Public International Law

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1. Explain the History and development of International law (Question)

Introduction:

The word international law was used for the first time by Jermy Bentham in 1780. According to Jermy Bentham International law is a body of rules and principles which regulate the relations among the members of international community. According to Prof Oppenheim (in 1905) International law is the name for the body of customary and conventional rules which are considered legally binding by civilized states in their intercourse with each other. Sir Robert Jennings & Arthur watts, have revised Prof Oppenheim definition of international law International law is the body of rules which are legally binding on states in their intercourse with each other. These rules are primarily those which govern the relation of states, but states are not the only subjects of international law, international organizations and individuals are also subjects of international law.

- History and development of International law: International law as we find today is the product of the experience of the civilized states of the world and the continuous growth of many countries. According to Prof Oppenheim "international law is in its origin essentially a product of Christian civilization and began gradually to grow from the second half of the Middle Ages". The claim of the European scholars that the credit of giving birth to international law as we know today is that of the European countries. But S.S.Dawan refused to accept what the statement given by European Scholars (Ramayana, Mahabharata, Bhagavadgeetha and Kautilya).
- Every one religion gave much contribution for development of International law. They are Jews, Romans, Greeks, Hindus and Muslims.
- Jews: It is clear from the study of ancient history that when most of other states of the world were backward and less civilized, the Greeks civilization was quite advanced and the Greeks had achieved great advancements in different fields. Socrates, Plato, Aristotle, and other philosophers of Greece enlightened the world through different ideas and philosophies.
- They had formulated definite laws of war and peace.
- They used to solve their disputes through by Arbitration.
- Prior declaration was made before the commencement of War.

- There was also provision for exchange of War prisoners.
- All the above points evidence for us how Greeks gave a contribution for development of International law.
    - Romans: As compared to Greeks, Romans were capable with far greater talents for the developments of international law. Modern international laws were developed in 16^{th} and 17^{th} centuries. In this era Romans gave much contribution for evelopments of international law.
    - 1. Romans deserved the credit for developing the laws of War.
    - 2. According to them there were two types of war.
    - * just war
    - * unjust war

    Following were the grounds of waging just war

    - * Attack on Roman territories
    - * violation of the privileges of Ambassadors
    - * contravention of Treaties
    - * Assistance to enemy states by Friendly countries of Rome

    According to Romans war can be terminated on two grounds.

    - 1. treaty of peace
    - 2. Through conquest and annexation of the conquered territories.

    Romans had divided the treaties into 3 categories.

- 1. Treaty of Friendship
- 2. Treaty of Alliance
- 3. Treaty of Hospitality.
- Above points are says that romans gave good contribution for development of international law.
    - Jews: Jews gave much contribution for development of international law.

- How to enter into Treaties with states
- What are the procedure for Declaration of war
- Through by treaty only terminated the war
- Respect the rights of People
- To protect the women and children in war time
- Respect the immunities and privileges of Diplomatic Agent.
- Hindus: As pointed out earlier, some of the rules of international law were quite in a developed stage in ancient India. Through study of the Ramayana, Mahabharata, Manusmruthi, Kautilya Arthasasthras will justify the truthfulness of the statement. Bhagvat githa which is regarded a pious religious Text-Book by Hindus, has not only classified just and unjust wars but has also made a vivid discussions of them. A study of Bhagvat githa also reveals that the declaration of war before its commencement was essential. The duties of the state in administrative and external matters have been vividly discussed in kautily's Arthasasthras. According to Kautilya just as well as unjust means could be used in wars.
- The study of Ramayana and Mahabharata reveals that during that period diplomatic agent enjoyed many privileges and immunities.
- According to Manu "to fight and die in a just war was a good deed indeed.
- In view of Manu dishonesty or poisonous weapons were prohibited (nishedha) in war.
- To kill wounded and sick soldier in war is contrary to the rules of War.
- In that period definite rules were relating to the treatment of prisoners of War.
- Above points may be rightly concluded that Hindus contributed to the development of International law.
- Muslims: Muslim rulers of India had relations with other states. They received ambassadors of others states and entered into treaties with them. But the Muslim rulers lacked (pravinyathe) talents for the development of the rules of international law. The Muslim rulers recognised the distinction b/w combatants and non-combatants (a person or nation engaged in fighting during a war) had formulated rulers for protection to women and children during war. They observed their treaties in good faith. But they had a very bad custom of leaving the prisoners of war at the mercy of Imam who was empowered to make them slaves or even to kill them.

- 16TH and 17th centuries: Especially the modern international law was developed in 16th and 17th centuries. In this era Hugo Grotius gave great contribution for development of International law. Hugo Grotius was born in Holland in 1583. at the age of 15 years, he took the law degree at the university of Leyden.

- In 1609 his first book "mere liberum" was published. In his book he strongly argued for freedom of the sea. In 1625 published in his famous book "DE JURE BELLI AC PACIS". This book brought name and fame for him. This book focused on laws of war and peace. Therefore he is called as a father of modern international law.

- Some of the events are:

- 1. Congress of Vienna: the congress of Vienna, 1815 was a landmark event for the development of international law. It was the first European conference and formulated many rules of international law.

- Ex: Rules relating to international rivers, classification of diplomatic agent, etc.

- 2. Declaration of Paris, 1856: the declaration of Paris was a law making treaty in which many rules relating to naval warfare were laid down.

- 3. Geneva Convention, 1864: many rules relating to the wounded and sick members of the armed forces during land warfare were laid down in Geneva Convention of 1864. Killing of wounded soldiers prohibited and rules were made for providing certain facilities to them.

- 4. Hague Conference 1899 and 1907: Hague Conference 1899 and 1907 are rightly calculated as great developments relating to the development of international law. These conferences emphasized the settlement of international disputes through peaceful means. Many rules of international law relating to land warfare and naval warfare were formulated.

- 5. Treaty of Locarno: in 1936 France, Britain, Germany and Italy, etc., were entered into treaty that don't use the force for settlement of their boundary disputes and solve their disputes through peaceful means.

- 6. Kellogg-Briand or Paris pact (treaty) of 1928: this treaty was a land mark and it was a very significant international event for legal regulation over War.

- 7. Geneva convention, 1929: this convention was signed by 47 states of the world. Many rules relating to the treatment of Prisoners of war were laid down in this convention. Provide medical and other facilities to the prisoners of war.

- 8. Second world war: Almost all the above mentioned rules of international law were openly violated during Second World War which turned into total war. The Second World War indirectly led to the eventual establishment of the United Nations.
- The United Nations: the united nations Charter came into force on October 24, 1945 and thus United Nations was established. In the beginning of its member were only 51 which have now swelled to 194.
- Then it conducted several conference and treaties on different aspects in the world
- Important conventions are:
- 1. Geneva convention on Law of the Sea-1958
- 2. Vienna Convention of Diplomatic Relations-1961.
- 3. Vienna Convention of the Law of Treaties-1969, etc.

II.Explain the Nature of International law (Question)

Synopsis:

1. Meaning of International law
2. Whether international law is a true law or not
3. Types of international law
4. Weakness of the international law
5. Suggestions for improving international law
6. Sanctions in international law

1. Whether international law is a true law or not:

According to Austin (political superior authority): law is only enacted by political superior authority.

Hobbes and Puffendrof (superior political authority)

Holland, Bentham & Jethro brown are deny (refused) the legal character of international law. According to these jurists international law lacks an effective legislative machinery, an executive machinery and potent judiciary and above all the sanction which is necessary for the enforcement of law.

Some of the jurist says international is a true law:

- As pointed out by Prof Oppenheim, in practice, international law is recognised as law by the states and they consider it binding on them.
- In some states (USA and UK) international law is treated as part of their own law.
- Statute of ICJ provides that court should solve the dispute accordance with international law.
- International conference and convention treat international law as law in the true sense of the term.
- The United Nations is based on the true legality of international law.

2. Distinction between private international law & public international law:

Public International law:

- Public international law for its major part deals with states and lesser extent deals with individuals.
- Public international law is same for all the states.
- Public international laws are absolute.
- Public international law includes mainly of the rules recognised by states in their relations with each other and mostly international customs and treaties.
- In case of foreign element public international law will apply.
- In case of public international law , issues will be decided by ICJ

Private International law:

- Private international law deals with individuals.
- Private international law may be different in different states
- Private international law does not at all confer absolute rights.
- Rules of private international law are framed by the legislature of a state and recognised and developed by state courts.
- In the field of foreign element Private international law determines as to which law will apply.
- Private international law also decides which court has the jurisdiction to decide the disputes.

3. Weakness of the international law

***** It lacks effective authority to enforce its rules

* It lacks effective legislative (law making authority) machinery

* The ICJ has no compulsory jurisdiction in the true sense of the term.

* The sanctions behind international law are very weak

- ICJ cannot intervene in the matters which are within the domestic jurisdiction of states.
- Many rules of international law are uncertain and vague.
- International law has failed to maintain order and peace in the world.

4. Suggestions for improving international law:

- The ICJ should be given compulsory jurisdiction in the true sense of the term.
- An international criminal court should decide all the cases of international crimes.
- International law should be properly codified and scientifically revised from time to time.
- The machinery to enforce the decisions of the world court should be strengthened.
- The powers and scope of the activities of the international law commission should be expanded.
- The doctrine of judicial precedents should be applied in the field of international law.
- In order to strengthen the legislative machinery of international law, more law making treaties & conventions should be made and there should be a provision for their revision from time to time.
- The legislative activities of the general assembly should be further enlarged.
- The U.N. charter should be amended

5. Sanction in international law:

- There is great controversy among the jurist regard to sanctions in international law.
- There are two groups regarding sanctions in international law. (favor and against)
- Compare to municipal law, sanctions in international law are far less effective.

Starke has pointed out the following sanctions behind the international law

- Under chapter VII of the united nations charter, if there is threat to the international peace and security or an aggression has taken place, the security council can take necessary action to maintain or restore international peace and security.(Gulf war 1991,Iraq-kuwait)
- The decisions of the international court of justice are binding upon the parties to the dispute. Art 94 of the United Nations also provides that if a party to the dispute does not follow the decision of the court, the other party may approach the security council which can take necessary action to ensure the implementation of the decision.
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III. Explain the Basis of International law (question)

Synopsis

1. Meaning of international law

There are the two main theories which attempt to explain the basis of international law.

2. Theories as to the law of Nature.
3. Theory of Positivism

Other theories regarding the basis of international law

4. Theory of consent
5. Auto- limitation theory
6. Pacta Sunt Servenda
7. Theory of Fundamental rights

Theories as to the law of Nature:

- According to the exponents of this theory, international law is a part of the law of nature.
- States follow the international law because it is a part of law of nature which is a higher law.
- In the beginning natural law associated with religion. The jurists of 16^{th} & 17^{th} centuries, especially Grotius, secularized the concept of the law of nature.
- According to Grotius natural law as the dictate of right reason, for social nature man can enter into agreement or disagreement but should be commanded by god or author of nature.

