

## PUBLIC INTERNATIONAL LAW

PIL is a law which governs the day to day state behaviors relations. Rules govern interaction between two or more states. Interstate relations between and among states.

Sources of international law- unlike domestic law which are found in codes, P.I.L sources are found in various areas not found in one single area. The sources are

International Custom- day to day state practice, practice must be repeated over certain period of time.

Treaties International- treaties concluded by states

Particular General, treaties may be multilateral concluded by large number of states bilateral treaties concluded by two states.

General Principles of Law – may be domestic law or international law “the perpetrator should be punished” types of laws.

Writings of most known publicists - International lawyers, famous and recognized people.

Judicial decisions –

The first three are formal/primary source of international law and the last two are secondary sources of international law.

Helps to make rules the first three e.g. if they had treaty who breached it – treaty – general principles.

Subjects of International law

1<sup>st</sup> States – are primary subjects of international law

2<sup>nd</sup> Individuals (because the right and duty of the subjects are derived from state through treaty) and international companies or international organizations are secondary subjects because international law is made and applied by states. How made? = through treaty or custom

Secondary = Rights and Duties given to them from states

3 major international areas giving rise to standing of individuals which include International Humanitarian law, International Criminal law and Law of War. **Legal personality-** is the ability to enter into legal relationship and having rights and duties.

States have primary/original legal personality. Individuals, companies, international organizations have derivative secondary legal personality because rights and duties are given by states because laws are made primarily by states.

### Fundamental Principles of International Law

1. **Principle of Sovereign equality of states** - States are sovereign and they are equal before international law. **Sovereignty** – states should sense their best interest first equality – in the eyes of international law they are equal regardless of other factors, regardless of economy, military power, geographical size.
2. **Principle of not using force threat to settle disputes** - use of forces should be the last resort. Self-defense is allowed against an immediate aggression. Deploy alternative dispute resolution mechanism e.g. Negotiation, or mediation or adjudication/ arbitration, and finally war.
3. **Principle of peaceful settlement of dispute-** Article 2 (3) UN Charter

## PUBLIC INTERNATIONAL LAW

4. **Principle of Non-Intervention on the affairs of other state** - could be on domestic or foreign affairs.
5. **Principle of co-operation**- states should cooperate/especially some problems having international dimension e.g. climate change or generally environmental problems e.g. terrorism, states should cooperate to break down their problems. E.g. trafficking – in any form.
6. **Principle of good faith**- during treaty conclusion or development activities e.g. In a way that doesn't bother neighboring states exploiting resource.
7. **Principle of Self-Determination of people**- ICCPR- may be internal self-determination or external self-determination. External is succession being a state.

International Areas/ Subjects covered by international law- E.g. issue of state succession and state responsibility. Law on peace and security, law of war, law of treaty, law of the sea, law of international waters, law of international organizations, nuclear energy, economy and development, investment and environment. Classifications of International Law

It has four classifications:-

1. **General** International Law- refers to a treaty by which many countries are part members too. Rules & Principles that are applicable to a large number of states, based on customary international law or multilateral treaties.
2. **Universal** International Law- a law which is to be applied by countries which are not members. In this case the rights and principles become binding upon all states. Preemptory norms are universally accepted norms **Jus Cogens** which condemns genocide, slavery, torture, war crimes in human treatments and the like.
3. **Regional** International Law- This applies only to certain groups of states, and bounded geographically.
4. **Particular** International Law- is binding upon 2 or a few states only.

**State Succession** - It is the transfer of rights and obligations from a predecessor state to a successor state. Transfers of rights and duties exist in other words it is the process of transferring, sovereignty over a territory from a subject of international law to another subject of international law.

There are various issues which must be raised by both sides

1. What happens to the existing bilateral and multilateral treaties?

Bilateral treaties – if it is boarder treaty, then it will be respected but other treaties will be invalidated. “Grow the land treaty to treaty”.

