

## **Lecture Notes for International Law II**

### **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 statue, 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. Netherland's 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



## Introduction of Diplomatic Relations, Categories of Diplomats, Functions of Diplomats

### 1. Introduction of Diplomatic Relations and Diplomatic Agents

- J. G. Starke: "Consequent on a development over some hundreds of years, Institution of Diplomatic Representative has come to be principal machinery by which the intercourse between States is conducted."
- **History of Diplomacy and Diplomatic Relations:** The Egyptian-Canaan and Egyptian–Hittite Diplomatic Relations. (1)The Egyptian–Hittite peace treaty, between the New Kingdom of ancient Egypt and the Hittite Empire of Anatolia Some of the earliest known diplomatic records are the **Amarna letters** written between the pharaohs of the Eighteenth dynasty of **Egypt and the Amurru rulers of Canaan** during the **14th century BC**. (2) Following **the Battle of Kadesh in c. 1274 BC** during the Nineteenth dynasty, **the pharaoh of Egypt and the ruler of the Hittite Empire** created one of the first known international peace treaties which survives in stone tablet fragments, now generally called the Egyptian–Hittite peace treaty.
- **The permanent appointment** of diplomatic envoys began from the **seventeenth century**. The rights, duties, immunities and privileges of the diplomatic agents in the 18th and 19th century were mostly in the form of customary rules of international law.
- **The Congress of Vienna 1815:** is considered first landmark wherein customary law regarding diplomatic agents was clarified and codified.
- **The Vienna Convention of Diplomatic Relations 1961:** the Preamble of the Convention states that those matters for which there is no express provision in the Vienna Convention will still be governed by the customary rules of international law.

### Classification/Categories of Diplomatic Agents

- **The Congress of Vienna 1815:** classified the diplomatic agents in following three categories: (1) **Ambassadors and Legates** (a permanent diplomatic mission headed by a minister); (2) **Ministers Plenipotentiary** (a diplomat who is fully authorized to represent his or her government); (3) **Charge d'affairs** (diplomats

of the last/low category who are appointed by foreign ministers not by the Head of State)

- **Congress of Aix-La-Chapelle, 1818:** A fourth category **Minister Residents** was included and placed at number three. According to Congress of Aix-La-Chapelle the classification was as follows:
- **1) Ambassadors and Legates:** diplomats of first category, represent completely Sovereign States, and are appointed as Ambassadors to other States or Permanent Representatives of their respective countries in the United Nations. The representatives appointed by Pope are called Legates.
- **2) Ministers Plenipotentiary and Envoys Extraordinary:** They have less privileges and immunities as compared to the first category of diplomats.
- **3) Minister Residents:** Have less privileges and immunities compared to first two categories. This category was dropped in Vienna Convention on Diplomatic Relations 1961.
- **4) Charge d' Affairs:** appointed by the foreign ministers not by the Head of State.
- **The Vienna Convention on Diplomatic Relations 1961:** the category Minister Resident was dropped and now following three are categorised as diplomatic agents: 1) **Ambassadors or nuncios** accredited to Heads of States or other Heads of Missions of equivalent rank (nuncios: a diplomatic representative of the Pope having ambassadorial status); 2) Envoys, Ministers and Internuncios accredited to Heads of State; and 3) Charge d' Affairs accredited to Ministers for Foreign Affairs.

### **Functions of Diplomatic Agents**

- **Mediations and Negotiations:** Mediate and Negotiate and convey the results back home.
- **Observation:** Observe the incidents and events
- **Protection:** protect the rights and interests of the citizens of their states, in the host state. Make efforts to protect person and property of their citizens.

- According to **Article 3 of Vienna Convention**: The functions of a diplomatic mission are as follows: 1. Representation; 2) Protection of the interests of the home state and its citizens; 3) Negotiations; 3) ascertainment by all lawful means, conditions, and development in the host State, and reporting back to home State; 4) Development of friendly relations and cooperation between two states specially focusing on the economic, cultural, and scientific ties. And to perform any other functions which are allotted to them from time to time.

