

Lecture Notes for International Law-I

Sources of International Law

- **The material sources of international law:** "the actual material from which an international lawyer determines the rule applicable to a given situation" (J. G. Starke). These are actually legal procedures/methods for the creation of rules of general application which are legally binding on the addressee.
- **Sources of international law:** Methods or procedures by which international law is created.
- **Customs:** Article 38 (b) of the Statute of International court of Justice recognises "International Custom, as *evidence of general practice accepted as law*". Usage and Custom. Ingredients or Elements of Customs: i. long duration (not required in international law), Uniformity and Consistency (Substantial uniformity not complete uniformity), Generality of Practice, *Opinio juris et necessitatis* (General recognition among states). Customary rules of international law have developed as a result of 1. diplomatic relations between states, 2. practice of international organs, 3. state laws, decisions of State Courts and State military or administrative practices, 4. treaties between states.
- **Treaties or International Conventions:** Article 38 of the Statute of the International Court of Justice lists "international conventions whether general or particular, establishing rules expressly recognised by the contesting States" as the first sources of international law. The term *Convention* would apply to any treaty, convention, protocol, or agreement regardless of its title or form. Article 2 of the Vienna Convention on the Law of the Treaties, 1969 states "A treaty is an agreement whereby two or more States establish or seek to establish a relationship between them governed by international law." Types of Treaties: 1. Law Making Treaties (Universal law treaties such as UN charter and International treaties such as 1958 and 1960 Geneva Conventions on the Law of the Sea) 2. Treaty Contracts:
- **General Principles of Law Recognised by Civilised Nations:** Article 38 of the Statute of International Court of Justice lists *General Principles of Law Recognised by Civilised States* as the third source of international law. Those principles which have been recognised by almost all the States. For example, principles of law which could be established common to the municipal law of all civilised nations but it becomes a law only when it is recognised so by the

World Court. Such laws are treated as such because of a common origin or because they express a necessary response to certain basic needs of human association. For example, The rule of *pacta sunt servanda* (contracts must be kept), principle that reparations must be made for damage caused by fault, the right of self defence,

- **Decisions of Judicial or Arbitral Tribunals:**
- Juristic Works
- Decisions of Determinations of the Organs of International Institutions

Subjects of International Law, Muslim International Law, Requisites for Statehood.

Subjects of International Law

- The law commands its subjects but it merely regulates the use and disposition of objects.
- **1. States alone are Subjects of International Law:** Oppenheim is one of the chief exponents of this theory. Soviet Union and Soviet/Russian authors are also unanimous on this point. **Criticism:** Fails to explain the case of slaves and pirates. **Oppenheim's** response: "*Since the Law of Nations is primarily a law between States, States are to that extent, the only subjects of the Law of Nations.*" Prof. **Schwazerberger:** How can it be expected that individuals who are the basis of society may only be objects of international law. **The International Court of Justice:** in *Reparation of Injuries Suffered in the Service of the U.N.* held "that United Nations has the capacity to bring an international claim against the State for obtaining reparation when an agent of the U.N. suffers injury in the performance of his duties in circumstances involving the responsibility of a State".
- **2. Individuals are the only Subjects of International Law:** The chief exponent of this theory is **Prof. Kelsen**. Another exponent **Westlake** remarked "the duties and rights of the States are only the duties and rights of men who compose them". **Criticism:** International Court of Justice adheres to the traditional view that only States can be parties to international proceedings. **Philip C. Jessup:** "But while I agree ... that States are not only subjects of international law, I do not go to the other extreme and say ... that individuals are the only subjects." **Individuals** are now recognised as subjects of international law and they can now (although in a very few rather negligible cases) even claim rights against States (including his own) but their procedural capacity to enforce their rights is grossly deficient.
- **3. States, Individual, and certain non-State Entities are Subjects:** i) several treaties have conferred upon individuals certain rights and duties.

ii) In *Danzing Railway Official Case* the Permanent Court of Justice ruled that if any treaty the intention of the parties is to confer certain rights upon some individuals, then international law will recognise such rights and will enforce them. iii) 1949 Geneva Convention on the Prisoners of War confers certain rights upon the Prisoners of War. iv) The Nuremberg and Tokyo Tribunals held that international law may impose obligations directly upon the individuals. V) The Genocide Convention of 1948 has also imposed certain rights and duties directly upon the individuals. According to the Convention a person guilty of crime of genocide may be punished. VI) European Convention on Human Rights 1950