Multilateral Treaty- /environment, development and trade/ doesn't oblige the state, however treaties allow reservation, no resolution is allowed for **Genocide** convention if Ethiopia is part of it so is Eritrea. **Human Rights Treaties**- no state is allowed to be reserved from these treaties. **Preemptory norms A.K.A Jus Cogens**- in any country respected

## Chapter Two

### The State System

State is a basic unit of the international legal system. Without state there is no international law state has legal personality. So the stability depends on the state and the government. In order to have a good relation with other states.

## PUBLIC INTERNATIONAL LAW

| National Legal System                                       | International Legal System                                                                                                                                                             |
|-------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Subjects of National Law                                    | Subject to international laws                                                                                                                                                          |
| Very centralized                                            | decentralized                                                                                                                                                                          |
| The legislature, executive & Judiciary is clearly stated    | but here they seem alike                                                                                                                                                               |
| Individuals have rights and Duties.                         | States have rights and duties                                                                                                                                                          |
| The gov't makes the law.                                    |                                                                                                                                                                                        |
| The judiciary decides the rights and duties of individuals. | Non-International government which made laws or pass laws to other states because states are sovereign and equal. So there is no government which passes law to other sovereign state. |

**So how they are made?**- through treaty or custom there is no international tribunal with full or compulsory jurisdiction to decide the rights and duties of states e.g. every state is represented and have one vote in UN they seem like they made treaty but they don't. ICJ is the only judiciary body of the UN. Human rights Council it lacks jurisdiction to entertain cases which come from state because both countries or contesting states should agree to see the case by ICJ.

There was Ethio Vs Eritrea border arbitration committee when border is given there is a demarcation in a map and there is demarcation which is made on the ground. Each Stone and River is considered. Ethiopia uses a give and take international principle about Bademe.

Written agreement from the considering states. E.g. when Ethio and Eritrea corralled one said let us go to ICJ but they didn't they went to Arbitration.

The government enforces the law there is strong and well organized enforcement mechanism.

No international governmental body to enforce the decisions made by international tribunals. There is weak enforcement mechanism. Sometimes international law works with power politics but it's law is weak.

Individuals are equal before the law.

States are equal before the international law.

Self-help defense is very restricted

self-help is very prominent and common.

Sovereignty anything in addition to independence. Independence is at the counter and most important part of sovereignty it is ultimate authority of the state. **Types-** Internal and External. Internal states have the right to implement law have a strategy and allocate resource etc. which they have power on the inside of the state it is the legislative power of the state it has full power to administer within the state. States have exclusive power within their territory. **External-** deals with external matters to make any relation and dealing out to any other country no other country may not affect one state's dealing with other states.

Internal Sovereignty - Historical Background is traced back to 16<sup>th</sup> century particularly 1648 West Phadia Treaty concluded in Germany. It ended the 30 years' war in Europe it was a religious war between Catholics and protestants who resided in Germany and France. When there were disputes in one country one religious group comes and helps its religion this treaty gave power to national government to have full control over this religious disputes within the country.

## PUBLIC INTERNATIONAL LAW

Erosion of Sovereignty there is a big difference between erosion, envision and colonization. Envision is only concurring while colonization is when the ruler is the colonizer they are the same by violating sovereignty erosion is when it is voluntarily or by willingness. The purpose will be trade or other the one challenging policies and rules of the state that is you are not no more independence to get the benefit you should change your strategy and policy voluntarily.

### State Formation and Self-Determination of People

There are various ways how states are formed first succession which is the splitting of part of state and forming one's own government. Decolonization- is when a former colonized state gains its independence from the colonizer. Disintegration- the mother country separates into different countries. Unification- The other part of self-determination of people and state.