## Reception and Recall of Diplomats

### Career diplomats and political appointees

- **any person** can be appointed by a state's national government to conduct said state's relations with other states or international organisations
- a number of states maintain an institutionalised group of **career diplomats**—that is, public servants with a steady professional connection to the country's foreign ministry.
- The term career diplomat is used world-wide in opposition to **political appointees** (that is, people from any other professional backgrounds who may equally be designated by an official government to act as diplomats abroad).
- both career diplomats and political appointees enjoy the **same diplomatic immunities**.

### Termination of Diplomatic Agents/Mission

- **Recall of Envoy:** If the appointing State recalls the envoy the diplomatic mission comes to an end. Such a step is taken only when relations between the States deteriorate and there are very remote chances of their improving.
- **Notification in regard to the End of Envoy's Functions:** Under Article 43 of the Vienna Convention on Diplomatic Relations 1961, the appointing State may end the functions of envoy through a notification. **Article 43** states: the function of a diplomatic agent comes to an end, *inter alia*: (a) **on notification by the sending State** to the receiving State that the function of the diplomatic agent has come to an end; (b) **on notification by the receiving State** to the sending State that, in accordance with paragraph 2 of Article 9, it refuses to recognise the diplomatic agent as a member of the mission.
- **On the Request of the Receiving State:** This may be the case if due to some reasons the relations between the States are strained.
- **By Delivery of Passport:** If a diplomatic envoy is handed over the passport it means that he has become an undesirable person in the receiving State and should

go back to his country immediately. Such a step may be taken when either war has broken out in between the two States or some very grave situation has arisen.

- **Persona Non-grata:** As mentioned in Articles 9 and 43 of the Vienna Convention on Diplomatic Relations, 1961, a receiving State can declare at any time that a diplomatic agent has become an undesirable person or persona non-gratia. Such a declaration terminates the diplomatic mission immediately. Example, Pakistan and Iraq.
- **End of the Object of Mission**
- **Expiration of Letter of Credence:** if a diplomatic agent has been appointed for a fixed period, on the expiry of such period his mission comes to an end.
- In addition to above conditions, diplomatic mission may also come to an end in the following cases: 1) By death; 2) Removal from post; 3) Breaking of diplomatic relations 4) Constitutional changes; 5) Revolutionary changes in government; 6) End of the work of mission by some Conference; 7) War; and 8) Change in the post of diplomatic agent.

### **Refusal to Accept a Diplomatic Agent**

- if the appointment of a particular person as diplomatic agent in a particular State is harmful for the receiving State.
- if the diplomatic agent has by his declaration or conduct done some enemical thing.
- Being a citizen of the receiving State, so that none of the citizens of the receiving state is given privileges and immunities over other citizens.
- Moreover, no reasons are required for such refusal.
- In practice host or receiving States are consulted first, so there are minimum chances of refusal.
- Bangladesh's refusal to accept Khawja Alqama as High Commissioner.

## Diplomatic Immunities

### 1. Basis of Immunities/Privileges of Diplomatic Agents

- **Theory of Extra Territoriality:** Basis of diplomatic privileges and immunities
- ***Ex-parte Petroff (1971):*** Two Australian citizens threw explosive substances on the Chancery of Soviet Union in Canberra, pleaded that they could not be prosecuted in Australian jurisdiction because the Chancery was not in the territory of Australia. The Supreme Court of Australia rejected the plea, discarding the theory of extra territoriality.
- **Functional Theory:** privileges and immunities are granted because of special functions performed by diplomatic agents. Recognised by Vienna Convention on Diplomatic Relations 1961.

### 2. Diplomatic Immunities and Privileges

- **Inviolability of Persons of Envoys:** Article 29 of Vienna Convention on Diplomatic Relations 1961 "The person of a 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."
- "The right of inviolability extends to the person of diplomatic officials as well as diplomatic agents, their premises, archives, papers, documents, and correspondence".
- Diplomatic agents and officials have the duty not to interfere in the internal affairs of the State, not to use the premises of the mission for the unlawful activities, not to commit acts of violence, sabotage, or espionage. In case of violation of laws the receiving State may request a diplomatic agent of the diplomatic agent/official or declare him/her persona non-gratia.
- **Immunity from Criminal Jurisdiction of the Courts:** Immunities may be lost in severe cases such as conspiring against the receiving State or in case diplomatic agent presents himself to the court instead of sending a message that he is the representative of a sovereign State and does not fall in the jurisdiction of the court.