Requisites for Statehood

- Definition of State: Salmond:** State is a **community of people** which has been established for **some objectives** such as internal orders and external security. **Lawrence:** State is a **society** which is **politically organised** and its members are bound with each other by being under **some central authority** and most of the people automatically follow the rule of this central authority. **Oppenheim:** The existence of a State is possible only when people of State have settled under highest Governmental authority and habitually follow its orders. **Prof. H.L.A Hart:** "The expression 'a State' is ... a way of referring to two facts: First, that a population inhabiting in a territory live under that form of ordered Government provided by a legal system which its characteristic structure of Legislature, Courts, and primary rules; and secondly, that the Government enjoys a vaguely defined degree of independence.
- Elements of a State: Article 1 of Montevideo Convention 1933:** "The State as a person of international law should possess the following qualifications a) A permanent population, b) A definite territory c) A Government and d) A capacity to enter into relations with other States". **Oppenheim:** i) Population ii) A definite territory iii) Government iv) Sovereignty. **Holland:** added one more element namely 'civilisation' because of which the State becomes the member of international community.

Sources of Muslim International Law

- Quran
- Sunnah
- Ijtihad
- Ijma
- Qiyas
- Istihsan (Juristic Preference)
- Istishab (Continuity of Practice)

Codification of International Law

- The process reducing the whole body of law into Code in the form of enacted law. Generally it is meant a systematic arrangement of the rules of law which are already in existence.
- Sir H. Lauterpacht: " ... The task of codifying International Law, if it is to mean anything, must be primarily one of bringing about an agreed body of rules already covered by customary or conventional agreement of States."
- Wider sense of "Codification": it may also mean modification of the existing rules of law, to update them according to most recent requirements. Codification properly conceived is itself a method of the progressive development of law.
- Article 15 of the Statute of International Law Commission: "Progressive Development of International Law"... means the preparation of draft conventions on subjects which have not yet been regulated by international law or in regard to the law which yet has not been sufficiently developed in the practice of States.
- Article 15 of the Statute of International Law Commission: "Codification of International Law" means the more precise formulation and systematisation of rules of international law in field where there already has been extensive State practice, precedent and doctrine.

History of Codification

- Dates back to the end of 18th Century, when the idea of Codification was conceived by Bentham. An Unsuccessful attempt by the French Convention to draw up a declaration of the Rights of Nations in 1792.
- **Declaration of Paris 1856:** Signed by Britain, France, Austria, Russia, Turkey, Prussia and Sardinia, after the end of the Crimean War 1856. This laid down principles about a) abolition of privateering; b) non-capture of neutral goods except contraband of war, under enemy flags; c) Blockade to be binding must be effective; and d) except contraband of war, enemy goods cannot be captured under neutral flag.

Codification by Individual Writers: First attempt was in **1861 by an Austrian Jurist, Alfons Von Domin-Petrus-hnvecz. 1863 Prof. Francis Lieber** of Columbia University Law School, New York attempted to codify the laws of war. The Swiss Jurist **Bluntshli in 1868, David Dudley Field in 1872, Levi in 1887**, Italian Jurist **Pasquale Fiore in 1890, E. Duplexis in 1906 and Jerome Internaoscia in 1911** published their codes of International Law.

Codification of International Law

The Two Hague Conferences

- The First Hague Conference 1899, convened by Emperor Nicholas II of Russia. Adoption of two conventions in the form of a code: (a) Convention on the pacific settlement of international disputes, and (b) Convention on the Laws and Customs of War on land.
- The Second Hague Conference 1907: attended by 44 states, produced 13 conventions relating to warfare and neutrality in war on land and sea, the status of enemy merchantmen at the outbreak of war, bombardment by naval forces, conversion of merchant-ships into men-of-war.

Declaration of London (Naval Conference 1909)

- To draw up an agreed list of contraband goods
- Never came into force as it was not ratified and lost importance due to First World War in 1914.

Codification under the League of Nations

- The League Council appointed a Committee of sixteen jurists in 1924, to report the Council subjects which were ripe for codification. Following subjects were recommended for codification: 1. Nationality; 2. Territorial waters; 3. State responsibility for damage done in their territory to the persons or property of foreigners; 4. Diplomatic immunities and privileges; 5. Procedure of International Conferences and Procedure for the conclusion and drafting of treaties; 6. Exploitation of the products of the sea; 7. Piracy
- Consequently, the Assembly decided that a conference should be held at Hague to Codify: 1. nationality; 2. territorial waters and; 3. responsibility of States for the damage done to foreigners in their territories.
- The Committee still continued its work and in 1929 reported two more topics for codification: 1. Law relating to functions and competence of Consuls; and 2. the Competence of Courts regarding foreign States.