#### The Legal and Political Issue of Statehood

Legal Aspect- According to 1933 of Montevideo Convention which deals with the right and duties of states. There are four legal recognitions in which an entity should fulfill in order to get recognition as state these are 1. **Population**- there must be permanent population which already has lived for long time in that territory. There is no minimum number of population to be a state. 2. **Defined Territory**- Government should control permanent substantial large area Human Right decision is not necessary there is no absolute consistency on border area there are different space, land territory and coastal areas. 3. **Government**- Combined population with territory. It has two controlling aspects internal and external aspects the former is the internal sovereignty it has full right to e.g. on the people and any other matter while the latter deals with the external sovereignty to deal with foreign affairs. Why do we say effective government? Because it is necessary for a newly emerged state. Government changes through time and the power may be lost permanently or temporarily, even if there is no government the state will continue to live e.g. Somalia for 20, Ethiopia for 5 years Italian Envision. 4. **CAPACITY TO ENTER INTO LEGAL RELATIONSHIP WITH OTHER STATES**- according to this criteria two theories developed **DECLARATIVE AND CONSTITUTIVE**. **Declarative** politicians believe that as long as the first three are developed recognition should be given as state because it is already declared. **Constitutive** believe that in addition to the first and third the state in order to be said a state it shall get recognition from other countries. **De Jure and De Facto** the former means based on law which is clearly stated while the latter means impliedly or by practice giving recognition.

Right of self-Determination- One of the fundamental principles of international law and recognized by several countries Constitution. It is found in different types of charters, ICCPR, ICESCR in addition to this several regional charters also give recognition such as African Charter On Human Right and the ICJ also give recognition to it which is one of the Judiciary body of the UN. Self-Determination is the right to participate in Democratic Process of governance and to influence one's future regarding politics, culture and socially. In addition to this ICJ defined this principle as follows it is the need to pay regard to the freely expressed will of the people.

#### Types of Self-Determination- there are two types internal and external.

Internal- associates with people of state to choose their own political status. E.g. In federalism state principle Tigray is organized by their own people and their own language and other states.

External- is one of succession or unification or disintegration these are by other words future of external self-determination these are by other words features of external self-determination.

#### State Territory and Borders

## PUBLIC INTERNATIONAL LAW

In Africa border are demarcated by principle of **UTI POSSIDETIS**, means keep what you had during independence why? Because the organization of OAU the now African Union urged member countries to respect this principle which applies to two types of border demarcations there is Administrative Border Demarcation and Treaty Based Demarcation between two different colonizers.

**Administrative Boundary Demarcation – Niger and Chad** were both colonies of France. France for its own administration a little part of Chad gave to Niger and after decolonization the principle says keep what you already had during independence.

**Treaty Based Boundary Demarcation-** Nigeria and Niger, Nigeria was a colony of Britain and Niger was France's Colony the two countries then have a treaty that some part of Nigeria to go to Niger and according to this principle after treaty boundary will be kept. It will have advantage and disadvantage.

Advantage- There is no choice other than to keep what you have or it results war. Disadvantage- This boundary divides the Ethnic group e.g. Brudie and Rwanda Tutsi and Hutu both found in both countries.

**State Succession-** this is the process of transferring sovereignty over territory during succession there are two stages predecessor state and successor state. Predecessor state is a mother state and sovereign is child state. So, there are rights and duties which should pass to the successor state. What kind of rights and duties should the successor state have to succeed? There are several ideas given by several scholars there are issues which must pass to the successor state.

This are natural resources which are found in the border. Border issue is a pending negotiation. Treaty the mother land country may have signed many treaties there will be negotiation which treaty passes to the child state or not. But human rights treaties should pass because there is no negotiation on these treaties. Because there are other treaties which are cost preparatory norms (**Jus Cogens**) should not be preserved they should be accepted by the child state. There are norms which are accepted and respected by the international community they should not be disrespected or unaccepted E.g. Genocide, Apartheid, In Human Treatment and Human Trafficking. This all are condemned acts including war crime, crime against humanity and piracy. **Membership to international organizations-** if the mother land was a member of international organizations the child may or may not be a member. **International Claims-** international debts USSR when it splatted to 13 countries they divided the debts and pay. **Public and Private Properties-** for public property is not that much problem private properties are subject to this matter because it affects the ones who have property on the child state.

