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PUBLIC INT'L LAW

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- introduction (name n occupation)

- Need to read a lot

- get prepared to present int'l cases

PUBLIC INTERNATIONAL LAW (PIL)

Before looking into the meaning of PIL, let's first make distinctions between

- Public Intl Law (PIL)

- Human Rights Law (HRL)

- International Humanitarian Law (IHL)

- Private International Law (CL)

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1. DEFINITION

Is a branch of public law that governs relations between subjects of international law.

READ: J. G. Starke QC, An introduction to int'l law;

- Origins & dev't of int'l law: pp. 6-15

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Who are the subjects of international law?

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2. Subjects of Int'l law

- *Primarily, States are the principal subjects of Int'l law.*
- *Other subjects include:*
  - *Int'l organizations*
  - *Individual persons [i.e. discuss diplomatic espousal]*

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What things make int'l law distinct from national laws?

- ***Explain it in light of the characteristic features of law; i.e. Law is***

  - enacted by public authority

  - sanctioned by public force

What about international law?

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- *We do not find int'l law being written in a form of books or codes like domestic laws;*
- *There is no int'l government with a mandate of passing laws to the int'l community;*
- *We don't have an int'l executive organ responsible for the enforcement of int'l laws;*

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Due to these above mentioned reasons, some scholars doubt that "int'l law is really law".

Is International law Truly law?

READ: J. G. Starke QC, An introduction to int'l law;

- Is int'l law TRULY law?: pp. 19-23

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3. Sources of Int'l law

- What do we mean by source of law?
  - Formal source
  - Material source
- How do you relate these two to PIL?

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- *Major sources of int'l law include:*
  - *Treaties/Conventions/etc…*
  - *Custom (general practice; accepted as law)*
  - *General principles of law (good faith, principle of legality, double jeopardy, etc)*
  - *Case laws*
  - *Juristic works (teachings of highly qualified publicists)*
- *Discuss each of the above sources in detail !*

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1. Treaties

- *Are agreements b/n subjects of int'l law and governed by such law.*
- *May be denominated by such dff names as Conventions, Charters, Covenants, etc*
- *Can be classified into dff categories based on dff criterion*

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Types of Treaties

-Based on the # of parties to the treaty ---

- Bilateral or Multilateral

-Based on the nature of the obligation -----

- Executed or Executory

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- *Bilateral – contains two parties*
- *Multilateral – contains three or more parties*
- *Executed – contains an obligation the performance of which brings about the end of the treaty*
- *Executory – contains an obligation requiring perpetual performance on z part of the parties*

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Treaty Making

Step One

Appointment of a representative

Full Powers *– a document signifying that the person to whom it was given has legitimate power to negotiate/conclude a treaty on behalf of his country.*

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Exception ***– the following people are not required to produce FP when negotiating a treaty***

- Head of State

- Head of gov't

- Ministers of Foreign Affairs

- Representatives attending Diplomatic Conferences

See Vienna Convention on the Law of Treaties

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Step Two

Negotiation Stage

- *The stage where terms of the agreement are determined by the parties to the Treaty.*
- *It is done differently depending on the type the treaty takes – bilateral or multilateral*

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When multilateral

– negotiation is done by way of conducting diplomatic conferences

- usually, the conferences are organized by int'l organizations

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When bilateral

– negotiation is done by the representatives of the respective

parties to the treaty

- constant revisions and deliberations which may take years are done

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Step Three

Signature

- *The stage where the final document of the negotiated treaty is signed*
- *The signature of the parties may take either of z following 2 natures – Simple or definitive*

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Simple Signature *– a type which requires further act of acceptance or approval or confirmation to cause the entry into force of the treaty*

Definitive Signature *– a type which has the effective date of the agreement without any further act of approval.*

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Ethiopia's case

- *No Treaty Making Law*
- *Proc 2 Provide 4 Treaty Making Procedures, PDRE's Proclamation No. 25/1980*
- *Treaty making power – Foreign Affairs (FA)*
- *FA – has dff dep'ts such as African Affairs Directorate Genera, Asian Affairs…, etc*

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- ***Issuance of Full Powers*** *– vested in the Prime Minister*

-***Treaty proposal*** *– by any competent Ministry or other government office*

- ***Negotiation*** *– done by the Ministry of Foreign Affairs*

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- *Once a refined doc is found after the negotiation, the agreement would be ready for signature*

- *Definitive signatures – apply to agreements on friendly or diplomatic relations, establishment of headquarters of IOs, etc*

Eg. Agreement b/n FDRE and AU on the Headquarters of z latter, Adopted on 25 April 2008

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- *Simple Signatures – apply to all other agreements than those which are adopted by definitive signatures.*

