, it is documented, numbered, circulated, deliberated upon and then referred to by different countries before it is finally accepted or denied.

The structure of UNCAT comprises, firstly, of a preamble which develops a conceptual link of the convention. The convention's purpose is then laid down followed by the definitions of all the

relevant and important terms used in the convention. Certain preventive measures are then listed in the convention following which is a series of offences under this convention. The structure also includes the enforcement mechanism, the process of ratification of the convention.

Thus, multi lateral treaties create a specialized area of law, opened to all states through a detailed methodical process of negotiation and the result is a treaty coming from the concerns of bright minds expanding the scope and content of International Law.

TREATY NEGOTIATIONS

Treaties are the foundations of and one the major source of International law; they are the basic building blocks of International law. Treaties can be bilateral or multilateral. As there exist no international legislature, so, laws at international level are made through mutual consultations and negotiations, which ultimately, after being drafted, are ratified and given a status of treaties or conventions.

The most important convention on treaties is the Vienna Convention which not only defines a treaty but also discusses about the negotiating states, contracting states and states which are not party to, and hence not subject to, a treaty.

Following are the elements of Treaty negotiations:-

1. Treaty Text
 - a. Conceptual framework, which describes the context of the treaty
 - b. The issue being handled by the treaty under the conceptual framework
 - c. Legal linkages with other treaties
 - d. Familiarity with International law
2. Delegation negotiating consists of diplomats, representatives, experts or lawyer of the negotiating state.
3. Structural aspect

During the negotiations of the treaties, there is an arrangement for translation of the speeches and discussions of the delegates into at least five U.N languages. So whatever the delegates say would be translated into different languages; thus the rule of thumb for the delegates is to speak slowly allowing translation. There should not be any emotions involved, but only logical points of view and low tone. There should be more substance than the emotions.

Moreover, in bilateral treaties, the negotiation skills –the ability to convince others about your stance -- are more important than the public speaking skills. In multi-lateral treaties, both skills matter.

FUTURE INTERNATIONAL LAW CHALLENGES

All laws follow progress; very few create progress. Therefore, laws evolve along with the passing of time and progress. When there was a need for contracts and agreements, related laws on contract were evolved; when need arose for punishing criminals, criminal laws were enacted; after the manufacture of auto vehicles, laws relating to them were established. Along with enacting the laws for the main issue, there also arises a need to evolve laws related to the associated issues, like traffic laws after the auto vehicles started coming on roads. Therefore, one new manufacture kicks start a series of laws.

Same is the case with International law. When there were no air crafts, there was no need for laws for safety of aircrafts and over flights; but once aircrafts were manufactured, a series of laws related to them were drafted. Similarly, after man's venture into space, need for space laws was badly felt, so space treaties were negotiated. Laws relating to ships evolved in the same way.

This chase of progress by international law poses the questions of future challenges of international law as well. Everything that's happening now or that would happen in future at the international level would create need for more effective laws. Therefore, we need to have a broad framework of these challenges. At least three important challenges to international law have been identified, which are forcing the International law experts to re-visit some of the settled issues of international law; they are as follows

1. Non-state entities;
2. Balancing human rights with anti-terrorism measures; and
3. Use of force.

Non-state entities

Until near future, people and institutions doing wrongs belonged to certain states. Thus a particular country was held responsible were the wrong acts of a national. Keeping this in mind, all treaties and conventions were made on this rule. But now the situation has changed, as such persons are constantly moving internationally; one such person is Usama bin Laden, who was a Saudi national, then moved to Afghanistan and now no where to be seen. His Saudi nationality no longer means that Saudi government would be responsible for his wrongful deeds. Similarly groups like Al-Qaeda that doesn't belong to any particular country and do not owe allegiance to any law are non-state entities. Despite the loose description that non-state entities are those who do hold themselves under the laws of any country and commit crimes.

Balancing human rights with anti-terrorism measures.

Recently, there has been a rise in international terrorism, which has imposed legal obligations on all the states to take aggressive measures against terrorists and their financing. On the other hand, International law forces on all the states to follow human rights religiously; besides, all the legal apparatus of states conforms to the norms of human rights requiring strict proofs to convict any criminals. But when force is used against an alleged terrorist, a lot of innocent people die as well. Similarly, the anti-terrorism legislations like the PATRIOT Act in US violate the rights of privacy of its citizens. This entails violations of human rights. So, we have to keep a right balance between the human rights and the anti-terrorism measures. These measures could be legal, administrative or operational. To strike out the afore-said balance, a state needs to point out and correct the human rights violations in these anti-terrorism measures.

Use of force

A state can only use force in self-defence or if authorized by United Nations Security Council. Like wise, anticipatory self-defence, reprisals; humanitarian intervention etc are also considered to be legal despite the fact that they have not been expressly mentioned in any international law treaty or convention. More recently, more ways have been discussed and debated by the international legal experts to make the physical intervention of one state into the territory of another state possible. Two such ways are when a state has been declared a failing state or when a terrorist attack originates from any country and that country is unable and unwilling to take care of it. There has been a lot of criticism about these two ways of allowing the intervention of one state into another; but till now no treaty or resolution on these two issues has been passed yet.