**Nationality of the people who are affected by the Process-** one when succession appeared persons who are found in the country. **Contractual Rights-** What are the rights of the mother state have had begun contract. **Natural Achieves-** Axum, Lalibela, Yeha should be issues. **Wrongs Committed by the Mother State-** should be raised as an issue.

**Types of Succession-** There are two types for succession of government which is the successor state should take the rights and duties of the former government. But for succession of state is different "When a government comes the previous government's power and duties will be its" but it is different with regards to state succession in theory there are two positions.

1. **Clean-State Possession-** is none of the rights and obligations of the predecessor state will pass to the successor state because it is clean and start from zero or it is new-life. But it is not possible because the above stated things such as human right should be respected.
2. **Continuity Possession-** Is all the rights and obligations of the predecessor state should pass to seceding state. This is also not possible in practice it fails the two possessions means it becomes some of the rights and obligation should pass and some will not.

## Chapter Three- International Organizations and Other Actors

International organizations have secondary legal personalities and their rights and duties are specified by the creator or member countries. They can enter into legal relationship example WHO is created for specific purpose so all international organizations are created for specific purposes e.g. UNESCO and FAO. Some international organizations deal with environment food and human right irrigation, trade and refuge etc. and they get privilege and immunity. The officer should get privilege and immunities from the member countries states have unlimited privilege and immunity but international organizations get limited immunity to carry out their specific purpose. International organization can be brought by an international claim when they act beyond their power it is called **Ultra Vires and it is legally void**.

**UN** the most important principle organization because all countries are represented in it. **Structure** it has six principal organs this are 1. General Assembly- composed of representatives of all member countries one country is represented by one vote regardless of their political and economic powers 2. **Security Council**- it is not composed of all member countries only 15 of whom 5 are permanent since the establishment in 1945 when it was established by the UN charter and 10 are non-permanent or temporary members which are elected every two years. 3. **The economic and social council** it has specific purpose and specialized function most of the work of the UN is performed by this council regarding the day to day activity. 4. **The trust ship council**- it is not as such functional currently the primary target was limited to give trust ship to decolonized states who couldn't stand by themselves but now a day this council's work is almost over. 5. **The Secretariat**- the office of the secretary. 6. **ICJ**- the only judiciary power of the UN.

Among the six the security council is the most decisive and important council of the UN the ten temporary members are elected by the **general assembly** USA, UK, RUSSIA, FRANCE AND CHINA these countries have veto power which is unilateral decision to disqualify a decision there is no majority vote it becomes majority vote when it is then in non-procedural issue and all country will be participating if one is absent it is considered as agreement not rejection e.g. Ethio Eritrea war there was proposal rejection of Weapon but all organ and china were absent and this composition for? And represent the whole people of the world.

**Principal Functions of the S.C-** 1. **Making Recommendations for Peaceful Settlement of Disputes** 2. **Taking Enforcement Action to Deal with Treaties to the Peace, breach of peace and act of aggression** then the enforcement will be two types non-military and military the former will be the first but if not a military action will be taken. 3. **Deploying un peace keeping operation**- article 25 provides that the members of the UN agree to accept and carry out decisions of the Security Council in accordance with the present charger. 4. **Enforcement Mechanism**- Article 41 and 42 deal with types of enforcement mechanism article 41 deals with non-military action while article 42 addresses military enforcement action. Art 41 deals with majors not involving the use of armed force this may include economic sanction or economic embargo. A. Complete or Partial interruption of economic relation B. Complete or Partial interruption of rail road, news, postal, telegraphic, radio and other menses of communication. C. severance or serious of diplomatic issues.