Hague Codification Conference of 1930

- First Conference on the codification of International Law.
- Three committees were set up to deal with each of the three topics: 1. nationality, 2. territorial waters and; 3. responsibility of States for the damage done to foreigners in their territories.
- No general agreement could be reached regarding number 2 and 3.

Committee on nationality adopted several conventions on questions relating to the conflict of Nationality Laws and Statelessness.

Codification of International Law

Codification under the United Nations

- **Article 13 (1) (a) of the UN Charter:** the General Assembly shall initiate studies and make recommendations for the purpose of "promoting international cooperation in the political field" and "encouraging the progressive development of International Law and its codification."
- On 11 December 1946, appointed a committee for the progressive development of International Law and its codification.
- In 1947 the General Assembly decided to set up an International Law Commission
- On 11 April 1949, an International Law Commission met
- Article 1 of the Statute of the International Law Commission states that the Commission shall have for its object the promotion of the progressive development of International Law and its codification.
- The Commission also considers proposals and draft multilateral conventions submitted by the members of the UN other than the specialised agencies, or official bodies established by inter-governmental agreement to encourage the progressive development of International Law and its codification.
- The Commission shall also survey the whole field of International Law to select topics for codification having knowledge of existing drafts whether governmental or not.
- Article 24 of the Statute of the Commission states that the Commission shall consider ways and means for making the evidence of customary international law more readily available, such as collection and publication of documents concerning State practice and of the decisions of national and International Courts on questions of international law, and shall make a report to the General Assembly on this matter.

Work of the International Law Commission

- On 21 November 1947, the General Assembly directed the International Law Commission : (a) to formulate the principles of International Law recognised in the Charter as well as in the judgement of the Nuremberg Tribunal; (b) to prepare a draft Code of offences against the peace and security of mankind; (c) to prepare a draft declaration on the rights and duties of States and; (d) to suggest the desirability and possibility of establishing an international judicial body for the trial of genocide and certain other crime.
- Started working in 1949;
- Three priorities of the Commission: (i) Law of Treaties (ii) Arbitral Procedure; and (iii) Law relating to the High Seas
- By 1971, the Commission submitted final drafts/reports relating to: (1) Regime of the High Seas; (2) Regime of Territorial Waters; (3) Nationality (including statelessness); (4) Law of Treaties; (5) Diplomatic Intercourse and Immunities; (6) Consular Intercourse and Immunities; and (7) Arbitral Procedure.
- The Commission also worked on the following topics: (1) Draft Declaration on Rights and Duties of States; (2) Formulation of the Nuremberg Principles; (3) Draft Code of Offences Against the Peace and Security of Mankind; (4) Question of Definition of Aggression; (5) Question of International Criminal Jurisdiction; (6) Question of Reservation to Multilateral Treaties; (7) Extended Participation in General Multilateral Treaties concluded under the auspices of the League of Nations; (8) Nationality including Statelessness; (9) Special Missions; (10) Representatives of States to International Organisation; (11) Prevention and Punishment of Crimes Against Diplomatic Agents and other Internationally Protected Persons; (12) The Most-Favoured-Nation Clause; (13) State Responsibility; (14) Succession of States in Respect of Treaties; (15) Succession of States in Matters other than Treaties; (16) The Law of Non-Navigational Uses of International Watercourses

Recent Conventions and Treaties

- Geneva Conventions on the Law of Sea, 1958

- Vienna Convention on Diplomatic Relations (1961) [see pages 135-136 of Tandon and Kapoor]

Merits of Codification

- clarity and certainty of rules along with reconciliation of conflicts and divergent views
- Filling numerous gaps existing in International Law, provision of rules where there is none.
- Bringing uniformity in the international legal system.
- Ending or at least minimising the disagreement and confusion prevailing on many important matters
- Increasing efficacy of International Law by increasing its binding force
- Facilitate working of International Court of Justice and other Tribunals to apply and enforce codified International Law.
- Easier and convenient to amend and update the codified International Law

Demerits of Codification

- Detrimental for the natural growth and future development of International Law. A regular and scientific revision of codes is required to incorporate changes in international conditions.
- Makes the system of law too rigid and inadaptatable to new situations
- Make the law too formal and conservative. It requires progressive interpretation of International Law.
- Emergence of new controversies

- Emergence of new controversies in interpretation because of the hair-splitting tendency of judges to interpret the law
- Only a partial codification is possible as law is still in its infancy
- Customary rules still form the bulk of International Law and many of them are not yet fully settled covering the whole area of international rules.