Criticism regarding theories as to the law of nature:

- The meaning of term natural law vague and uncertain.
- It is not based on realities and actual practice of states.
- Natural law associated with religion only.
- Where we find the god in case of wrongful act.

Positivism Theory:

- Positivists base their theory on the actual practice of states.

- According to them in the ultimate analysis, will of the states is the main source of international law, they said state is binding because the states have given their consent for the rules of international law.
- They said states are sovereign in international level and they restricted their powers and accepted certain rules as binding upon them.
- **Criticism:**
- One of the weaknesses of the positivist theory is that it is fails to explain the binding force of customary rules of international law.
- Positivists based their theory on consent which has been severely criticized by jurists.
- There are some principles of international law which are applicable even on non-members of the U.N. although they had never given their consent for it.
- **Auto limitation theory:** This theory is also based on theory of consent and fails to explain the basis of international law. It is based on the presumption that state has a will. Moreover, auto-limitation is no limitation at all. (According to this theory, it is based on will of the state).
- **Pacta Sunt Servenda**: Which means that agreements entered in to by the states must be followed by them in good faith.(whether it international conventions, law making treaty or treaty of contracts states should followed in good faith).
- **Theory of Fundamental Rights:** This theory is based on the naturalistic viewpoint. According to this theory, before the existence of states, Man used to live in natural state and possessed some fundamental rights such as right of independence, equality, self-preservation, etc.

IV. Explain the Sources of International law. (Question)

Synopsis:

1. Meaning of international law

2. Art 38(1) of the statute of international court of justice explains about sources of international law. There are six sources of international law, there are

- International conventions –Art 38(1)(a)
- International custom – Art(38(1)(b)
- General principles of law recognized by civilized states- Art 38(1)(c)
- Decisions of judicial and arbitral tribunals- Art 38(1)(d)
- Juristic works- Art 38(1)(d)
- Decisions and determinations of principal organs of international institutions- Art 38(1)(e)

- **International conventions –Art 38(1) (a):** The term conventions applies to any treaty, protocol, conference or agreement. According to Art-38(1)(a) of the statute of international court of justice, it is the first source of international law. In the modern period, international convention/treaties are the most important sources of international law.
- Article 2 of the Vienna convention on the law of treaties 1969, "treaty is an agreement whereby two or more states establish or seek to establish relationship between them governed by international law.
  - International treaty may be divided into two types(**Law making treaties and Treaty Contracts)**

- **Law making treaties:** Law making treaties are those treaties which are entered in to by large number of States. These are the direct source of international law.

Law making treaties may be divided into **two** types

- ✓ Treaties enunciating the rules of universal international law.
- ✓ Treaties enunciating the general principles.

- ✓ **Treaties enunciating the rules of universal international law**: Those treaties which are signed by a majority of the states are called the Treaties enunciating the rules of universal international law. Example: U.N. Charter.

- ✓ **Treaties enunciating the general principles:** treaties which are entered by a large number of countries enunciated general principles of international law.

Examples: Geneva Convention on law of the sea 1958, Vienna convention on diplomatic relations 1961.

- **Treaty contracts:** Treaty contracts are those treaties which are entered into by two or more states. The provisions of such treaties are binding only on the parties to the treaty. Such types of treaties are also the source of international law because they help in the development of customary rules of international law.

- **International Custom:** International custom used to be the most important source of international law in the past. In the modern period, their importance has been lessened.

Meaning of custom: custom is a practice which has been repeated and followed by States and has ultimately assumed the force of law. (It has been accepted and recognized by force of law (judiciary).

Customary rules of international law:

- Customary rules of international law have developed in the following four circumstances. They are
- 1. Diplomatic relations between states.
- 2. Practice of organs of international institution.
- 3. State laws, decisions of the state's courts and state parliamentary or administrative practices.
- 4. Treaty between states.

Ingredients or Elements of Custom: There are four main elements of an international custom. They are

- **Evidence of general practice accepted as law**: Long duration is an essential element of a custom in municipal law. But this is not necessary for an international custom. Art-38 of the ICJ directs the world court to apply international custom as evidence of a general practice accepted as law. In the field of international law, customs have emerged in short duration. Examples: Customs relating to sovereignty over air space, Sovereign rights over the resources of the continental shelf.

- Uniformity and consistency: The custom should be uniform and consistent but complete uniformity is not necessary. Nevertheless, there must be substantial uniformity.

- **Generality of practice**: though universality of practice is not necessary, the practice should have been generally observed or replaced by numerous states.

- **Scotia case law:** Facts of the case- a dispute arose between USA & UK. The fact was the rules of navigation established by British orders in council in 1863. In the year of 1864 more than 30 commercial states accepted the principle. To avoid the accidents on sea at night steamer ship should have a white light and sailing ship should have different colors other than white. But one day dispute arose between the United States ship Berkshire and the British ship Steamer scotia. The Berkshire struck by the scotia because of the Berkshire failure to display colored lights according to customary law of the sea. Due to this British lost its ship**.** In this case Court held that United States ship will not follow the general practice adopted by the States. Therefore, UK is not held liable to pay any compensation to USA.

- Opinio juris necessitates

- Reasonableness

- **General principles of law recognized by the civilized states:**

Res judicata, estoppel etc. are the examples of the general principles of law recognized by the civilized by states.

R. Key, case-in this case the court ruled that international law is based on justice, equity and good conscience which has been accepted by long practice of states.

Barcelona traction case,- in this case also court applied the principle of estoppel.

Prof B. Cheng said international courts have recognized the following principles.

- Good Faith

- Responsibility

- Prescription

- Every court has a right to determine the limits of its own jurisdiction

- A party to a dispute cannot himself be an arbitrator or judge

- Res judicata

- In any judicial proceeding, the court shall give proper and equal opportunity of hearing to both parties.

- **Decisions of judicial and arbitral tribunals (Art-38(1) (d) -** this source includes international as well as State decisions. The arbitral decisions have still less value because it is generally said that arbitrators work more as mediators rather than as judges. Judicial precedent shall not applicable in the field of international law.

V. Explain the Relationship between International law and Municipal law (Question)

Synopsis

- Meaning of International law and Municipal law.
- Monism theory
- Dualism theory
- Specific adoption theory
- Delegation theory
- Transformation theory

- There are five theories, which explain the relationship between international law and municipal law. They are

- **Monism theory**: According to this theory, man is the root of all laws, whether they are international or municipal or internal. It means international and municipal law are the two branches of a single tree. Both laws are originate from a unified knowledge of law (codified Knowledge of law). According to kelson, international law and municipal law are the two faces of same coin. There is no difference between international law and municipal law because international law is superior in international level and municipal law is superior in domestic level. Exponents of this theory are john kelson, wrieght & duguit.

- Dualism theory: According to this theory, international law & municipal law are different laws. Both are two separate laws. Because,

  - Subjects are different,
  - Field is different,
  - Municipal law is the result of the will of the people of that state and international is the result of the common will of all states.
  - Municipal law differs from state to state but international law is universal for all the states in the world. Chief Exponents of this theory are Trippel and Anzilotti

- **Specific adoption theory:** this theory is propounded by positivists. According to them, the international law cannot be applied in sovereign states directly; unless and until that sovereign state specifically adopts that by way of enactments. Examples: ICCPR & ICESCR 1966, Human Rights protection Act 1993.

- **Delegation theory**: international law spreads universally, but this law has to undergo transformation, if it is applied in municipal law. This is called transformation theory. The supporters of this theory opine that without transformation, international law cannot be applied in internal law.

- **Transformation theory:** according to propounders of this theory, international law delegates the rule making power to each state in accordance with the constitution and rules of treaty or any other conventions.

- **State practice regarding relationship between international law and municipal law**

- **British practice:** the British practice relating to the customary rules of international law and treaty rules is different.

British practice regarding customary rules of international law: in British customary rules of international law are treated as part of their own law. But these are subject to the following conditions.

a. Rules of international law should not be inconsistent with the British Statutes.

b. when the highest court determines the scope of customary rule of international law, all the courts in Britain are bound by it.

- **British practice regarding treaty rules**: in Britain the practice relating to treaties is based on the constitutional principles governing the relations between the executive and parliament. The matters relating to negotiations, signature etc. comes under the prerogative powers of the crown. In case of some type of treaties the parliamentary consent is necessary, while in other cases no consent is necessary for their application. Consent is necessary for the following types of treaties.

  - Treaties affecting the rights of British citizens
  - Treaties which amend or modify common or statute laws of Britain
  - Treaties conferring additional powers on crown and
  - Treaties which impose additional financial burden on the government.

- **American practice**: in America also the practice relating to the customary rules of international law and treaty rules is different.

  - Practice regarding customary rules of international law: are treated as a part of their own law when it is not inconsistent with American laws.

  - American practice regarding treaty rules: in America international law have been placed in the same category as the state law.

  - In America treaties are divided into two types

  - 1.(self-executing treaties) become applicable in America without the consent of congress)

  - 2. Non – self Executing treaties whereas non self-executing treaties require the consent of the congress to become applicable in the field of state law).

- **Indian practice:** Indian practice regarding the relationship between international law and municipal law emanates from British practice. From the beginning British distinguished the customary rules of international law and the rules lay down by treaties. This was our pre-constitution situation.
  - ✓ After our constitution was framed, India adopted the practice everything in accordance with the constitution. In fact framers of our constitution had been inspired with the charter of UNO. This has been reflected in our preamble, Part-I to part –IV especially.
  - ✓ Art 51- promotion of international peace and security.
  - ✓ Art 51(c) provides that state shall endeavor to ensure the respect to international law and obligations arising out international treaties.
  - ✓ Art-253 provides that parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention made at an international conference.

VI. Explain the Subjects of International law and the place of individual in International law (Question)

There are three main theories regard to the subjects of international law. They are

1. Only states are the subjects of international law

2. Individual alone are the subjects of International law

3. States are main subjects of international law but individuals, international institutions and certain non-state entities are also the subjects of international law.

- **Danzing Railway official case-**

Facts of the case Poland state acquired the Danzing Railway Company from another state under a treaty. According to that treaty Poland government should provide special amenities (Facilities) to officials of Danzing railway. After acquiring that company Poland did not provide any amenities to them. They filed case before PCIJ against Poland. Poland government argued that Danzing Railway officials were not parties to the treaty, which was an international treaty and they are not subjects of international law. (Pcij gives the decision infavour of Danzing Railway officials).

Nuremberg trial case

Facts of the case- 20 Germen Nazi leaders (individuals) and six organizations (international institutions) committed genocides (Killing) during the Second World War. They were prosecuted as war criminals. The evidence proved that they committed with common planning and conspiracy. The Nuremberg tribunal was established after the Second World War to try the war criminals of Germany. The trial was started on 20-11-1945. Facts of the case show that individuals and international institutions are also subjects of International law.