Decisions of the secretary council under article 41 are binding on the member states called up on. **Article 42** when majors on article 41 are not adequate then it may take such action by air, sea or land forces as may be necessary to maintain peace and security. **Article 43** who should execute article 42 because we didn't have international army we start with voluntary countries so there will be an agreement on the security council but when they execute their might be other interests one is the executor country may want to **explore the natural resource** two they want to train their solder practically third they want to try new weapon of technology on the country Article 43 in order to apply article 42 there has to be an agreement between security council and the member who wishes to send force to the violating state so they will conclude special agreement. **Article 34**, it can only entertain cases of only states international organization appear before ICJ just to get advisory opinion

## PUBLIC INTERNATIONAL LAW

not decision. **ICJ has two Jurisdiction** 1. **Contentious Jurisdiction**- This is a jurisdiction to settle legal disputes submitted to it by state Art 34 of the status of ICJ provide that any states may be party's in contentious proceeding before the court (individual came are not) 2. **Advisory Jurisdiction**- ICJ gives advisory opinion on legal questions on legal questions refers to is by international organ or agency.

**Chapter Four international Customary Law****Source of International- Art 38 (1) of the statute of ICJ**

- A. International Convention- whether general or particular stability rules expressly recognized by contesting state.
- B. International custom- has evidence of a general practice accepted as law.
- C. General Principles of Law- Recognized by civilized nation. Civilized "they refer peace loving Nations: the then drafter of the convention.
- D. Judicial Decision- It means decision Judicial or Arbitral.
- E. Teaching /writing/ of the most known highly qualified publicist.

The first 3 are formal source the other two material source of international law (2<sup>nd</sup>ary subsidiary).

Formal Source: it means it tell us what exact law is. Material Means- Where the law is found.

The most important source is customary international and also serves treaty as support customary international.

**Custom Element**

1. The Objective Element- it's the general practice or actual practice of state (its repeated action of the state) this repeat ion is within a certain period of time.
2. Subjective Element- This means the former practice (objective) accepted by law, subjective is the psychological element (opinion juris).
  - o As single precedent is not enough to establish International customary law (in principle) exception instant customary law (driteo sontanise) repetition and time factor rejected a single practice is enough.

**Objective element Example:-** official element statement of police by government (is made may in international conference, on media ---- repeated, saying by government and also accepting a legal consequence.

Subjective- legal **consequence states** must only exhibit (show) a certain practice but also they must also believe that the practice legally required.

**Types of Custom**

Religious                      General                      Custom

If a custom is general then all states in the world are bound by it.

Religion- states that in that region bound by it

Local- state in that local bound by it.

States that say no or say nothing during a time when the custom develop will be based by that custom. The same applies to new state.

## PUBLIC INTERNATIONAL LAW

A practice can be general even if its not universally accepted. E.g. The law of the sea. Coastal State, Maritime State, land locked state. States that are land locked must have **persistent objector** if not it also applies on them. E.g. The law of outer space- includes (moon) USA, Russia, China, went to the moon and the rule made by them will be followed... **persistent Objector** ... (**continuous Objector**).

If the state do notify keep silent this practice will apply to that state, by the **principle of a conciseness** - silence is acceptance.

## Chapter Five

International Law of Treaties- The Vienna convention on the law of treaties defined treaties as:- It is an international agreement concluded between states in a written form and governed by international law whether embodied in a single instrument or in two or more instruments and whatever its particular designation.

**Why need to conclude treaty?** It is to solve problems in cooperation. There are 33,000 treaties in UN. It shows. There are three features of definition. It is concluded between two or more states, it is an international agreement/written and it must be governed by international law.

Synonyms of Treaty- agreement, pacts, understanding, protocol, charter. Statute, act, covenant declaration, engagement, arrangement, accord, regulation and sometimes they may have other meaning.

**Application of treaty**- two concepts- territorial scope according 29 of Vienna conventions the territorial scope unless a different intention appears in the treaty it is binding upon each party in its entire part of the territory.