State Recognition and its Theories.

- **Oppenheim:** "In recognising a State as a member of international community, the existing States declare that in their opinion the new State fulfils the condition of statehood as required by international law."
- Conditions of Statehood include: 1). people 2.) a territory 3.) a Government 4.) Sovereignty
- Recognition is a Political Diplomatic Function: Discretion of States/Members of International Community to decide about statehood

Theories of Recognition

- **Constitutive Theory:** A State becomes an international person through recognition only. Therefore rights and duties of a State are applicable after the recognition, only. Exponents: Oppenheim, Holland, Lauterpacht.
- **Declaratory Theory:** Statehood or the authority of the new Government exists as such prior to and independently of recognition. Therefore, recognition is merely a declaration of an existing fact. Exponents, Hall, Wagner, Brierly, Pitt Cobbet, and Fisher.
- In-fact, recognition is declaratory as well as constitutive act.

1. Modes or Kinds of State Recognition

- **De facto:** is a Latin expression that means "in fact, in reality, in actual existence, force, or possession, as a matter of fact" (literally "of fact").
- "When a **State wants to delay the *de-jure*** recognition of any State, it may, in the first stage grant *de facto* recognition" (Schwargenberger)
- The reason for *de facto* recognition is that it is **doubted** that the State recognised may be stable or it may be able and willing to fulfil its obligations under international law.
- "*De facto* recognition is in a sense, **provisional and liable to be withdrawn** if the absent requirement of recognition fails to materialise."
- **De jure:** means 'a state of affairs that is in accordance with law', i.e. that is officially sanctioned.
- *De jure* recognition is granted when in the opinion of recognising State, the recognised State or its government possesses **all the essential requirements of Statehood**, and it is capable of being a member of the international community.
- According to A.H. **Smith**, the British practice shows that three conditions are required for such a recognition: **1) A reasonable assurance of stability** and performance **2) The Government should command the general support** of the population **3) It should be able and willing to fulfil its international obligations.**
- An **expressed declaration** or the establishment of **diplomatic relations** is required.
- The United Kingdom recognized **the Soviet state *de facto*** in 1921, but *de jure* only in 1924.
- **The state of Israel in 1948**, whose government was immediately recognized *de facto* by the United States and three days later by Soviet *de jure* recognition.

- The Republic of China, commonly known as "Taiwan", is generally recognized as *de facto* independent and sovereign, but is not universally recognized as *de jure* independent due to the complex political status of Taiwan related to the United Nation's de-recognition of it in favour of the People's Republic of China in 1971.

2. Methods of State Recognition

Implied Recognition: the recognition may be implied by the attitude and other circumstance of a State. Such a recognition is generally *de facto* but can be *de jure* in the following conditions:

- 1. When the recognised State and the recognising State enter into a bilateral treaty and formally sign it;
- 2. The beginning of formal diplomatic relations, exchange of Consuls etc.
- Additionally:
- 3. Participation of the State concerned in a multilateral treaty, international conference, and the start of negotiations between recognised and recognising States.

Recognition Subject to Condition

- Conditions have no effects as recognition once granted cannot be withdrawn on this account

Collective Recognition

Recognition granted by number of States collectively. Ex. States admitted to the UN. Such a recognition will be granted only by those States who voted in favour.

Intervention

- Oppenheim: "Intervention is dictatorial interference by a State in the affairs of another State for the purpose of maintaining or altering the actual condition of things".