The place of individuals in International law:

- As pointed out earlier individuals are also now treated as a subjects of international law. In recent times several treaties have been entered into wherein certain rights have been conferred and duties have been imposed upon the individuals. In this connection following may be noted.

- Pirates: pirates are treated as a enemies of mankind under international law. Every state can apprehend and punish them.

- Harmful acts of individuals: under certain circumstances states are responsible for the harmful acts of individuals. If a person causes to personnel property of ambassadors of another state, under international law state is responsible for his acts.

- **Foreigners:** responsibility of the state to protect the foreigner within its territory.
- **War criminals:** (in 1979) war crimes are committed by individuals and punishing them according to the provisions of international law.
- **Espionage**: (spies) (gudachararu) Kulbushan jadav case in Pakistan.
- The United Nations charter gives a place of importance to the individuals.
- The international covenant on Human Rights confers rights directly upon individuals.

VII. Explain the State Responsibility in different fields (Question)

Every state has its full power, sovereignty, and control over its municipal law. The internal law of a state shall not interfered by international law. Sometimes nationals of Russia reside in India for business purpose, and then he is called alien or foreigner in India. He should know the law of the land in India and should give the respect to such laws. In that time, if govt. organs caused any damage or its citizens violated the rights of such alien. Then state of India is held responsible for its organs wrong ful acts or its citizen's wrong ful acts.

- Definition of State Responsibility.

According to Starke "the rules of international law as to State Responsibility concern the circumstances in which and the principles whereby, the injured state becomes entitled to redress for the damage suffered".

- Article 5 of The Hague convention 1907 provides that if belligerent (Aggressive) state violates the rules of war, it shall be responsible for payment of compensation. It means if citizens, organs, local or public Authority or government of state caused any damage to foreigners or aliens or non-citizens of foreign state according to international law consent state is held responsible.

State Responsibility can be divided into two types.

1. Original Responsibility

2. Vicarious Responsibility

1. Original Responsibility: it is also called direct Responsibility. Responsibility which arises from organs of State government.

2. Vicarious Responsibility: it is also called indirect Responsibility. Responsibility arises from individuals of state.

State responsibility arises in different occasions. Such occasions are

- 1. State Responsibility in international Delinquency: (Wrong doing or Action going against the Law2.State Responsibility for injury to Aliens.
- 3. State Responsibility for acts of government organs.
- 4. State Responsibility for protection of Aliens.
- 5.State Responsibility for the acts of Mob violence
- 6. State Responsibility for the acts of Insurgents (Rebels)

- 7. State responsibility for contract with foreigners.
- 8. State Responsibility for breach of treaty or contract or agreement.
- 9. State Responsibility for in respect of Expropriation of foreign property.
- 10. State Responsibility for acts multi-National company.
- 1. State Responsibility in international Delinquency: Delinquency means Wrong doing or Action going against the Law. An international delinquency is any injury to another state committed by the head or government of a state in violation of an international duty.
- International delinquency is a wrongful act committed by the state alliance of another state directly or indirectly. Regarding this, two conditions are required

1. Wrongful act must be done by the head/organ/department/officials of the state against alien of another state.

2. The wrongful act must have been done against the principles of international law.

You Mans case (U.S V/S Mexico) 1926.

facts of this case this incidents were happened in Mexico. There were certain riots. To curb the riots in Mexico city, mayor gave an ordered to Army people to disperses (separates) the Americans. The army acted against the order of the mayor and fired at Americans. As result, three Americans were dead. It was imputed (assigned) against the Mexican Government. Even the army acted against the wishes of government also, state is held Responsible.

Yeager v/s Iran (U.S V/S Iran)

Facts of this Case: Yeager was an American national. He was employed in BHI, an American company in Iran. In February 1979, the Islamic Revolution took place. On 13-2-1979 Islamic revolutionary troops came to Yeager Apartment and order him to leave the office within 30 minutes and took him to Hilton hotel. He was detained for several days by them.at last he escaped from Iran. He claimed the compensation.

- **2. State Responsibility for injury to Aliens**: under international law state should protect the foreigner who comes from the foreign state for trade, business or tourism purposes. The state responsibility changes depending upon the circumstances. There are three particular circumstances. They are
- a) State responsibility for acts of individuals.
- Janes claim case (U.S. V/S Mexico 1926).

- Facts of the case: Janes he was a American and he was killed by carbejal in Mexico at mining place on 10-7-1918. This incident was seen by several persons. Regarding this Mexico did not take any action against carbejal. After completion of 8 years American government filed a case against Mexican Government and court passed an order to Mexican govt. should give 12,000$/- to depends of janes.

- b) State responsibility for acts of Mob-violence.

- c) State responsibility for acts of insurgents.(Examples: Kashmir, Punjab and Assam issues in india. LTTE issues in Srilanka).

- **3. State Responsibility for acts of government organs**: if the government organs/official caused any damage to alien, then state is liable directly and should pay compensation.

- **case law – Chorzow factory case (Germany v/s Poland) (1928).**

- Facts of this case: there was a German factory situated at Chorzow on Upper Silesia. (upper Silesia is a part of the territory of Poland) The Poland government expropriated that factory. The Germany claimed compensation for an indemnity for the damage caused by the expropriation by Poland was against the spirit and principles of Geneva Convention of 1922. The PCIJ gave its judgment in favor of Germany.

4. **State responsibility for contract with foreigners:** generally states can enter into contract with other state. But certain circumstance state can enter into contract with foreigners. If state fails to perform according to contract, individual can file a case under municipal law and get compensation. If it is exhausted, through by political means with the help of home state he can get the justice or he can file a case before ICJ with the help of native or parental state.

Union Bridge company claim case (US V/S Great Britain)1924.

Facts of the case: A war broke between Great Britain and orange free state of South Africa in 1899. union Bridge company supplied certain materials to port Elizabeth under a contract with government of orange free state. The officials of Orang free state removed the materials from Port Elizabeth and sold the goods without taking the consent of company. Company claimed damages.

5. State Responsibility for breach of treaty or contract or agreement: usually states have a treaty with each other. If states files to perform their treaty injured state can file case and get compensation.

Case law: I am Alone Ship case

Facts of the case: certain Americans were purchased Ship I am Alone from British govt it registered in Canada and used it for smuggling of Liquor. There was liquor treaty between USA and British in September 1928. the American officials fired and sunk the vassals I am Alone after chasing at a distance of 200 miles away American territories in the High – seas. The Canada government sued America for its wrongful act. The US-Canada compensation Tribunal awarded compensation 20,000/- pounds to Canada and held America liable.

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VIII Explain the types of Recognition with its differences. (Question)

Synopsis

1.Introduction

2.Meaning of Recognition

3. Theories of Recognition

4. Types of Recognition

5. Its differences

6. Legal consequences of Recognition

7. Non-consequences of Recognition

- Introduction: if any state or territory wants to enjoy the benefits of international law it should recognized as a state. If any territory or state wants to become a state it should possesses some elements. They are
- 1. a permanent population
- 2. a defined Territory
- 3. Sovereignty
- 4. a government
- 5. a capacity to enter into relations with other states.

Before understand the concept of Recognition first we should understand what is State. The American law institute defines a state. A state is under international law is an entity which has defined territory, permanent population is under the control of a government & engages in or has the capacity to engage in, formal relations with other entities.

- Generally Recognition means Acknowledgement of the status of an independent state. In the words of Prof. Oppenheim, "In recognizing a state as a member of international community the existing state declare that in their opinion the new state fulfills the conditions of statehood as required by international law.
- According to International Law, Recognition is the formal acknowledgment of the status of an independent State by other existing state.
  - **Conditions for Recognition of a new state:** According to Kelson, a community to be recognized as an international person must fulfil the four conditions. They are

- 1. the community must be politically organized.
- 2. it should have control over a definite.
- 3. this control should tend towards permanence.
- 4. the community thus constituted must be independent.

Theories of Recognition can be divided into two types. They are

1. Constitutive theory

2. Declaratory theory

- **Constitutive theory**: according to Prof Oppenheim, "a state is and becomes an international person through recognition only and exclusively. Constitutive theory gives utmost importance to process of recognition. According to this theory recognition is the most essential element. When one entity possesses elements of statehood, it cannot become a state in international level. It means if any entity wants to become a state in international level it should possesses essentials of statehood and it should be recognized as a state by already existing state.
- A political entity becomes a state only after obtaining recognition. Even though it has essentials of statehood, that entity could not become a state in international law, without recognition. Propounders of this theory are Hegal,Anziloti, Holland,Oppenhiem, etc.
- Examples: India-1947, Bangladesh-1971 (India & Russia) East timore-1999 (it consisting of 3 lakhs people) U.N.O.

Declaratory theory: Declaration means a document formalizing matters to be made known publicly. While constitutive theory utmost importance for process of Recognition. The declaratory theory does not give any importance to the process of recognition. According to this theory recognition of a state is formal one. It has no legal effect as the existence of a state is a mere question of fact.

- It means when one political entity possess essential elements of statehood, voluntarily declared itself in international level that I possessed all the elements of statehood therefore today onwards iam a state. Its shows that recognized by another state is not necessary. Propounders of this theory: Hall, Wagner, Brierly and pit corbet and fisher etc.
- Types of Recognition
- Recognition can be divided into two types. They are
- 1) Defacto recognition (Temporary)

- 2) Dejure recognition (Permanent)
- **1. Defacto recognition:** It is nothing but temporary Recognition. Defacto recognition is a provisional recognition of existing states to a new state. It is the first stage of recognition. It is an actual recognition, but may be withdrawn by recognizing state at any time.
- Examples: Israel is the best examples of this. Several states gives de jure recognition and some states gives de facto recognition.
- Taiwan: Taiwan is the best examples of this. Even today also several states given defacto recognition for Taiwan. Even lost its membership of U.N.O. Also till today it survives as a state
- **De jure Recognition:** is final, complete and law ful. Diplomatic relations are exchanged. It is final recognition.de jure recognition may be give directly and sometimes it may be given after de facto recognition. De jure recognition is final and irrevocable.
- De jure recognition is granted when in the opinion of the recognizing state the recognized state possesses all the essential requirements of statehood and is capable of being a member of the international community.
- As pointed out by Prof H.A.Smith, the British practice shows that three conditions precedent are required for grant of de jure recognition of a new state. Three conditions are
- 1. A reasonable assurance of stability and permanence.
- 2. the government should command the general support of the population.
- 3. it should be able and willing to fulfil its international obligation.