**Treaty and 3<sup>rd</sup> parties**- in principle it is binding on the party but the general rule is that treaty can't create right and obligation to 3<sup>rd</sup> party.

**Exceptions**- e.g. art 2/6 of the UN charter imposes obligations on states without their consent and it said that: the organization shall insure that states which are not members act in accordance with the fundamental principle of international law. So far as may be necessary for the maintenance of international peace and security example principle of non-interventions shall be respected- genocide conventions.

## Formation of Treaties

How treaty can be formed? Who can sign on behalf of states? Anyone who has full power.

A state representative may conclude treaty on behalf of a state:- 1- if, he/she possess full power. 2. If, from the practice of the state concerned it can be reduced he enjoys "full power"

According to art 2/1 of Vienna convention- full power emanates from a competent authority of a state designation to represent negotiation, adopting or authenticated the text of the treaty. A state may indicate its consensus to be bound by a treaty in different ways example signature, ratification, accession and adhesion. 1. Simple signature may be sufficient to bind parties to a treaty. 2. There could be this signature followed by further ratification, this is called signature ad referendum.

Signature Subject to Ratification- Therefore ratification is made frequently for those states required some parliamentary process to gain their being bound by international agreement in question.

Ethiopia WTO- accession is when the state is not party to **the negotiation rather the**

In addition to signature and ratification a state can also become a party to a treaty by accession and adhesion. The **difference** is the acceding state didn't take part in the negotiation of the treaty but invited by the negotiated states.

How? Two ways:- 1. If there is treaty **progression** for accession. 2. If all the parties to the treaty agreed should be agreed to the accession of that state.

## PUBLIC INTERNATIONAL LAW

Adhesion is distinct from accession it refers to a state's acceptance of a certain part of a treaty or a certain principle of a treaty.

**Interpretation of Treaty** - There are three approaches of interpretation of treaty.

1. Objective approach it is interpretation in accordance with the ordinary use of the words of a treaty because there are different meaning given to one/single word.
2. Subjective- this is interpretation in accordance with the intension of the parties to the treaty. What is the problem to be solved by the treaty.
3. Teleological- it is interpretation in accordance with the treaties aims and objectives or purposes.

We can only use one of them or two of them or all of them in interpretation.

**Invalidation of Treaty**- There are various ways of invalidation.

**A. Major Causes of Invalidation**

1. - Non-compliance with municipal/ domestic law example signature.
2. - Treaties concluded by persons not authorized to represent a state in general person who lacks full power.
3. - coercion of a representative of a state.- coercion of a state by threat or use of force common it is not dominant after the second world war, rather very rare.
4. Violation of specific restrictions on authority to express the consent of a state. Violation of instruction given to the representative by the state. E.g. if there is a something which says this or that to sign a signature and the state has to notify these conditions to member states. Unless it contains a particular provision to which a state attach.

What happens if one disregards such restriction art 47 of Vienna provides answer **it " if** the authority of representative to express the consent of a state to be bound by a particular treaty has been made a specific restriction then its omission to observe that restriction may not be invoked to invalidate the consent expressed unless the restriction was notified to the other negotiating state prior to its expression of consent.

**B. Minor causes for Invalidation**

1. Error/ mistake
2. Fraud
3. Corruption
4. Any treaty concluded against the principles of just cogens, prohibition of slavery, and condemnation of Genocide.

**Termination of Treaties** - There are 2 basic mechanisms to terminate.

1. When there is a provision in the treaty. E.g. For occurrence of a condition. For a certain period of time.
2. Whenever all the parties agreed to that effect

**Treaty Reservation**

It has a direct relationship with adhesion. Why? It may have unhealthy relationship with its domestic affairs. - It may be against the constitutionality of that state.

The state shall notify the reservation to all member state. A state may be willing to accept most of the provision of the treaty but for various reasons the state may object other provisions of the treaty called treaty reservation.