- **Immunity from Civil Jurisdiction:** Suits for recovery of debts or breach of contract cannot be filed against diplomatic agents. Article 31 of Vienna Convention provides three exceptions 1) regarding private immovable property 2) succession in which diplomatic agent is involved as a private person as executor, administrator, heir or legatee 3) Private professional or commercial activity
- **Immunity Regarding Residence**
- **Immunity from being Presented as Witness**
- **Immunity from Taxes, Dues:** Article 34 of the Vienna Convention: exceptions 1) Indirect taxes on goods and services 2) on private immovable property 3) succession or inheritance duties on private properties 4) on private income and investments 5) Charges for specific services such as registration, Court or record fee, mortgages dues, stamp duty, with respect to immovable property. Article 36: receiving State may exempt all custom duties, taxes and related charges.
- **Immunity from Police Rules**
- **Right to Worship**
- **Right to Exercise Control and Jurisdiction over their Officers and Families**
- **Right to Travel Freely in the Territory of the Receiving State:** Article 26 of Vienna Convention Exceptions: prohibited places and related to the security of a State.
- **Freedom of Communication for Official Purpose:** Article 27
- **Immunity from Local and Military Obligations:** Article 35
- **Immunity from Inspection of Personal Baggage:** Article 36 (2)
- **Immunity from Social Security Provisions:** Article 33
- **Immunities of the Servants of Diplomatic Agents:** Some immunities to the officials of the embassies, their women, children, and other personal servants and messengers. The messengers are immune from civil and criminal jurisdiction of the Courts. **Based on the principle of reciprocity.**

- **Immunities of the Consuls**

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## **Introduction of Treaties, Nature and Kinds of Treaties**

### **Definition/Meaning/Concept of International Treaties**

- International treaty is an agreement between two or more States whereby they establish or seek to establish their relations governed by International Law.
- **Vienna Convention on the Law of Treaties 1969:** Article 2, states that treaty is an agreement concluded between States in written form and governed by International Law. **Article 5:** the present convention applies to **any treaty which is the constituent** of an International Organisation and **to any treaty adopted within an International Organisation** without prejudice to any relevant rules of the organisation.
- **Prof. Schwarzenberger:** "Treaties are agreements, between **subjects of International Law** creating a binding obligation in International Law."
- **Treaties as Source of International Law**

### **Classification of Treaties**

- **McNair:** 1) Treaties having the character of conveyances; 2) Treaty Contracts; 3) Law-making treaties; and 4) other treaties, such as, the treaty of Universal Postal Union

**Oppenheim:** 1) Law-making treaties; and 2) Treaties for other purposes

## Termination of Treaties

- Extinction
- Outbreak of war: treaties for which general, political, and good relations are required; treaties regarding completed situations such as fixation of boundaries; treaties dealing with the rules of war; some multilateral treaties related to health, service, protection of industrial property etc. do not completely end but remain suspended during the war; there may be provision in the treaty which states what will happen in case of war.
- A material breach of bilateral treaty
- Impossibility of performance: Article 61 of the Vienna Convention on the Law of Treaties 1969
- *Rebus sic stantibus*: Change in fundamental circumstances
- Expiration of fixed term
- Successive denunciation: Article 55 of the Vienna Convention ... 1969
- Jus Cogens or Emergence of new Peremptory Norm of General International Law

## 2. Important Maxims relating to Law of Treaties

A. "*Pacta tertiis nec nocent ne prosunt*" only parties to a contract are bound by the contract. Article 34-38 of the Vienna Convention on the Law of Treaties 1969. **Exceptions:**

- Rights of the third party: Article 36
- Multilateral treaties establishing customary International Law
- Multilateral treaties creating new rules of International Law
- Multilateral treaties intended for universal application
- Treaty imposing obligation on a third party and that third party accepts the obligations