Distinction between De facto and De jure Recognition

- **De facto Recognition**
- 1. it is provisional (Temporary)
- 2. it is only a fact but not legal
- 3. it may be withdrawn at any time by Recognizing state
- 4. Diplomatic representatives are not exchanged
- 5. it depends upon wait and see policy
- 6. May not get the membership of U.N.O

- **De jure Recognition**
- 1. it is permanent and final
- 2. it is fully legal and Rightful
- 3. generally it cannot be withdrawn
- 4. Diplomatic representatives are exchanged
- 5. De jure recognition may be given without De facto Recognition. It can be given directly.
- 6. get the membership of U.N.O
- **Luther v. sagor (1921)**
- It was held that there is no distinction between de facto and de jure recognition for the purpose of giving effect to the internal acts of the recognized state. The fact in this case are as follows.
- in June, 1918, Russia nationalized timber and other industries. Consequently, Mill of the plaintiff was acquired. In August, 1920, the representatives of the Russian government entered into a contract with the defendant to sell some timber,etc. the plaintiff requested the court to declare that all the goods purchased by the defendant under the said contract are his property. The defendant contended that Russia was a sovereign state and by the act of a sovereign state, the ownership of the plaintiff was ended. Britain had given de facto recognition to Russia. The court decided in favor of the defendant. Because in internal matters of the state it's not necessary whether it got de facto or de jure recognition.

IX. Explain the Legal consequences of Recognition and Non recognition.

Legal consequences of Recognition:

- 1. Diplomatic relations
- 2. Treaties
- 3. To Sue and to be Sued
- 4. Immunities and privileges
- 5. State Succession arises.
- 6. Membership in United Nation
- 7. The courts of the recognizing state give effect to the past as well as present legislation and executives acts of the recogniosed state.
- 8. In regard to the property and diplomatic relations, the recognized state can claim certain immunity.
- 9. The diplomatic envoys of the recognized state get a number of privileges and immunities in the recognizing state.
- 10. The recognized state becomes entitled to sue in the courts of recognizing state.
- 11. Recognized state can purchase a property of recognizing state.

Consequences of Non-Recognition:

- 1.could not establish diplomatic Relationship
- 2 not entered into treaties
- 3. not have the capacity to sue and be sued
- 4. could not the membership of international community.
- 5. state succession not arises
- 6. cannot purchase a property of another state.
- **Recognition of insurgency:** Insurgency presupposes a civil war or political revolt in a state. In fact, insurgency is an intermediate stage between tranquility (peaceful) and belligerency. (waging war, nation at war)
- Insurgency means rebels against the government or political revolt in a state.

- Recognition of insurgency is the acknowledgement of fact situation for practical purpose.

Essentials conditions for recognizing insurgency

- Control over a considerable part of the territory
- Considerable support to the insurgents from the majority of the people living in the territory.
- Insurgents should be capable and willing to carry out international obligations.

Effects of recognition insurgency

- Insurgents are not treated as pirates
- The rebels of civil strife are treated as hostis generies humani (the enemy of human beings), until they are recognized as insurgents.
- 3. The international rules of war become applicable to them.
- Recognition of Government: Recognition of government is, sometimes, differs from the recognition of state. A state may be recognized and is admitted it as a member to the united nations. But the difficulty may arise in recognition of Head of the government. It is not legal. It is purely political.
- Examples : majority of the states does not recognize Taliban government in Afghanistan. Only Pakistan and few states have recognized it.india,America etc. have not recognized (but it has been recognized as a state by several states)

Luther v. sagor (1921)

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Great Britain v/s Costa Rica(1923)

- The legal government in costa Rica was ejected by Tinoco by force in 1917. he ruled the country for two years. He invited British nationals to invest the amount in industries. Accordingly some of the British industrialists went to costa Rica and established industries and businesses. Tinoco government had given undertaking giving guarantee for the money invested in that country. In 1919, Tinoco government was ejected by subsequent government by force. Many of the leading powers (states) did not Recognize the subsequent government in Costa Rica. But 20 states recognized it. The subsequent government rejected the obligations by enacting "The law of Nullities Act No.41". It caused a heavy blow against the British nationals. On behalf of its nationals, Great Britain claimed compensation. William H.Taft, the president of the united states supreme court was appointed as Sole Arbitrator with the mutual consent of Great Britain and Costa Rica.

- in the course of enquiry of Arbitration, the arbitrator discussed the question of Recognition. Costa Rica raised the objection in that Great Britain had not recognized the new government, thus it could not claim.

- the sole Arbitrator gave his award upholding the law of Nullities Act No.41. sole Arbitrator held that when state is not recognized as a state and its government is also not recognized then such state not have any jurisdiction to claim compensation because when it is not recognized its shows that it will not get independence and it is not a sovereign state in international level.

Afghanistan: Afghanistan measuring 6.47.497 sq.km. it was ruled by monarchy. Monarchy was overthrown in 1973. then after several persons ruled the Afghanistan. In 1989 USSR acquired it but withdrawn in 1989. then military council control the state but its plan was failed then it is under the control of Taliban. There are several revolutionary group each claiming head of the government but having control over in certain areas of Afghanistan. Laden came from Saudi Arabia to Afghanistan did lot of Terrorism Activities in the world. Even America, India and western countries suffers lot of problems. Therefore till today Afghanistan Taliban government is not recognized by all the countries in the world but only three states are recognized (Pakistan, Saudi Arabia United Arab Emirates).

- **Pakistan:** Nawaz Sharif was the elected prime minister of Pakistan. He is the leader of Muslim League party. His party won majority seats in parliament and formed the government. The military under the leadership of Musharraf overthrew and imprisoned him. But at first member states of U.N.O. did not recognize the Musharraf government. Later only one by one recognized it.

- **Palestine:** Palestine has been recognized as a state by more than 80 states(including india). Yasser Arafat leader of Palestine has been recognized as the head of the Palestine,

even though there is no proper administrative wing, ministry, place for secretariat, etc. its territories are also not clearly defined. Even then, Arafat's Government has been recognized by united nations also.

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X. defines State Succession. Explain the Rights and duties arising out of State Succession.

Synopsis.

- Meaning of State Succession
- Types of Succession
- Principles of the continuity of states
- Rights and duties arising out of state succession
- Succession regarding membership of United Nations
- Succession in International organization.
- The law of succession is seen in every jurisprudence, ex, Hindu jurisprudence, Muslim jurisprudence, Greek jurisprudence, Roman jurisprudence, etc. it is an inherent interest in every human being. The law of state succession is a new subject and still it is developing position. It is incorporated from roman law. The law of state succession is imbedded(inserted) in the principle of continuity theory. The governments may be changed but the state remains unchanged and its rights and liabilities are also remained and unchanged. It helps the international co-operation in business, relationships, etc. in good faith. It serves international peace and security.
- **Meaning of State succession**: A succession of international person occurs who one or more international person take place of another international person, in consequences of certain changes in the latter condition.
- State succession can be divided into two types. They are
- 1. universal succession
- 2. Partial Succession
- 1. Universal succession: if the legal identity of a community is completely destroyed there is said to be total succession and complete succession.
- Circumstances in which universal succession arises

a) Subjugation (defeat)

b) Voluntarily Merger

c) Break-up

- a) Subjugation (defeat): China subjugated Tibet and now Tibet as a part of the territory of china. Tibet lost its sovereignty and its independence.
- b) Voluntarily Merger: a state can voluntarily merge with another sovereign state. Then lost its identity as a state in international level.
- Examples: in 1975 Sikkim and India, after II world war Germany divided as two states. East and West Germany. On 03-10-1990 both states united each other.
- c) Break-up: A state may break up for several reasons and lead to birth of several states. When a state breaks into several parts and each part becomes a separate international person.
- Examples : in 1991 USSR

  In 1947 divided into two states.

  East Timore came into exist Nov, 1999 from Indonesia.
- **2. Partial Succession**: **Partial Succession** is a form of State **Succession** when a States loses its territory while retaining the personality and legal responsibility.

Partial succession takes place

a). When a part of the state revolt and after achieving independence

b) when a part of the state ceded(surrendered) to another state.

C) when a sovereign state loses part of its independence by becomes a protectorate of another state.

d) Purchase

e) Referendum/Plebiscite/ decree of the people.

Rights and duties arising out of state succession:

- 1. political rights and duties
- 2. Local rights and duties
- 3. State property
- 4. State Archives
- 5. State or Public Debts
- 6. Contracts

- 7. Concessionary Contracts
- 8. Laws
- 9. Unliquidated Damages
- 10. Nationality
- 11. Succession to property in foreign state.
- 12. Succession of states in respect of treaties.
- 1. political rights and duties: no succession takes place in respect of political rights and duties, hence succeeding state is not bound by the political treaties of the former state such as treaties of peace or neutrality.
- 2. Local rights and duties: A genuine succession takes place in respect of local rights and duties, such as, land, rivers, roads, railways, etc. in the case of German settlers in Poland, PCIJ ,in its advisory opinion held that private rights do not end by the change of sovereignty.
- **3**. State property: Article 11 of the Vienna convention on state property ,Archives and debts,1983 provides that successor state will get the property of the state. (if there is no agreement)
- 4. State Archives: Article 25 of the Vienna convention on state property ,Archives and debts,1983 provides that state Archives of the predecessor state passing to newly independent successor state. (if there is agreement) if there is bilateral agreement between two states ,it should not infringe the rights of people of that state, to information about history and to their cultural heritage.
- 5. state or public debts: : Article 36 of the Vienna convention on state property ,Archives and debts,1983 provides that successor state is not liable for debts of predecessor state or public debts. If there is no agreement) in case part of the territory of the state get independence from the parental state, it is liable for what the loan taken by parental state for that territory. (Art-38 and 40
- 6. contracts: Majority of jurists are of view that the succeeding states should be bound by the contract entered into by extinct state. But in west Rand central gold mining co.ltd v/s King, it was held that the succeeding state was entitled to decide whether it will accept the financial obligations of the former state. Until it accepts the financial obligations of the former state, it will not be bound by them.

- **7. Concessionary Contracts:** by Concessionary Contracts we mean the contracts through which certain concession such as digging of mines, laying of railwys,etc. are granted. Since these are of mostly local nature, the succeeding state is bound by them.
- 8. Laws: so for as the laws of the former state are concerned, civil law continuous until it is changed by the succeeding state.
- 9. **Unliquidated Damages for torts:** No succession takes place in respect of Unliquidated damages for torts. But, the succeeding state will bound if the former state had accepted or had decided to pay compensation.
- 10. Nationality: nationality is the link which individual can enjoy the benefits of international law.
- 11. Succession to property in foreign state: the succeeding state becomes the successor of the property of the extinct state situated in foreign situated in foreign country.
- 12. succession of states in respect of treaties. Treaties entered by former state shall not bound by succeeding state.
- Succession regarding membership of the united nations. Once a state lost its sovereignty, independence, integrity and identification in international level immediately state lost its membership because state only has he got the membership of U.N.O. but international community cannot get the membership.