- Hans Kelsen: international law does not prohibit intervention in all circumstances. Intervention in self-defence is permitted by international law.
- Quincy Wright: "Intervention may be diplomatic as well as military. A diplomatic communication of peremptory or threatening tone, implying possible use of military or other coercive measures may constitute intervention."
- If a state coerced by the necessity to save it from great and imminent danger
- The danger must be of such a nature as to put on jeopardy the existence of the state, its territorial and personal status, its government or form of government or to limit or even make disappear its independence.
- Article 51 of the UN Charter: "Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Whereas the use of force by states is controlled by both customary international law and by treaty law."
- Article 2(4) of the UN Charter, "All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations."
- Use of Pre-emptive Force in self-defence: Arab Israel War Case 1967, Israeli Attack on Osirak Reactor (Iraq) Case 1981

Grounds of Intervention

1. Self-defence and self-preservation

- Oppenheim: the use of force in self-defence can be justified only when it is necessary for self-preservation. Webster US Secretary of State in famous case, *The Caroline* (1841) declared that the necessity of self-defence should be instant, overwhelming, and leaving no choice of means and no moment for deliberation. The principle was affirmed by the Nuremberg Tribunal 1946 and the International Court of Justice in 1949.
- **The Caroline Affair or Caroline Case:** a diplomatic crisis beginning in 1837 involving the US, Britain, and the Canadian independence movement. **William Lyon Mackenzie** and other Canadian rebels, commanding the ship *Caroline*, fled to **an island in the Niagara River**, with support from nearby American citizens. British forces then boarded the ship, killed an American crew member in the fighting, and then burned the ship and sent it over Niagara Falls. This action outraged the United States. In retaliation, a group of American and Canadian raiders attacked a British ship and destroyed it. There were several other attacks in 1838 between the British and Americans. The diplomatic crisis was defused by the negotiations that led to the Webster-Ashburton Treaty in 1842, where both the Americans and British admitted to wrongdoing.
- **Article 51 of the UN Charter:** "Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Whereas the use of force by states is controlled by both customary international law and by treaty law." Article 51 is subject to following conditions: 1) there should be an armed attack; 2) The right exists until Security Council has taken any action; 3) It should be reported to the Security Council; 4) It is subject to the review by Security Council; 5) This right shall not affect the responsibility of the Security Council for the maintenance of peace and security; 6) The right is not available against a non-member of the United Nations.
- Distinction between: Self-defence and Self-preservation; and Self-defence and Self-help

2. Intervention on Humanitarian Grounds

- Such intervention was permitted in Past. Ex. England, France, and Russia jointly intervened in conflict of Greece and Turkey in 1827 to check violations of human rights. However, it is controversial question as to whether after the enforcement of the UN Charter, such intervention is permitted or not. It is nonetheless clear that if at all intervention is permitted on humanitarian grounds, it may be done only by the United Nations.

3. To Enforce Treaty Rights

Was permitted in the past but no more applicable after enforcement of the UN Charter. Ex. Germany attacked Belgium in 1831 and 1839. England intervened because it had a treaty with Belgium to maintain the neutrality of Belgium. However, the UN Charter has propounded the principle of non-intervention and states have undertaken not to intervene in the internal and external affairs of a State.

4. Intervention to Prevent Illegal Intervention

Was permissible in past but no more acceptable.

5. To Maintain Balance of Power

6. For Protection of Persons and Property

7. Collective Intervention

8. To Maintain International Law

9. Intervention In Civil Wars

Modes of Acquisition and Loss of Territory

Modes of Acquisition

1. Occupation

- Oppenheim: "Occupation is the act of appropriation by a State by which it intentionally acquires sovereignty over such territory as is at the time not under the sovereignty of another state."
- 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 formerly in control."
- To establish the occupation of a State over a territory it has to be determined if State has the effective occupation over such territory.
- ***Island of Palmas Arbitration (1929)***. It was dispute between America and Netherlands, regarding sovereignty over the Island of Palmas. Palmas (Miangas) is an island of little economic value or strategic location. It is two miles in length and three quarters of a mile in width, and it had a population of about 750 in 1932, when the case was finally decided. Palmas lies between Mindanao, the southernmost part of the Philippines, and the Nanusa Islands, the northernmost part of Indonesia other than Palmas. In 1898, Spain ceded the Philippines to the United States in the Treaty of Paris (1898) and Palmas lay within the boundaries of that cession. In 1906, the United States discovered that the Netherlands also claimed sovereignty over the island, and the two parties agreed to submit to binding arbitration by the Permanent Court of Arbitration. On 23 January 1925, the two governments signed an agreement to that effect. Ratifications were exchanged in Washington on 1 April 1925. The agreement was registered in League of Nations Treaty Series on 19 May 1925. The arbitrator in the case was Max Huber, a Swiss lawyer.
- **American position** was that it had acquired the Island under a treaty of 1898 with Spain. Netherlands' stance was that Spain never had occupation over Palmas and therefore had no right to transfer it to another State through a treaty. The Arbitration Court decide in favour of Netherlands.
- **The Netherlands' primary contention** was that it held actual title because the Netherlands had exercised authority on the island since 1677. The arbitrator noted that the United States had failed to show documentation proving Spanish sovereignty on the island except the documents that specifically mentioned the island's discovery. Additionally, there was no