**Examples:**

- **Geneva Convention(s) on the High Seas**
- **Rules of sovereignty over airspace under Chicago Convention on International Civil Aviation 1944 (Article I)**

**B. "*Rebus sic stantibus*":**Termination of treaties when material or fundamental circumstances change

**C. "*Pacta sunt Servanda*"**

## **Settlement of International Disputes**

### **1. Pacific Means of Settlement of International Disputes**

- **Arbitration**
- **Judicial Settlement**
- **Negotiations**
- **Good Offices**
- **Mediation**
- **Conciliation**
- **Enquiry**
- **Under the auspices of the UN**

### **2. Compulsive or Coercive Means of Settlement**

- **Retorsion: Behaving in a discourteous manner**
- **Reprisals: Use of force against an illegal action**
- **Embargo:** the affected State becomes entitled to create obstruction in the transport of its ships which are within the territory of the affected State.
- **Pacific Blockade:** American Blockade of Cuba in 1962
- **Intervention**



## Introduction to the Law of War and Enemy Character

### War

- What is meant by War?
- War as a contest between the armed forces
- War beyond a mere contest between the armed forces:
  1. growth of the number of contestants;
  2. growth of numbers of non-combatants engaged in war preparations;
  3. the development of aerial warfare;
  4. economic measures;
  5. the advent of totalitarian States.
- Non-war-armed conflict or limited war
- Need for Amendment of the Laws of War: (i) development of the concept of total war; (2) expansion of the world community as a result of the independence of new States; (3) development of human rights; (4) need for protecting the civilian population from the scourge of war; (5) need for enforcement of human rights during war; (6) obsolete codification of laws of war.
- Commencement of War: warning, ultimatum, declaration, messengers

### Enemy Character

- goods, individuals, corporations, ships etc.
- **Enemy character of the individuals of the belligerent States:** Britain and America determine the enemy character of individuals of belligerent States on the basis of domicile and residence. Other European countries determine on the basis of nationality.
- **Enemy character of the individuals of the neutral States**

- **Enemy character of Corporations:** is determined on the basis of (a) their permanent residence and (b) their registration
- **Enemy character of ships:** is determined by their flags.
- **Enemy character of goods:** all goods on board an enemy merchantman. ownership of the goods.
- **Transfer of Enemy ships:** such ships can be transferred under the flag of neutral States in two conditions: (a) Before outbreak of war, provided that such a transfer is not intended to avoid the capture of ship. (b) After the start of war, such transfer is generally illegal but may be allowed if the owner of the ship establishes that transfer was not made with an intention to avoid capture of the ship. (Declaration of London not ratified)
- **Transfer of Goods in Sea:** on the basis of status of ownership of goods.

## **Insurgency/Belligerency/Belligerent Occupation**

### **Rights and Duties of Belligerent Occupation**

- The private moveable property can be seized and public movable property can only be used. The immovable property can be seized only for a temporary period and cannot be disposed of
- Except for the needs of the forces of the occupying power, the valid professions of the local inhabitants should not be disturbed.
- Occupied people should be free to follow their religious customs and practice their religions.
- The occupying power is not entitled to transfer the inhabitants of the occupying territory to certain other places.
- The occupying power is entitled to get food material for their military forces. But this should be done keeping in view the needs and convenience of the local inhabitants.
- The occupied people cannot be compelled to perform military works against their own country.
- Contributions and donations cannot be extracted from the local people. However, this can be done only in exceptional circumstances when ordinary taxes are insufficient to meet the essential needs of the occupying power.

(Hague Conference 1907 and Geneva Convention of 1949)

- The civilian people of the occupied territory cannot be arrested and detained as hostages.
- Collective fines cannot be imposed on the occupied people.
- The old Courts remain established and the status of judges also remains unchanged. The old penal laws should also not be disturbed. Undue pressure should not be exerted upon the judges and the public officials of the territory occupied.