More challenges of International law are listed below briefly.

1. Issue of non-proliferation
2. Amendment of UN charter.
3. Enhancement of jurisdiction of International judicial forums.

Following are some of the International law challenges for Pakistan:

1. Kashmir issue
2. Siachin glacier
3. Sir Creek
4. Durand Line
5. Foreign terrorists organization (FTO's)

CONCLUSION AND OVERVIEW

International law is a discipline which discusses matters between states and states, citizens and states, organization and states, and organizations and organizations.

The foremost question that arises in the mind of an international law student is whether international law is really a law or not? The student would say that how can you classify International law as law when it does not have a legislature to make laws, an executive to enforce them and a judiciary to interpret them. But it, nevertheless is a law, due to the very fact that it has come into existence by voluntary agreement of the states; there may not be an international legislature, but treaties and conventions fulfill this purpose; there may not be a proper executive, but the world conscious enforces the international law; and finally there may not be a regular hierarchy of courts, but courts like International Court of Justice and International Criminal courts, to some extent, serve the purpose.

International law, like any other man-made law, has various sources, like treaties, customs, academic writings, international organizations, International court or arbitration. Among these, **treaties are very important; treaties are also known as conventions, protocols, or memorandum of understandings etc.** Customs also define many international law concepts. 

Then the question comes as to the relationship of International law with the municipal laws. Civil law countries do not have to incorporate an international law into their domestic laws, because a treaty once ratified automatically becomes part of the domestic law. On the other hand, in common law countries, implementing legislation is needed to incorporate an international treaty into the municipal law.

The next topic which was discussed in the International law course is the question of jurisdiction of states. Law of a state defines state's jurisdiction. The state law is applicable to its territory, nationality, universality like hijacking, piracy and genocide, and on different transactions. **There are also people on whom state jurisdiction is not applicable, like diplomats; it is called Diplomatic immunity.**

Another important question in International law is that how is a territory acquired and lost. Following are some methods: Acquisition through use of force, which is not allowed any more; adhesion; accession; prescription, accretion.

Law of recognition of a state is has also a lot of impact and repercussions on the international level when a new states comes into being. Recognition could be either de facto or de jure. There are also two different theories of recognition: constitutive theory and declaratory theory. Moreover, question of state succession is also important in retrospect of the law of recognition.

One aspect of International law which has gained a lot of importance recently is the law of sea. **There are a lot of conventions on it; the most important being the Convention of law of sea,** which states that the territorial waters of state extend to 12 miles. Moreover, exclusive economic zone of a state extends to 200 miles; continental shelf goes till 350 miles.

Besides the laws of sea, laws of air space and outer space are very significant with regards to the jurisdiction of a state on the air and space above it. A number of conventions and treaties related to airspace and outer space have come into existence; among them is 1944 Chicago convention. Besides, an International Civil Aviation Authority has been established to control the air space.

One interesting topic which has been hotly debated and discussed by international lawyers is the issue of Human rights and its world-wide violations. Human rights include right to life, liberty, dignity, free speech etc. These laws have been codified in the Universal declaration of U.N in 1948.

With the development of nuclear energy, a lot of relevant treaties have also come into place like Non-proliferation treaty, which aims for universal disarmament besides curtailing the proliferation of nuclear weapons. International Atomic Energy Agency was created to implement the mandate of NPT.

The issue of terrorism was also discussed in the lectures of International law. It has been discussed recently in great detail and with great fervor. Therefore, almost 13 major conventions related to this topic. Despite all these conventions, terrorism has not been properly defined as yet. The most important resolution of U.N after the 9/11 attacks is the UNSC resolution 1173, which is considered the mother of all treaties on International terrorism.



Another important and significant issue of international law is the Refugees law, which came into existence to handle the displacement of citizens of one state into the territory of another state due to the persecution felt by the citizens in the formers states. United Nations High Commission for Refugees has been set up to oversee the issue of refugees. Then there is a question of Internally Displaced Persons from one area of a country to another area.

One of the future challenges of International law is the area of Use of force. All kind of use of force has been prohibited by Article 2 (4) of the U.N charter, except in self defence or if authorized by UNSC. Lately more such exceptions like anticipatory self-defence, reprisals, hot pursuits and humanitarian interventions have been created, but they are still debatable.

Related to the issue of Human rights and use of force is the issue of International Humanitarian Law (IHL), which is also known as the law of wars/conflicts. It does not say when the force should be used and when not; all it says is that whenever force is used, or whenever there is an armed conflict, certain set procedures and rules have to be followed like principles of proportionality and the conduct during hostilities.

Another very important topic of international law is State responsibility. A state is held responsible for the acts of its organs and officials working in these organs; besides people who are not as such officials but are authorized to act in this capacity also come with in the ambit of state responsibility.

Then we discussed some Pakistan related case studies like Kashmir issue and Siachin with regards to international law. Both are legal issues that have been converted into political issues.