evidence that Palmas was a part of the judicial or administrative organization of the Spanish government of the Philippines. However, the Netherlands showed that the Dutch East India Company had negotiated treaties with the local princes of the island since the 17th century and had exercised sovereignty, including a requirement of Protestantism and the denial of other nationals on the island. The arbitrator pointed out that if Spain had actually exercised authority, there would have been conflicts between the two countries, but none is provided in the evidence.

- Effective Occupation is Necessary: I) Will to exercise sovereignty and II) an exhibition of actual authority.
- **Distinction between Occupations and Subjugation:** In occupation no country should have exercised sovereignty over it previously or might have been abandoned by a State. Whereas, in case of subjugation the State subjugated has to be previously under sovereignty of another country.

2. Prescription

- If a State exercises control and establishes occupation over a particular territory for a long time and thus exercises *de facto* sovereignty over it, then the territory becomes part of that State. Case of Palmas Island
- Some Jurists agree whereas some do not agree with the Prescription
- International law does not prescribe any fix period for prescription
- However, the Treaty of Washington 1871 and British Gyanna Arbitration 1899 fixed this period for 20 years, but it is not a generally agreed time period.
- Conditions of Prescription: i) Prescription is possible if the State has not accepted the Sovereignty of any other State over the territory; ii) Possession should be peaceful and uninterrupted; iii) Possession should be in public; and iv) possession should be for a definite period. However, in presence of some treaty or convention, territory cannot be acquired by prescription through administrative acts only.

3. Accretion

- "Title by accretion occurs when new territory is added, mainly through natural causes, to territory already under the sovereignty of the Acquired State. No formal act or assertion of title is necessary."

4. Cession

- "The Session of territory may be voluntary or it may be under compulsion as a result of war conducted successfully by the State to which the territory is ceded."
- Cession will be valid only when the sovereignty of a territory is transferred to another state.

5. Annexation

- When a State conquers another State, the conquering State after conquest establishes its sovereignty over the conquered State. It is necessary for the establishment of sovereignty that conquering State should occupy effectively the territory concerned. So mere conquering is not enough for annexation.

6. Lease

- A State may give its territory to another State under lease for a certain period. Some rights of sovereignty are transferred to another State through lease although complete sovereignty is not transferred. Example: Lease of Island of Malta to Britain.

7. Pledge

- Sometimes there arise certain circumstances under which a State is compelled to pledge a part of its territory in return of some amount of money for which it is in dire need. Sovereignty is partly transferred. Example: The Republic of Geneo had pledged the Island of Corsica to France.

8. Plebiscite

- **Case of West Irian:** When Indonesia gained its independence from the Netherlands in 1949, the Dutch government retained control over the territory of West New Guinea. From 1949 until 1961 the Indonesian government sought to "recover" West New Guinea (later known as West Irian or West Papua), arguing that the territory, a part of the former Netherlands East Indies, rightfully belonged with Indonesia.
- In late 1961, after repeated and unsuccessful attempts to secure its goals through the United Nations, Indonesia's President Sukarno declared a military mobilization and threatened to invade West New Guinea and annex it by force. The Kennedy administration, fearing that U.S. opposition to Indonesian demands might push the country toward Communism, sponsored talks between the Netherlands and Indonesia in the spring of 1962. Negotiations took place under the shadow of ongoing Indonesian military incursions into West New Guinea and the threat of an Indonesian invasion.

- The U.S.-sponsored talks led to the August 1962 New York Agreement, which awarded Indonesia control of West New Guinea (which it promptly renamed West Irian) after a brief transitional period overseen by the UN. The agreement obligated Jakarta to conduct an election on self-determination with UN assistance no later than 1969. Once in control, however, Indonesia quickly moved to repress political dissent by groups demanding outright independence for the territory.

9. Acquisition of Territorial Sovereignty by Newly Emerged State

For example: Pakistan, Israel, India.