XI. Explain the types of State Jurisdiction (Question)

- Generally State jurisdiction means it is the power of the state under international law govern persons and property by its municipal law. According to prof Oppenheim state jurisdiction is essentially the extent of each state's right to regulate conduct on the consequences of events. Each state has its own territorial jurisdiction over its people, property, etc. each state sovereign within its territories. It can make laws civil or criminal for its people. It is called territorial jurisdiction. Under international law all states are equal. Each state enjoys full freedom in its territory. It is due to reason that each state must survive. The internal law protects the law-abiding nationals of that country. The state punishes the wrong-doers, who go beyond the municipal law. Else, not only the peace and security of that country, but also of the entire world peace.

- **State jurisdiction can be divided into two types.**

- 1. Territorial Jurisdiction/sovereignty

- 2. Extra-Territorial Jurisdiction/Sovereignty.

- **1. Territorial Jurisdiction/sovereignty**: A state can exercise its sovereignty within its territory. It means that state is independent and sovereign with in its territory and it can make a law for its territory and its people. It is called Territorial jurisdiction.

For the purpose of the exercise of territorial jurisdiction, the customary international law recognizes the state territory as follows

- 1. the land situate within the boundaries of a state recognized by international law over which state has its control and power.

- 2. the maritime costal belt or territorial sea, according to the law of the sea.

- 3. a ship bearing the flag of the sate wishing to exercise jurisdiction and

- 4. ports.

- Section 2 of IPC provides that if any person committed a crime within the territory of india, our Authority have the jurisdiction to punish according to provisions of the code. Any person means either citizens of India or non citizens of india.

- Examples: 1. if Indian citizen committed a crime within the territory of india, then our Authority has the right to punish because he did the crime within the territory of india and he is a citizen of India.

- 2. if Pakistan citizen did a crime with in india, our authority has the right to punish because he did a crime with in the territory of india.

- 3. If citizen of pak and USA both killed one citizen in Delhi, after that both ran away to America, then the question is whether American courts has the jurisdiction to punish both or American citizen only.

Chung Chi Cheung v/s The King (1939)

- Facts of the Case: Chung Chi Cheung was a cabin Boy in a Chinese Armed ship and he was a British Citizen. He shot the captain and injured the Acting chief officer of the ship while was territorial Marinal Jurisdiction of China. The Captain died on the spot. The Acting Chief officer ordered the crew to get the ship to the port of Hong Kong and handed over the accused to the police of Hong Kong. The accused pleaded that the murder took place in the territorial water jurisdiction of china, and he should handed over to china. (which state has the jurisdiction to punish) both State has the right to punish for Britain he was a citizen and for China he committed the crime with in the territorial jurisdiction of china.

- **Veer Savarkar Case(1911)**

- Facts of The case: Savarkar was a famous Indian freedom fighter. He had revolutionary thoughts. He wants to free india from British clutches. While he was in London, he was arrested by British Government under The Fugitive Offenders Act 1881.while he was brought from London to India for Trail; he escaped from the ship and reached Marseilles Harbour. A French policeman arrested Savarkar and handed over him to a British policeman. French policeman thought that he did a crime in the board (ship)its my duty handed over him to British person. Later French government alleged a violation of its territorial sovereignty and asked the British government to return Savarkar to it as restitution. But British government did not heed the request of France. France filed a case against British before Permanent court of Arbitration. It gave its decision infavour of Great Britain. (once a state extradited the criminal to another state, which state received the criminal it cannot return the criminal to which state extradited because there is no rule in International law regarding this).

- **S.S.Lotus Case (1927)**

- Facts of the case: s.s. lotus was a French ship. While it was proceeding to Constantinople, it collided (hit or crashed) with a Turkish collier- the Boz-Kourt at the coast of Turkey. As a result, Turkish Vessel was sunk and eight Turkish nationals were died. The Turkish Government initiated criminal proceedings against the officers of both the ships and arrested them and convicted them. The French Government protested the trail and convictions, contending that the turkey had no jurisdiction.

- PCIJ held that Turkish Govt. did not violated the rules at the time of Punishing the French officers because the accident were happened with in the jurisdiction of Turkey.

- **Immunities from Territorial Jurisdiction:**
- International law confers exemption and immunities from territorial jurisdiction on certain individuals and entities, these are called "Immunities from Territorial Jurisdiction". They are
- 1. Diplomatic Agents: (Vienna convention on Diplomatic relations 1961)
- 2. Foreign sovereigns: this immunity is bases on the maxim "Par in porem non habit imperium" (No state can have jurisdiction over another state)
- Case laws: Mighell v/s Sultan of Johore (1894)
- 3. Public properties of Foreign sovereign state: how immunities are enjoyed by foreign sovereign as like his property also got the immunities. But one thing is that property should be owned by foreign sovereign state.
- 4. international organizations: All the international organizations are the international persons. They are equivalent with sovereign states. Therefore, they enjoy the immunity from territorial jurisdiction with the similar status of foreign sovereign.
- 5. Extradition Treaties:
- 6. Foreign Troops (videshi pade): some times a state allows another state to have free passage of foreign troops in its territory. It means state which grants the free passage, waives its rights and grants immunities to those foreign troops. (Iraq-kuwait war Saudi Arabia grants its territory to members of security council)
- 7. War ships and their crew: the immunities to war ships and their crew is similar to Foreign Troops
- **Extra Territorial Jurisdiction:** Where a state extends its jurisdiction beyond its territorial jurisdiction, it is called Extra-Territorial Jurisdiction. Section 4 of IPC explains about Extra-Territorial Jurisdiction. It provides that if Indian citizen did a crime outside of India, then our authority has the right to punish that criminal according to law of the land, because he /she is a citizen of india.
- According to this theory, in some cases, persons, property etc. may be situated physically within the territory, yet the state cannot exercise jurisdiction over them, vice versa, the property or persons may not be within the territory of the state may be able to exercise jurisdiction over them.
- The theory of Extra- Territoriality applies on the following cases.
- Sovereign and High officers of the state.

- Diplomatic Agents.
- Public Vessels of Foreign State.
- Armed forces of Foreign state.
- International Organisations.
- Sovereign and High officers Of the state: when sovereign rulers or high officers of foreign state visit other states, they are ordinarily regarded to be outside the jurisdiction of visiting state.
- Diplomatic Agents: the diplomatic agents are also immune from different types of jurisdictions of states in which they are appointed.
- Public vessels of foreign state: public vessels of foreign states generally treated to be outside the jurisdiction of foreign states where they may be for the time being.
- Armed forces of foreign state: the armed forces of foreign states also enjoy certain immunities from the jurisdiction of foreign state where they are sanctioned for the time being.
- International institutions:

XII. Explain the concept of State Territorial Sovereignty (Question)

- Each state is sovereign within its territory. The territory of a state comprises not only of its land mass but also its national waters (rivers, lakes, bays (natural harbor), estuaries, other enclosed areas and the territorial sea).
- **Meaning of State Territory**: state territory may be defined as portion of globe which is subjected to the sovereignty of a state. A state without territory is not possible, although the necessary territory may be very small, as with government.
- State territory includes land mass, national waters, Territorial waters/maritime Belt, Continental shelf, Exclusive economic zone and High sea/open sea.
- **International Rivers**: rivers which run through several states are described as non-national rivers. Such rivers are owned by more than one state; each state owns that part of the river which runs through its territory. Rivers which are navigable from the open sea and pass through several states, between their sources are called international rivers.
- Inter-oceanic canals- are the canals which connect international water ways and are available for the shipping of all states. Their use and control are governed by international treaties.
- The most important oceanic canals are
- Suez Canal
- Keil Canal
- Panama Canal
- **Suez Canal**: it is the most famous inter-oceanic Canal. In the beginning it was under control of French government. Later on it came under the control of British govt in 1954. a treaty was concluded between British and Egypt whereby Britain withdraw its force from the Suez canal. In 1956 Suez canal was nationalized by Egypt. France, Britain and Israel reacted strongly against this action of Egypt and made a joint armed intervention to prevent Egypt from nationalizing the Suez canal. The problem was resolved through the efforts of Russia, security council and the general Assembly. Subsequently all the states shall have the right of shipping over this canal.
- **Keil canal**: in the beginning this canal was under the control of Germany. After the First World War, it was thrown open for all the states. (it is another important inter oceanic canal)
- **Panama Canal:** panama canals connect Atlantic Sea with the pacific sea. Under the treaty of 1901 the panama canals came under the control of U.S.A. this is a very

important canal for commercial and transport purposes. Recently there has been a lot controversy between panama and America regarding the control and use of this canal. In March 1973, the Security Council held a session on panama. In this session a proposal was brought which could have removed the control of America. But this proposal was rejected by America. At last panama and America states entering into fresh treaty, in 1973 onwards panama and America both control over this canal equally.

XIII. Explain the Modes of Acquisition and loss of State Territory. (Question)

- Meaning of State
- Meaning of State Territory
- Modes of Acquisition of State territory are

1. Occupation
2. Prescription (long use without interruption)
3. Accretion (increase through by natural growth)
4. Cession (surrender)
5. Annexation /conquest (through by war) (Addition)
6. Lease
7. Pledge
8. Plebiscite (decree of the people)
9. Purchase
10. Newly born states (through by revolution new states were born from their parental state.
11. Agreements/treaty

1. Occupation: according to starke "occupation consists in establishing sovereignty over a territory not under the authority of any other state, whether newly discovered or an unlikely case abandoned by the state formally in control.

Essentials of occupation:

- Occupation must be actual (real). It should not be nominal.
- Occupation recognized only upon the actual exercise of sovereignty.
- Sometimes, occupation may also be preceded by discovery. Discovery of a new land gives good title.
- There must be strong intention and desire to have the occupation of that.
- It must be open and public and involve the continuous, peaceful display of state authority extending over a long period.
- A mere forceful occupation does not give a rightful title to the occupier.

Island of Palmas Arbitration case:

- Palmas Island is very Small Island, measuring two miles. Having 1000 population only, near Philippines. Before 1898 the Philippines was under the control of Spain.in the Spanish American war of 1898, Spanish lost Philippines to America. America claimed that I have acquired that Palmas island through by treaty with Spain. And this island was discovered by Spains. Therefore in 1906 American officials visited to Palmas Island and opine that land belongs to America.

- On the other hand, Netherlands claimed to have occupied it since 1700. According to the court of Arbitration, island of Palmas was a part of Netherlands because before America visited that territory, from 1700 Netherlands government exercises their actual continuous sovereignty over islands without any interruption.

Eastern Green land case:

- On July 10, 1931, Norway declared their sovereignty over the eastern part of green land through a government decree. On the other hand, Denmark also claimed her sovereignty over the said area. During these hot exchanges, the Second World War was declared. After that several allied powers declared that eastern green land should belong to Denmark only. The foreign minister of Norway also admitted and supported the declaration of allied powers.