Article 2/d of Vienna defines reservation as:

## PUBLIC INTERNATIONAL LAW

It is a unilateral statement made by a state when signing, ratifying, accepting, approving or acceding to a treaty where by it intends to exclude or modify the legal effect of certain provision of the treaty in their application to that state.

### Chapter Six- Law of State Responsibility

There are three characteristics for law for law of state obligation.

1. The principles governing when and how a state is held responsible for a breach in international obligations.
2. Determining the legal consequences of such wrongful acts.
3. Determining how such international responsibility may be implemented.

**Acts attributable to state wrongfulness-** Whenever a state failed to obey international principles it may be the person acting on behalf of states.

**Wrongful act of private citizens** – it is only in exceptional cases such as:- normally the private act of a person may not make state liable.

1. Encouraging individual citizen to attack foreign citizens.
2. Failing to take reasonable care or due diligence to preserve/prevent the foreign individuals.
3. Obvious failure to punish the wrong doer individuals.
4. Failure to provide the insured foreigners with an opportunity of obtaining compensation from the wrong doer in the local courts. In other words there is denial of justice.
5. Obtaining some benefit from the individual acts. E.g. Keeping or sharing losing objects.
6. Express ratification of wrongful act of individual

These are some cases in which states liability is incurred for private wrong.

**Defenses to wrongfulness** - Circumstances precluding to wrongfulness of the states.

1. Force majeure e.g. Violation of air territory due to natural i.e. volcanic eruption or manmade i.e. war cause.
2. Distress
3. Self defense

These are some of the circumstances which help the state to escape international liability. However obligations arising from Preemptory (erga omnes obligation towards all) norms are non derogable that is, that is an obligation arising out of preemptory norms of international law can't preclude wrongfulness.

### Counter Measures/legal consciousness

**Reprisal** (necessary and proportional are very important)- these are acts which would normally be illegal but which are rendered legal by a prior or former illegal act committed by the other state e.g. Deportation and expropriation.

**Retorsion-** it is a lawful act which is designed to insure the doing states e.g. cutting of economic to the wrong doing state. – it is sacred and lawful act.

**Reparation-** there are various forms of reparation

1. **Reinstitution** in kind- if a bridge is destroyed rebuilding. Its purpose is to reestablish the situation that existed before the illegal acts were committed.

## PUBLIC INTERNATIONAL LAW

2. **Providing** compensation- it is done if the first is not possible.

**Self Help**- it is different from reprisal because of the existence of armed measures. In self help it is allowed :

- If the wrongful state failed to provide reparation.
- If the wrong doing state failed to appear before international tribunal.
- It is allowed only against an armed attack as a self-defense.
- It is allowed only against an armed attack as a self-defense. E.g. art 2/4 of UN charter.

Therefore self-help is used to enforce states legal right but taken as exception.

3. **Assurance** and guarantying for non-repetition of the illegal acts.

4. **Satisfaction** it is made when there is no material damage but there is moral damage. It explained in two ways:

1. An **apology** to that government 2. Taking **disciplinary** action against those responsible actors.

## Chapter 7

International dispute resolution (peaceful settlement of dispute between states UN charter art 2/4- war is an exception.

Art 2/3 peaceful settlement of dispute

Art 33/2 provided peaceful dispute settlement mechanism among these:-

### ▪ Diplomatic Settlement

- Negotiation
- Mediation

### ▪ Judicial Settlement

- Arbitration
- Adjudication

## Negotiation

- ✚ It involves parties to that dispute only for that matter there is no involvement of third party.
- ✚ It is a face to face task.
- ✚ There is no loser or winner party which exist in judicial settlement
- ✚ What exists is compromise
- ✚ The result/out come is in the states control.
- ✚ It is a pre-requisite to go to other means of settlement of dispute particularly mediation.