## **International law on the conduct of hostilities**

International law on the conduct of hostilities regulates and limits the methods and means of warfare used by parties to an armed conflict. It aims to strike a balance between legitimate military action and the humanitarian objective of reducing human suffering, particularly among civilians.

- Killing of civilians, bad treatment of prisoners of war, use of poisonous gases, sinking of ships without affording protection to the crew and its passengers
- Declaration of Paris 1856; Geneva Convention of 1864; Hague Convention of 1899; Hague Convention of 1907; Geneva Gas and Bacteriological Warfare Protocol 1925; The Submarine Rules Protocol 1937; and The Four-Geneva Red Cross Conventions, 1949.
- **The Hague Convention 1907:** Distinction between combatants and non-combatants. Persons in the regular armies having specific regiment number are lawful combatants. Guerrillas, volunteers, corps can also be recognised as combatants if (a) serving under a definite and specific authority (b) having specific emblem recognisable from a distance and (c) conducting war in accordance with the rules and customs of war.
- **Geneva Convention on Prisoners of War 1949**
- **Geneva Convention 1949:** Convention regarding Sick and Wounded Members of Armed Forces in the Field

## **Prohibited Means in Land Warfare**

- **Hague Convention 1907:** prohibition of: using poisonous gas and weapons, projectiles which cause unnecessary sufferings and pain; polluting or poisoning water and other food materials; attacking or destroying cities and villages which are undefended or far from military areas (in case military attack on such areas is necessary for some reasons prior warning to the inhabitants has to be given); killing wounded or sick persons of armed forces;
- **Ruses of War or Stratagem and Deceit**

- **Espionage**

**Geneva Convention of 1949 relating to the treatment of the Dead and Injured Members of the Armed Forces**

- Attacking the dead and the injured during war
- looking after without discrimination
- Prohibition of insulting and mutilating dead bodies
- Protection to mobile hospitals, doctors and people serving hospitals and patients
- Marauding i.e. plunder or looting of the dead bodies
- The hospital ships and means of transportation used for sick and wounded
- Prohibition of violence against sick and wounded
- At the end of hostilities, treatment of dead bodies

## **Prisoners of War**

- The Hague Convention 1907, The Geneva Convention 1929, and The Geneva Convention 1949
- Article 13: Humane treatment; causing death or endangering health; physical mutilation to medical or scientific experiments; acts of violence and insult; measures of reprisal; full civil capacity.
- Article 14: respect of person and honour;
- Article 15: Free of charge maintenance for the medical attention
- Article 16: Similar treatment without any prejudice; privileged treatment on the basis of health, age, or professional qualifications.
- Article 17: Physical and mental torture to secure information;
- Article 18: Effects/articles of personal use except arms, horses, military equipment and military documents; PPEs such as metal helmets, gas masks.
- Article 19: evacuation to camps far enough from connected war zone;
- Identity documents; badges of rank; nationality decorations; articles having personal or sentimental value.

## **Blockade as an act of War/Strategic Blockade**

### **Pacific Blockade or Commercial Blockade**

#### **Essential Elements of Blockade**

- It should be done as a means and an act of war
- whole or part of an enemy coast be blockaded
- applied for ingress and egress of the ships
- without discrimination applied to all states
- Effectiveness: use of necessary force; some vessels may succeed in getting through
- Continuous Maintenance
- Proper establishment
- Impartiality
- Declaration and notification
- Exemption to neutral ports
- Geographical limits of blockaded area
- Violation of Blockade is a criminal act; issue of notification and knowledge of blockade;
- Consequence of violation of Blockade: catching the vessel and producing before the Prize Court; Detention of Sailors

#### **End of Blockade**

- If war ends
- Withdrawal of blockading power
- Continuous violations of blockade
- If the blockading power conquers the blockaded State

- If the blockading power is defeated in the war
- If the fleet of the ship enforcing blockade moves away

### **Long Distance Blockade**

## **Contraband**

- Meanings of Contraband
- Types of Contraband: Absolute Contraband, Conditional Contraband and Free articles
- Declaration of Paris 1856
- Declaration of London 1909
- Ownership of Contraband
- Doctrine of Continuous Voyage
- Kim Case