- However, Norway govt filed a proceeding before the PCIJ.

- The court by a majority decided that eastern green land should belong to Denmark only. As the intention claim and occupation were displayed very clearly on the part of the Denmark.

- **Andaman Island issue:**

- Andaman Island very near to Indonesia but it's very far away from India. These Islands have been under the control and occupation of India since British government. Indonesia government argued that it belongs to us because it's very nearer to us but government of India argued that it belongs to us because since British period it was under our control, therefore it belongs to us.

2. Prescription: A claim which is founded on long use, the operation of long or immemorial possession or use of a thing and uninterruption use and enjoyment.

3. Accretion: it means territory is increased through by natural growth. It is a geographical process. Due to floods, eruption of volcanoes, raising of corals in the shape of islands create certain new lands and add the territory of the state. It is called Accretion.

- **4. Cession**: means surrender. A sovereign state surrenders some of portion of its territory to another sovereign state. The cession of territory may be happened on the basis of 3 grounds.
- Voluntarily
- compulsion as a result of war
- Amicable settlement between countries to avoid war of conflicts.
- Examples: Berubari is a small area having 9 square miles situate in the west Bengal. There was an agreement between india and pak in 1958 by which india transferred the area of berubari of india to pak(now it is in Bangladesh)
- **5. Annexation** /conquest (through by war) (Addition) (in 1959 State of China through by war acquired State of Tibet and in 1962 through by war State of China acquired 10,000 square KM territory from India.)
- **6. Lease**(1897 -1997 China leased Hong Kong territory to Britain for a period of 100 years)
- **7. pledge**
- **8. plebiscite**(decree of the people)(through by plebiscite (election) East Timore people got independence in 1999 from State of Indonesia)
- 9. purchase (USA purchased Alaska territory From USSR for research purpose in 1854) and napoleon sold his Luciana territory to USA for Rs 3,00,000/-)
- 10. **Newly born states** (through by revolution new states were born from their parental state.
- 11. **Agreements/treaty** (1960 Berubari) to avoid the war between India and Pakistan, through by treaty Govt. of India transferred its part of territory to Pakistan in 1860. Its popularly known as Berubari.

Modes of loss of Territory are:

- **There are seven modes through which a state may lost its territory.**
- 1. Cession: as a state acquires the territory through cession, the other state loses it.
- 2. Operation of Nature:
- 3. Through by Democratic means (merge).

- 4. Revolt: sometimes a state may lose its territory and a new state may emerge. Example (Pak-Bangladesh)
- 5. Dereliction: when a state renounces part of its territory or fails to exercise or slackness, to exercise sovereignty over it, then it may lose such territory. Such examples are however, very rare in history.
- 6. Losing a Territory by granting of Independence to a colony:
- 7. purchase:
- 8. Treaty/Agreement.

XIV. Define Nationality. Explain the modes of acquisition and loss of Nationality. (Question)

- **According to Prof Oppenheim Nationality is the link through which an individual can enjoy the benefits of international law.**
- **Modes of Acquisition of Nationality.**

A nationality may be acquired by any one of the following ways.

- 1. by Birth
- 2. by Naturalization
- 3. by Resumption (first loose again he will get)
- 4. by Subjugation(conquer, war)
- 5. Merger (in 1975when Sikkim State merge with in India automatically all the Sikkim people lost the Nationality of Sikkim and got the nationality of India1975)
- 6. by migration(to leave one country)

Modes of loss of Nationality:

- **1) By Release:** (when he acquired the nationality of one State, automatically he lost the nationality of another State**.**
- **2) by deprivation:** (Removal) (if state prohibits its citizens to work in another country, then without consent of state if he works**)**
- **3) By Renunciation:** if any people have two states nationality, then he renounces any one states nationality.
- **4. By substitution:** in 1897 state of china leased its part of the territory to England for a period 100 years. After completion of period the people can choose either England or china.
- **5. by long Standing residence in abroad:**

Nottebohm case:

- Born in 1881 in Germany, Nottebohm went to Guatemala in 1905. but he continued his business relations with Germany and went to Germany several times. After 1931, he visited his brother in Liechtenstein. In 1938, he visited his brother in Liechtenstein. In 1938, he left Guatemala. After reaching Liechtenstein, he through his attorney, submitted an application for naturalization as a citizen of citizen of Liechtenstein. And the same

was granted in October in 1939. he returned to Guatemala at the beginning of 1940 on Liechtenstein passport and in Guatemala his change of nationality was enrolled on the register of aliens. As a result of Second World War Guatemala confiscated the property of Nottebohm and arrested and transferred to USA. Then he went to Liechtenstein. In 1951 Liechtenstein filed a case before ICJ.

- **Dual or Double Nationality:** The concept of **dual** nationality **means** that a person is a **national** of two countries at the same time. Each **country** has its own nationality laws based on its own policy. Persons may have **dual** nationality by automatic operation of different laws rather than by choice.

XV. Define extradition and explain the essential conditions for extradition (Question)

Synopsis:

- Introduction
- Meaning of Extradition
- Object of Extradition
- Essential conditions for Extradition
- Cases
- 1. Haya Della Torre case
- 2. Sucha Singh case
- 3. Dharma Teja Case
- 4. Dali lama Case
- 5. Abu Salem Case
- 6. Nadeem Case
- 7. Dahood Ibrahim Case
- 8. Re Munier Case

Oct 24th1945 is the green letter day in the history of the world. Because on that day only very important leaders of the world established one of the strongest international institution in the world, it's popularly known as United Nations organizations. One of the main objects of U N O is to maintain international peace and security. With co-operation of states only, UNO can achieve its goals. Its shows that, it is the right and social responsibility of every country to punish the culprits, criminal offenders, anti-social elements. Else, the peaceful atmosphere of the country spoils.

In modern world states are not only the subject of international law, even individuals, international institutions and non-state entities are also subjects of international law. Each state exercises complete jurisdiction over all the persons with in its territory.

- If a person committed a crime within the territory of the state, a state can punish the criminal under municipal law or law of the land. But a difficult problem arises when a person after committing crime runs away to another country, in such a situation how injured state can punish the criminal. Through international cooperation/treaties only state can punish the criminals; otherwise he will become a dangerous to the world.

- In modern era crimes has no boundaries but criminal law and states had its own jurisdictions. Territorial jurisdiction plays an important role to bring the criminal before judiciary. Therefore if criminal flees from the territorial jurisdiction of the state after committing an offence, regarding this, the law of extradition plays an important role to bring back the fugitive.

- Where a person who has committed an offence in one country escapes to another, what is the duty of the latter with regard to him? Should the state of asylum try him in its own country according to its own laws or send him up to the country whose law he has broken? To the general question international law gives no certain answer.

- The father of modern international law "Hugo Grotius" in his book "***De Jure Belli ac Pacis***" said that 'it is the duty of each state either to punish the criminals or return them to the states where they have committed a crime'. Basic principle is that in international law every state has the right to punish the criminals either he committed a crime in the country or outside the country. If the state is incapable to punish, then it can surrender or handed over the criminal to another state where that person was committed an offence.

- In modern world it is argued that every state is sovereign and no one state exercises its jurisdictional authority of another sovereign state. But mutual cooperation of states for the maintenance of law and order and the administration of justice demand that nations should cooperate with one another in surrendering fugitive criminals to the states in which crime was committed particularly because

- Where he has committed the offence that country has the right to punish because more evidence is available in that country.

- That country has the greatest interest in the punishment of the offender to ascertaining the truth.

- In the words of Prof Oppenheim "extradition is the delivery of an accused or a convicted individual to the state on whose territory he is alleged to have committed or to have been convicted of a crime, by a state on whose territory the alleged criminals happens to be for the time being".

- According to Starke the term extradition denotes the process whereby under treaty or upon a basis of reciprocity one state surrenders to another at its request a person accused or convicted of criminal offence committed against the laws of the requesting state.

Extradition is useful for the following two reasons.

- Severe offences do not go unpunished (must be punished)

- Demanding State may have good proof to penalize the offender or criminal.

Object of Extradition are:

- To punish the criminals
- To give justice for Injured State
- To protect the valuable rights of states
- To prevent criminals who flee from a jurisdiction to escape from punishment
- Criminals are surrendered as it safeguards the interest of the territorial State.
- Extradition is based on mutual cooperation.

Essential conditions for Extradition:

- 1. Political Offender
- 2. Religious Offender
- 3. Military Offender
- 4. double Criminality
- 5. bilateral Treaty
- 6. Rule of Speciality
- 7. Evidence/Prima facie
- 8. Conditions
- 9. procedure
- 10.Its own Nationals
- **Political Offender**: Extradition between two countries can be welcome in cases of criminals only and not for political offenders. In international law extradition for political criminals is not permitted. Political crime means if crime is related to politics, if committed from political motives or committed for political purpose.
- Religious offender: religious offense means any action which offends religious sensibilities and provokes negative emotions in people with strong belief and which is usually associated with an traditional response to, or correction of, sin (immorality).
- **Double Criminality**: the specific offence for which his extradition is sought for, must be an offence in the State requesting for extradition and the state extradited accused. This is called rule of double criminality. For example, Murder and Bigamy.

- **Bilateral Treaty**: extradition is generally a matter of Bilateral Treaty. It has been held that there must be a formal treaty not simply an agreement or notification. Therefore without extradition treaty no one state will not extradite the criminal because its not a law or rule.

- **Rule of Speciality:** when an accused is extradited then the receiving state must try him for that Specific offence for which his extradited was sought for. It means for what offence extradited the criminal for such offence only receiving state conduct a trail.

- **Evidence/Prima facie**: there should be sufficient evidence for the crimes for which extradition is requested. It should prima facie appear that the accused has committed the crime. without evidence no one state should not surrender the criminal.

- **Conditions**: the conditions mentioned in the extradition treaty and other formalities must be also fulfilled/ observed.

- When a person is accused of having committed a crime and his extradition is sought for, it is not necessary that accused must be present in the state where the alleged crime was committed.