## Mediation

- ✚ There is 3<sup>rd</sup> party involvement.
- ✚ The 3<sup>rd</sup> party gives suggestions and comments.
- ✚ The 3<sup>rd</sup> party has no legally binding effects.
- ✚ Mediator should get confidence from both parties.

## Arbitration

- ✚ Like mediation there is third party
- ✚ Unlike mediation its decision is binding.
- ✚ It is more flexible than adjudication
- ✚ The parties have different choices/freedom
  - Seat of the tribunals
  - Selection of the tribunal of judges.
  - Procedures to be applied.

## PUBLIC INTERNATIONAL LAW

- Laws to be determined. Finality approval.

**Adjudication**

- ✚ It is performed by permanent courts.
- ✚ There is permanent judges.
- ✚ The procedure is fixed.
- ✚ The law is pre-determined
- ✚ There is an involvement of third party who has a power to bind.
- ✚ Example ICJ
  - Contentious Jurisdiction- it is a jurisdiction to settle disputes submitted to it by states in accordance with international law.
  - Advisory Jurisdiction- It is a jurisdiction to give advisory opinions on legal question/referred to it by IO and agencies.
  - It has 15 judges among these five seats are taken by permanent members of the security council.

**Chapter 8- Jurisdiction**

It has different meaning- It means territory – it refers to powers exercised by state over persons, property or events. Here it involves legislative jurisdiction, judiciary jurisdiction and enforcement jurisdiction.

There are four

As far as criminal trials are concerned the bases of jurisdiction most frequently invoked by the state on the following principles- **Territorial Principle- Nationality Principle - protective Principle- Universality Principle.**

**Territorial Principle**

A state can claim jurisdiction over a crime committed within its territory. It is a general rule. Sometimes a criminal act may begin in one state and complete in other state e.g. A man may shoot across a border and kill the other on the other state. In such circumstances both states have jurisdiction based on two principles:

1. The state where the act started have jurisdiction under subjective territorial principle.
2. The state where the act completed have jurisdiction under objective territorial principle.

**In such cases both states seat and negotiate about who will have the jurisdiction.**

**Nationality**

There are two principles to prosecute criminals under nationality principle

1. Active Nationality Principle- a state may prosecute its nationals for crimes committed by its citizens in anywhere in the world based on active nationality principle.
2. Passive Nationality Principle- A state may claim jurisdiction for crimes committed by foreigners against its citizens anywhere in the world.

**Protective Principle**

It allows states to punish acts which arms or puts danger its national security even if committed abroad by foreigners or citizens. E.g. Pilots/plans to overthrow that nation's government, espionage, spy, forging its currency, breaking its immigration regulation, terrorism acts.

**Universality Principle**

This principle goes with preemptory norms. Those are **erga omnis** obligations.

## PUBLIC INTERNATIONAL LAW

States claim jurisdiction over crimes committed against erga omnes obligation or crimes laid down under **jus cogens** principle.

## Immunity

Immunity means freedom or exemption from some obligation, penalty or power of another. There are 3 types of immunity- 1. State/Sovereign Immunity 2. Diplomatic Immunity 3. Immunity of International Organizations.

1. State or Sovereign immunity- No state may exercise jurisdiction over another state because all states are equal.
2. Diplomatic and Consular Immunity- Diplomatic privileges have a final objective the purpose of such privilege is not to benefit individuals but to insure the efficient performance of diplomatic missions of represented state. Why? **To ensure the efficient performance of the functions of diplomatic missions as representing a state not to benefit the individual.**
  - a. Consular Immunity- Consuls like diplomats represent their states in another state but unlike diplomats they are not concerned with politics performed between states, rather perform variety of activities which are non-political e.g. Issuing passports and renewing the same
3. Immunity of IO-

## Extradition

Handling over of criminals to the state which needs to punish them. How When there is extradition treaty and when the crime is against jus cogens.

### Why Extradition?

There may be absence of law or evidentiary purpose.

Crime in one state may not be in another.

Variety in punishment of a certain crime in different states.