Modes of Loss of Territory

1. Cession
2. Operation of Nature
3. Subjugation
4. Prescription
5. Revolt
6. Dereliction: Abandoning
7. Grant of Independence to a Colony

State Jurisdiction

1. Jurisdiction is not absolute
2. Exercise of Jurisdiction in Case of Collision of Ships on High Sea. Case S.S. Lotus
3. Three views on Criminal Jurisdiction:
 - a. A State can exercise jurisdiction within its territory, Britain, US, and others
 - b. Some countries such as France and Germany adhere to the principle of territoriality with some exceptions like national security and economic grounds.
 - c. Extraterritoriality i.e. Turkey, Italy etc.

S.S. *Lotus* Case 1927 Turkish ship "Bozkourt" collided with French ship "S.S Lotus". Some Turkish nationals died. S.S Lotus reach Constantinople (Turkish Port) after the collision. The Crew was arrested, held guilty and convicted by the Court. France and Turkey took the issue to the Permanent Court of International Justice, where the Court decided in the favour of Turkey.

Article 11 (1) of the Geneva Convention on the High Seas, 1958 provides: " ... no penal or disciplinary proceedings, may be instituted against such persons except before the judicial or administrative authorities either of the flag State or of the State of which such person is a national."

Law of the Sea

Maritime Territory: Sovereignty of a coastal State extends to internal waters, territorial waters, and for some purposes over contiguous zone, continental shelf, and exclusive economic zone.

1. Maritime Belt or Territorial Waters

- Area or Belt adjacent to coastal State (12 nautical miles) over which it exercises the sovereignty. The sovereignty is exercised not only over territorial waters but also over its airspace, its bed and subsoil.
- Right to Innocent Passage

2. Contiguous Zone

- Further to territorial waters an area not exceeding more than 12 nautical miles is considered as the contiguous zone. Coastal State is entitled to apply rules related to customs, taxation, immigration, and pollution. If an unlawful activity starts in the territorial waters, contiguous zone forms the area of hot pursuit.

3. Continental Shelf:

- (200-350 nautical miles area) Coastal states have the right to harvest **mineral and non-living material in the subsoil** of its continental shelf, to the exclusion of others. Coastal states also have **exclusive control over living resources** "attached" to the continental shelf, but not to creatures living in the water column beyond the exclusive economic zone.

4. Exclusive Economic Zone or Patrimonial Sea

- (200 nautical miles from the baseline) the coastal nation has sole exploitation rights over all natural resources. Foreign nations have the freedom of navigation and overflight, subject to the regulation of the coastal states. Foreign states may also lay submarine pipes and cables.

International Rivers

Rights and Duties of Riparian States

Treaty-practice regarding international rivers

India-Pakistan Indus Water Agreement signed on 19 September 1960

Farakka Issue: India-Bangladesh (September 1976- September 1977)

Inter Oceanic Canals

1. Suez Canal
2. Keli Canal
3. Panama Canal

Freedom of the High Seas

What is meant by High Seas?

- The concept associated with territorial waters
- The concept associated with exclusive economic zone

The Geneva Convention on the High Seas 1958

- Open for all the States, and no State can exercise sovereignty over it
- Government non-commercial service ships has immunity from jurisdiction of any State except the flag State
- a warship on high seas is not entitled to board a merchant ship without reasonable grounds: a) suspicions of piracy b) suspicions of slave trade c) a Ship showing a foreign or no flag but suspected to be of the same nationality
- Entitlement to lay submarine cables and pipelines

Freedoms of the High Seas

According to Geneva Convention on the High Seas 1958:

- Navigation
- Fishing
- Laying submarine cables and pipelines
- Flying over the high seas
- Construction of artificial islands and other installations permitted under international law

Scientific Research

Jurisdiction over Air Space

Different Views

- Air space is available to each State without any restriction. Contrary to International Treaties; Prior permission is required.
- Each State Exercises control over its air space up to unlimited height. Modern technology enabling aircrafts to go to a very high altitude.
- A State exercises control over the lower strata of the air space; Better view; no general acceptance of this view as no State is prepared to accept it affirmatively.
- A State can make rules in regard to the outer space so as to ensure its security; issue of capability to make and apply such rules.