- **Its own Nationals:** generally states do not allow the extradition of their own citizens. But, this has been criticized. Even today also several states adopted the rules that not allow the extradition of their own citizens**.**

- ***Haya De La Torre's Case***

- a rebellion took place in Peru in 1948 but Failed. The Government issued an arrest warrant against rebellion leaders. Haya De La Torre was one of the Peruvian leaders against whom arrest warrant was issued. When this information received by Haya De La Torre, immediately he sought asylum to State of Colombia Embassy, situate in Lima capital of Peru. Colombia Government granted asylum on 03-01-1949. When this matter known by State of Peru, it requesting to Colombia Government to surrender Haya De La Torre because he did lot of rebellion activities against Peru State and also one of the main rebellion leader but State of Colombia refused to surrender or extradite him because he is not a criminal but he is a political offender and decided to take him to Colombia. Peru refused to leave him out of country, and arranged army around the Embassy of Colombia in Lima so that Haya De La Torre should not escape from the State of Peru. Colombia brought a suit against State of Peru Government before International Court of Justice (ICJ). Peru Government argued that Haya De La Torre was a Criminal, and he should not escape from the punishment and should be extradited by Colombia Government. But Colombia Government contended that Torre was a political offender and he was entitled to asylum. The international Court of Justice declared that Colombia was not to bind to surrender the refugee, treating Haya De La Torre as a Political offender

- **Re Castioni case**

In this case extradition of a man named Castioni was accused of murdering a member of the State Council of the canton of Taconite. Political discontent was going on in the said Canton for some time. An armed mob attacked the municipal palace and killed a member of the state council. There was evidence that the shot had been fired by Castioni . But the Queens Bench of England held that Castioni had committed a political crime and therefore he could not be extradited.

Re Meunier Case

- He was an rebel and was charged with causing two explosions in a parish Caffe and some barracks. After committing the crime he fled away to England. The French govt. requested for the extradition. The Accused contended that he cannot be extradited because he was accused of a political crime. In this case the accused did not belong to any particular political party. He was anarchist and was opposed to all sorts (kinds) of govt. the court ordered for his extradition.

Dalai Lama Case

- when State of China acquired the whole territory of Tibet, then Religious leader of State of Tibet they came to India along with his followers and requested to Government of India to give Asylum in its territory. In those periods Jawaharlal Nehru was the Prime Minister of India and he accepted their request granted asylum to them in its different territories.

Sucha Singh Case

- Sucha Singh murdered of former Chief Minister State Punjab Sri Prathap Singh Kairon. The he fled to State of Nepal. There was a Extradition treaty between india and Nepal in 1953. when this matter known by india, then our govt. request to State of Nepal to surrender of Sucha Singh. After consider the evidence govt. of Nepal Extradite the Criminal to India.

Veer Savarkar Case(1911)

- Facts of The case: Savarkar was a famous Indian freedom fighter. He had revolutionary thoughts. He want to free india from British clutches. While he was in London, he was arrested by British Government under The Fugitive Offenders Act 1881.while he was brought from London to India for Trail, he escaped from the ship and reached Marseilles Harbour. A French policeman arrested Savarkar and handed over him to a British policeman. French policeman thought that he did a crime in the board (ship)its my duty handed over him to British person. Later French government alleged a violation of its territorial sovereignty and asked the British government to return Savarkar to it as

restitution. But British government did not heed the request of France. France filed a case against British before Permanent court of Arbitration. It gave its decision infavour of Great Britain. (once a state extradited the criminal to another state, which state received the criminal it cannot return the criminal to which state extradited because there is no rule in International law regarding this).

XVI. Define Asylum. Explain the types of Asylum (Question)

- Meaning: Asylum means the protection granted by a state to someone who has left their home country as a political refugee on his request.
- As pointed out by Starke, Asylum involves two elements:
- (1) a shelter which is more than a temporary refuge and
- (2) a degree of active protection on the part of the authorities which have control over the territory of asylum.
- According to Art-14 of UDHR, "everyone has the right to seek and enjoy in another countries asylum from prosecution or trial".
- Asylum can be divided into two types.
- 1. Territorial asylum
- 2. Extra territorial asylum.
- **1. Territorial asylum**: Territorial Asylum is granted by a State on its Territory, it is called Territorial Asylum. The right to grant asylum by a State to a person on its own territory flows from the fact that every State exercises territorial sovereignty over all persons, on its territory to any one. The grant of territorial asylum therefore depends upon the discretion of a State which is not under a legal obligation to grant asylum to fugitive, As no precise rules as to grant of territorial asylum.

Some examples of territorial Asylum:

- 1). Idi Amin have been given by Saudi Arabia.
- 2) Baby Dok have been given asylum by France.
- 3) Dawood Ibrahim mafia Don is given asylum by Pakistan Government.
- 4) Salman Rushdie for his controversial novel Satanic Verses given Asylum by Great Britain.
- 5) Taslima Nasreen a Bangladeshi writer for her novel Lajja granted asylum by Sweden.
- 6) Tiger Menon, wanted in Bombay Bomb blast case, granted asylum by Pakistan.
- 7) Dalai Lama and his followers was granted asylum by government of India.
- Extra territorial asylum: when Asylum is granted by a State at places outside its own territory. It is called extra-territorial Asylum.
- Thus Asylum is given at legation, consular premises and warships are the instances of extra-territorial asylum.

XVII. Define Treaty. Explain the modes of formulation and Termination of Treaty (Question)

- Article 2 of the Vienna convention on the law of treaties 1969, “treaty is an agreement whereby two or more states establish or seek to establish relationship between them governed by international law”.
- In the words of Prof.Oppenhiem, international treaties are agreements of a contractual character between States or organisations of States creating legal rights and duties.
- In the view of Italian Anzilotti, Pacta sunt servenda is the basis of the binding force of international law. This principle means that States are bound to fulfill in good faith the obligations assumed by them under agreements.

Classification of treaties:

- International treaty may be divided into two types
- law making treaties
- Treaty contracts
- Law Making Treaties: Law making treaties are those treaties which are entered in to by large number of States. theses are the direct source of international law.
- Treaty contracts: Treaty contracts are those treaties which are entered into by two or more states

Various modes by which a state may express its consent to be bound by a treaty:

- 1. Signature
- 2. By an Exchange of instruments Constituting a treaty
- 3. By Ratification, acceptance or approval
- 4. By Accession (pravesha)
- 5. By any other means if so agreed.

Formulation(construction) of treaties:

Following are the main steps in the formulation treaty.

- 1. Accrediting (recognizing) of persons on behalf of contracting parties.
- 2. Ratification
- 3. Accession and Adhesion (jodane)
- 4. Entry into force

- 5. Registration and publication
- 6. Application and enforcement
- **Termination of Treaties**: A treaty may be terminated on the basis of two grounds.
- 1. by operation of law
- 2. by the act of the parties

1. by operation of law: a treaty may be terminated by operation of law in any of the following ways.

- a) Extinction (loss or death) of either party to a bilateral treaty.
- b) out-break of war
- c) a fundamental or material breach of a bilateral treaty
- d) impossibility of performance
- e) expiration of fixed term

Important maxims relating to the law of treaties:

- **Pacta treaties nec nocent nec prosunt:** it is fundamental principle of the law contract that only parties to a contract are bound by the contract.
- **Pacta sunt servenda:** This principle means that States are bound to fulfill in good faith the obligations assumed by them under agreements**.**
- **Rebus sic stantibus:** this maxim rebus sic stantibus means that when the fundamental or material circumstances under which a treaty is concluded, then this change becomes a basis for the avoidance, change or termination of the treaty**.**
- **JUS Cogens:** this provision is incorporated in the Vienna convention on the law of treaties 1969. it provides that a treaty is void it conflicts with a peremptory norm of general international law.

XVIII. Explain the immunities and privileges of Diplomatic Agent (Question)

- Diplomatic Agent is the head of the mission or a member of the diplomatic staff of the mission.

Diplomatic Agent can be divided into 3 types. They are

- Ambassadors and Legates
- Minister pleni potentiary and envoys Extradinary
- Charge-D-affaires
- **Ambassadors and Legates:** they are the first category of diplomatic agents and are the representatives of completely sovereign states. The representatives are appointed by head of the states or pope.
- **Minister pleni potentiary and envoys Extradinary**: being the second category of diplomatic agents, these representatives enjoy lesser privileges and immunities as compared with those of the first category and are appointed by head of the states or pope.
- **Charge-D-affaires:** charge-D-affaires are the last category of diplomatic agents. these representatives enjoy lesser privileges and immunities as compared with those of the second category and these representatives are appointed by foreign minister.

Immunities and Privileges of Diplomatic Agent:

- 1. Inviolability of the person of Envoys- (Art-29)
- 2.immunity from criminal jurisdiction of courts.
- 3. immunity from civil jurisdiction.
- 4. immunity regarding residence.
- 5. immunity from being present witness.
- 6. immunity from taxes.
- 7. immunity from police.
- 8. Right to worship
- 9.Right to exercise control and jurisdiction over their officers and families.

- 10. Right to travel freely in the territory of the receiving state.
- 11. freedom of communication for official purpose
- 12. immunity from local and military obligation.
- 13. immunity from the inspection of personnel baggage.
- 14. immunity from social security provisions
- 15. immunity from local laws and police rules.
- **1.Inviolability of the person of Envoys**- (Art-29) it is a well established principle international law that the person of envoys is regarded inviolable. It has been incorporated in Art-29 of the Vienna convention on diplomatic relations-1961.
- Art-29 provides that the of envoys or diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. The receiving state shall treat him with due respect and shall take all appropriate steps to prevent any attack on his person, freedom or dignity. Torture of Indian diplomat in pakistan-1992(Rajesh Mittal)
- **2.immunity from criminal jurisdiction of courts**: the diplomatic agents are immune from criminal jurisdiction of the court of the states in which they are appointed.
- **3. immunity from civil jurisdiction**: the diplomatic agents are also immune from the jurisdiction of the civil court. Suits for recovery of debts, breach of contract, etc. cannot be filed against diplomatic agents.
- **4. immunity from being present witness**: diplomatic agents cannot be presented as witnesses in the court. But a diplomatic agent may himself waive this immunity and personally present himself in the court as a witness. In such a case, he cannot consequently claim his immunity.
- **5.Immunity from taxes**: under international law diplomatic agents are immune from taxes. These immunities are incorporated in Art- 34 to 36 of Vienna convection on diplomatic relations 1961.
- **6.Immunity from police rules**: the diplomatic agents are also immune from the police rules of the state in which they are appointed.
- **7.Right to worship**: the diplomatic agents enjoy the right to worship. They are free to follow any religion or perform the religious services and ceremonies, etc. in their own way.

- **8.Right to exercise control and jurisdiction over their officers and families:** diplomatic agents also have the right to control and jurisdiction over their officers and their families.
- **9. Right to travel freely in the territory of the receiving state**: under Art-26 of the Vienna convention on diplomatic relations, 1961, the diplomatic agents can travel freely in the territory of the receiving states. But they cannot go prohibited places or which are important places from the point of view of security of the receiving states.
- **10. Freedom of communication for official purposes:** according to Art-27 of the Vienna convention on diplomatic relations, 1961, the diplomatic agents have freedom to communicate with the home state in connection with their functions and duties.
- **11. Immunity from the local and military obligations**:Art-35 of the Vienna convention on diplomatic relations,1961, provides the diplomatic agents are also immune from any local and military obligations.
- **12. Immunity from inspection of Personal Baggage**: under Art-36(2)
- **13. Immunity from Social Security Provisions**: Art-33.

Duties of Diplomatic Agents:

- 1. duty to respect laws and regulations of the receiving state.
- 2. duty not to interfere in the internal affairs of the state.
- 3. diplomatic agent not to practice for personal profit any professional or commercial activity.

4. official business to be conducted with or through the minister of foreign affairs of receiving state or such other ministry as may be agreed

Termination of Diplomatic Mission:

Diplomatic mission may be terminated in any of the following ways.

- 1. Recall of Envoy: at any time the appointing state may recall its envoy.
- 2. Notification in regard to envoys functions: the appointing State may end the term and functions of an envoy through notification.
- 3. on the Request of the receiving state:
- 4. By delivery of Passport: delivery of the passport to diplomatic agent is yet another way of terminating his diplomatic missions. Such a step is taken only when either the war has

broken out in between the appointing and the receiving state or some other situation has arisen.

- **Persona-non-gratia:** this term means undesirable person (unwanted person). At any time and without assigning any reason the receiving state may declare any diplomatic envoy as persona-non-gratia.
- **End of the object of the mission**: the diplomatic mission comes to an end when the object of the mission has been achieved.
- In addition to the above ways, diplomatic mission may also be terminated or may come to an end on account of any of the following reasons.
- 1. Death
- 2. Removal from the post
- 3. Breaking of Diplomatic relations
- 4. Constitutional changes
- 5.Revolutionary changes in government
- 6. End of the work
- 7. war
- 8. change in the post of the diplomatic agent.

Can a state refuse to accept Diplomatic Agent?

- On the basis of three grounds the receiving state may refuse to accept diplomatic agent.
- 1. if the appointment of a particular person as diplomatic agent is considered harmful for the receiving State.
- 2. if the diplomatic agent has by his declaration or conduct, done some inimical (Contrary) thing.
- 3. if he is a citizen of receiving state.

Consuls: Consuls are representatives of their States but they are not diplomatic agents. Their main function is to look after the commerce and trade interests of their countries

Classification of Consuls:

- **1. Consuls-General:** are generally appointed in main commercial cities and are heads of the consuls offices.
- **2. Consuls:** they are appointed at small cities and assist the work of consul- general.
- **3. Vice- Consuls:** they are below the consuls and in some states they are appointed by the consuls-general.
- **4. consul-Agents:** they are of the last category and are appointed either by consul-general or consul.

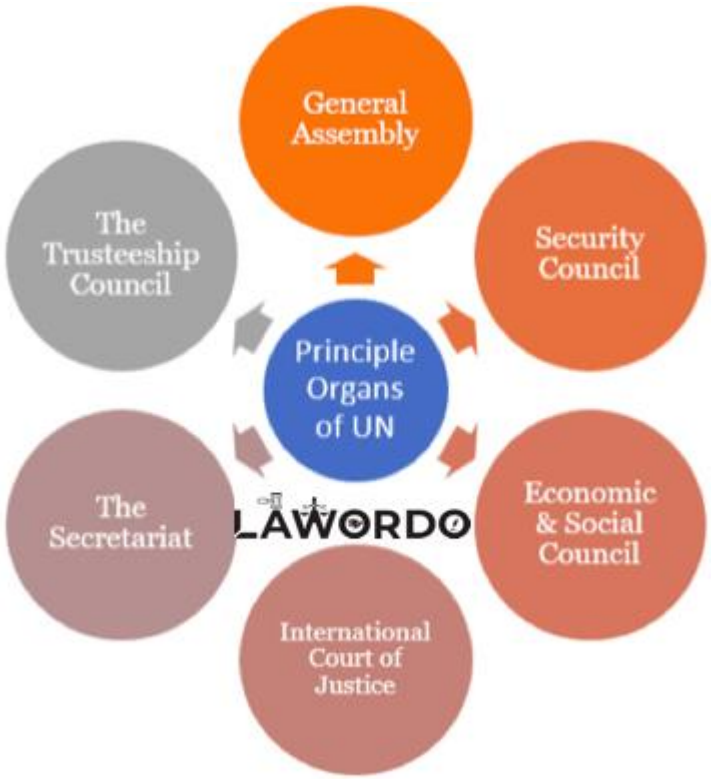
Functions of Consuls:

- 1. they protect the commercial interest of their states.
- 2. they supervise and look after shipping etc. Of their countries.
- 3. they look after the interests of their citizens and assist them in getting passport etc.
- 4. they perform certain other functions for the citizens of their states such as to testify signatures, registration of marriage, birth, death etc.

XVIII. Explain the principal organs of UNO.

Oct 24th1945 is the green letter day in the history of the world. Because on that day only very important leaders of the world established one of the strongest international institution in the world, it's popularly known as United Nations organizations. One of the main objects of U N O is to maintain international peace and security. With co-operation of states only, UNO can achieve its goals.

Principal organs of UNO are



The main organs of the UN are the General Assembly, the Security Council, the Economic and Social Council, the Trusteeship Council, the International Court of Justice, and the UN Secretariat. All were established in 1945 when the UN was founded.

General Assembly

The General Assembly is the main deliberative, policymaking and representative organ of the UN. All 193 Member States of the UN are represented in the General Assembly, making it the only UN body with universal representation. Each year, in September, the full UN membership meets in the General Assembly Hall in New York for the annual General Assembly session, and general debate, which many heads of state attend and address. Decisions on important questions, such as those on peace and security, admission of new members and budgetary

matters, require a two-thirds majority of the General Assembly. Decisions on other questions are by simple majority. The General Assembly, each year, elects a GA President to serve a one-year term of office.

Security Council

The Security Council has primary responsibility, under the UN Charter, for the maintenance of international peace and security. It has 15 Members (5 permanent and 10 non-permanent members). Each Member has one vote. Under the Charter, all Member States are obligated to comply with Council decisions. The Security Council takes the lead in determining the existence of a threat to the peace or act of aggression. It calls upon the parties to a dispute to settle it by peaceful means and recommends methods of adjustment or terms of settlement. In some cases, the Security Council can resort to imposing sanctions or even authorize the use of force to maintain or restore international peace and security. The Security Council has a Presidency, which rotates, and changes, every month.

- Daily Programme of work of the Security Council
- Subsidiary organs of the Security Council

Economic and Social Council

The Economic and Social Council is the principal body for coordination, policy review, policy dialogue and recommendations on economic, social and environmental issues, as well as implementation of internationally agreed development goals. It serves as the central mechanism for activities of the UN system and its specialized agencies in the economic, social and environmental fields, supervising subsidiary and expert bodies. It has 54 Members, elected by the General Assembly for overlapping three-year terms. It is the United Nations' central platform for reflection, debate, and innovative thinking on sustainable development.

Trusteeship Council

The Trusteeship Council was established in 1945 by the UN Charter, under Chapter XIII, to provide international supervision for 11 Trust Territories that had been placed under the administration of seven Member States, and ensure that adequate steps were taken to prepare the Territories for self-government and independence. By 1994, all Trust Territories had attained self-government or independence. The Trusteeship Council suspended operation on 1 November 1994. By a resolution adopted on 25 May 1994, the Council amended its rules of procedure to drop the obligation to meet annually and agreed to meet as occasion required -- by its decision or the decision of its President, or at the request of a majority of its members or the General Assembly or the Security Council.

International Court of Justice

The International Court of Justice is the principal judicial organ of the United Nations. Its seat is at the Peace Palace in the Hague (Netherlands). It is the only one of the six principal organs of the United Nations not located in New York (United States of America). The Court's role is to settle, in accordance with international law, legal disputes submitted to it by States and to give advisory opinions on legal questions referred to it by authorized United Nations organs and specialized agencies.

Secretariat

The Secretariat comprises the Secretary-General and tens of thousands of international UN staff members who carry out the day-to-day work of the UN as mandated by the General Assembly and the Organization's other principal organs. The Secretary-General is chief administrative officer of the Organization, appointed by the General Assembly on the recommendation of the Security Council for a five-year, renewable term. UN staff members are recruited internationally and locally, and work in duty stations and on peacekeeping missions all around the world. But serving the cause of peace in a violent world is a dangerous occupation. Since the founding of the United Nations, hundreds of brave men and women have given their lives in its service.

Explain the Power and Functions of WTO

The World Trade Organization (WTO) is the only global international organization dealing with the rules of trade between nations. At its heart are the WTO agreements, negotiated and signed by the bulk of the world's trading nations and ratified in their parliaments. The goal is to help producers of goods and services, exporters, and importers conduct their business.

LOCATION: Geneva, Switzerland

ESTABLISHED: 1 January 1995

CREATED BY: Uruguay Round negotiations (1986-94)

MEMBERSHIP: 164 members

Functions

The WTO's overriding objective is to help trade flow smoothly, freely and predictably. It does this by:

- administering trade agreements
- acting as a forum for trade negotiations
- settling trade disputes
- reviewing national trade policies
- building the trade capacity of developing economies
- cooperating with other international organizations

Structure

The WTO has 164 members, accounting for 98% of world trade. A total of 22 countries are negotiating membership.

Decisions are made by the entire membership. This is typically by consensus. A majority vote is also possible but it has never been used in the WTO, and was extremely rare under the WTO's predecessor, the GATT. The WTO's agreements have been ratified in all members' parliaments.

The WTO's top level decision- making body is the Ministerial Conference, which meets usually every two years.

Below this is the General Council (normally ambassadors and heads of delegation based in Geneva but sometimes officials sent from members' capitals) which meets several times a year in the Geneva headquarters. The General Council also meets as the Trade Policy Review Body and the Dispute Settlement Body.

At the next level, the Goods Council, Services Council and Intellectual Property (TRIPS) Council report to the General Council.

Numerous specialized committees, working groups and working parties deal with the individual agreements and other areas, such as the environment, development, membership applications and regional trade agreements.

Explain the Powers and Functions ILO

It was created in 1919, as part of the Treaty that ended World War I, to reflect the belief that universal and lasting peace can be accomplished only if it is based on social justice. The International Labour Organization (ILO) was created in 1919. Since 1946 the ILO is a specialized agency of the UN. The Organization aims at promoting social and economic progress and improving labour conditions.

The main functions of the ILO are the following:

- Creation of coordinated policies and programs directed at solving social and labour issues;

- Adoption of international labour standards in the form of conventions and recommendations and control over their implementation;

- Assistance to member-states in solving social and labour problems;

- Human rights protection (the right to work, freedom of association, collective negotiations, protection against forced labour, protection against discrimination, etc.);

- Research and publication of works on social and labour issues.

The basis of the ILO is the tripartite principle, i.e. the negotiations within the Organization are held between the representatives of governments, trade unions, and member-states' employers.
187 conventions and recommendations on social and labour issues have been adopted since 1919.