Aerial Navigation

- **Paris Convention of Aerial Navigation 1919; Warsaw Convention 1929; Chicago Convention on International Civil Aviation 1944**

Chicago Convention on International Civil Aviation 1944

- Complete and exclusive sovereignty over the airspace over land territories and territorial waters.
- Applicable only to civil aircraft not to State aircrafts used for military, customs, and police services. All such aircrafts need special permission.
- Aircrafts other than scheduled flights, subject to the observance of terms and conditions, can make flights into or in transit non-stop across the territory of a State or to make stops for non-traffic purposes, without the necessity of taking prior permission. However, a State may direct/lead the flights for safety and other purposes.
- Scheduled flights has to take the prior permission to operate over or into the territory.
- Bilateral treaties to govern the relations
- Five Freedoms of Air (International Civil Aviation Conference, Chicago November 1944): 1. freedom to fly across foreign territory without landing; 2. Freedom to land for non-traffic purposes; 3. freedom to disembark in foreign territory traffic originating in the State of the origin of aircraft; 4. freedom to pickup in any foreign country traffic destined for the State of origin of aircraft; and 5. freedom to carry traffic between two foreign countries.
- Chicago International Air Services Transit Agreement 1944 (firs two freedoms)
- Chicago International Air Transport Agreement 1944 (last three freedoms)

Outer Space

- 1 October 1957, Soviet Union's Sputnik

The General Assembly of the UN Resolutions:

- 13 December 1958, "the common interest of mankind in outer space" and "that it is the common aim that outer space should be used for peaceful purposes only."
- 12 December 1959, The General Assembly of the UN: "International Cooperation" in the Peaceful Uses of Outer Space. Committee established.
- 20 December 1961, 14 December 1962, and 13 December 1963: "Declaration of Legal Principles Governing the Activities of States in the Exploration And Use of Outer Space". Unanimously adopted.

Outer Space Treaty of 1966, or the Treaty of Principles Governing the Activities of States in the Exploration and Use of Outer Space including the Moon and other celestial bodies, 1966:

- Freedom of access
- National appropriation by claim of sovereignty, by means of use or occupation, or by any other means, is not allowed.
- Not to place in orbit around the earth any objects carrying nuclear weapons or any other weapons of mass destruction, install such weapons on celestial bodies, or station such weapons in outer space.
- Use for exclusively peaceful purposes; establishment of military bases, installations and fortifications, the testing of any type of weapons, and conduct of military manoeuvres on celestial bodies shall be forbidden.
- Astronauts as envoys of mankind in Outer Space and should render to them all possible assistance in the event of accident, distress, or emergency landing on the territory or high seas. After such a landing, astronauts should be returned safely and promptly.
- International responsibility for national activities in Outer Space.
- International liability for damages to another State party to the treaty.

Registering State shall retain jurisdiction and control over an object sent into space.

Nationality

- "The bond which unites a person to a given State which constitutes his membership in the particular State, which gives him a claim to the protection of that State and which subjects him to the obligation created by the laws of the State." (Charles G. Fenwick, 1971)
- The rules of nationality are determined by State law.
- Problems of Statelessness and double nationality
- Hague Conference 1930
- Convention of the Nationality of Married Women 1957
- Convention on the Reduction of Statelessness 1961

Significance of Nationality in International Law

- The protection of rights of diplomatic agents by virtue of nationality
 - States can be held responsible for the acts of their nationals
 - States are generally expected to accept their nationals
 - Nationals may be compelled to do military service for the State
 - State can refuse to extradite its own nationals
 - During Wars, enemy character is determined on the basis of nationality
 - States have the right to exercise criminal and civil jurisdiction over their nationals
 - Difference between Nationality and Domicile
 - Nationality is the legal relationship between nation and the individual
 - Citizenship is the relationship between the person and the State law
- Double nationality

Modes of Acquisition and Loss of Nationality

Acquisition of Nationality

- **By Birth**
- **Naturalisation**
- **By Resumption:** if a person loses his/her nationality because of certain reasons, he/she may resume the same after fulfilling certain conditions.
- **By Subjugation:** if a State is defeated or conquered/subjugated, all citizens acquire the nationality of the conquering State.
- **Cession:** if a State is ceded in another State
- **Appointment in Public Service of another State**

Loss of Nationality

- **By Release:** on a citizen's request he/she may be released from the nationality.
- **By Deprivation:** national law may require that if a person without seeking prior permission of the Government obtains employment in another State, he/she may be deprived of his/her nationality.
- **Long Residence Abroad:** State laws may contain provisions in this connection
- **By Renunciation:** a person may also renounce his/her nationality because he/she might have to chose of the two or more nationalities.
- **Substitution:** some States allow substitution of nationality. A person may get nationality of a State in place of the nationality of another State.

Political Asylum

Extradition