- *PDRE's Proc No. 25/1980 calls them "treaties with economic or political importance"*

- *Such treaties, after signature, are sent to the HPR for ratification*

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Ratification of Treaties in z HPR

- *See the issue of ratification in light of Arts 55(12) and 9(4) of the FDRE Constitution*
- *The process – z same as z law making process except – no change/modification in case of ratification*
- *Other issues – submitted to z house in its English version; no act of rendition is done in z house; only ratification proc (w/t z content of z treaty) is publicized.*

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Application of Int'l Law in National J/ns

Dualist Vs Monist

- *Are different theories regarding the application of international law within a national jurisdiction.*
- *They may appear in a pure or mixed form in a single nation.*

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- *International law only requires that its rules are respected.*
- **States are free to decide on the manner in which they want to respect these rules.**
- **International law does not determine which point of view is to be preferred, monism or dualism.**

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MONISM

- *Monists claim that int'l and municipal laws form a unity.*
- *So-called monist (mixed monist) States make distinction b/n the dff sources of int'l law; eg. Treaties and Customs.*

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- *When int'l law contradicts with national law, the former prevails over the latter; as in the case of Holland.*
- *In some other States like Germany, Treaties have the same effect like municipal laws; thus when they contradict to each other, pples of interpretation apply.*

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- *In a pure monist State, int'l law does not need to be translated into national law.*
- *An act of ratifying int'l Treaty immediately incorporates such law into a national law.*
- *Thus, int'l law can be applied directly by courts of law and invoked by citizens.*

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DUALISM

- *Dualists emphasize the difference between national and international law, and require the translation of the latter into the former.*
- *Without this translation, international law does not exist as law.*

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- *Mere ratification of an int'l Treaty does not bring about its application within a national jurisdiction.*
- *In case of contradiction, the same principle that applies in monist States applies.*

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2. Customs

- *are, unlike treaties, generally applicable*
- *i.e. apply to all states in the world*
- *Again, unlike treaties, they are not the products of express rule making*
- *i.e. they are patterns of State practice*

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- ***Examples of customs:***

  - protection of foreign emissaries

  - principle of State sovereignty

  - etc

- Q. is custom losing its status as int'l source of law and leaving the place for int'l treaties?

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- *Int'l custom lays the basis for int'l treaties – pacta sunt servanda*

How does custom develop?

- *From long established practice of States*
- *The practice has to be done*

  - consistently: similar or in agreement with what is already known and

  - persistently: never ceasing, continually

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Begin from page 147 text

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4. State personality

- *Personality refers to the status with which a State becomes capable of performing juridical acts in the int'l plane.*
- *Once a nation fulfills the criteria of statehood, it would obtain this status of personality.*

What are the criteria of Statehood?

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A nation becomes a State if it has a

- permanent population

- defined territory, and

- stable government

- Capacity to enter into relations

READ: J. G. Starke QC, An introduction to int'l law;

- State recognition: pp. 149-181 (u may read only three or four pages)

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5. State sovereignty

- *What is sovereignty?*
- *What are the limits of sovereignty?*

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State Sovereignty

- *Signifies **independence**.*
- *i.e. the right to independently exercise the functions of a State to the exclusion of any other State's or external power's interference.*
- *It refers to an entity which owes no obedience to any other entity.*
- *We can pinpoint **two** important elements of sovereignty.*

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1. *The State has an exclusive control over its defined territory and internal affairs; i.e. no other State can tell it what to do and what not to do regarding its internal affairs; and if it does, that amounts to interference.*
2. *States are autonomous entities; and thus, they cannot be bound by international obligations without their consent.*

But what constitutes "internal affair" of a State?

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Ex. Do Human Right Issues fall within the domain of "internal affair of a State"?

- *beginning from time immemorial up until in the aftermath of the cold war, human rights were regarded to fall purely within the domestic jurisdiction of a State.*
- ***i.e. human rights were considered to be matters which are not, in principle, regulated by International Law.***

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"Sovereignty often came to be an attribute of a powerful individual whose legitimacy over territory (which was often described as his domain and even identified with him) rested on a purportedly direct or delegated divine or historic authority but certainly not [ ] on the consent of the people. ... If another political power entered the territory of the sovereign (whatever the reason) without his permission, his sovereignty was violated. In such matters, the sovereign's will was the only one that was legally relevant".

Michael Riesman

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- *However, the act of a State within its territorial jurisdiction is said to be "**internal**" so long as it does not violate any of the rules and principles applicable to States in the international plane.*
- ***In other words, sovereignty is enjoyed by States not without limitations.***

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- *Sovereignty does not entitle a State to enjoy the privilege of immunity from every act it performs within its jurisdiction.*
- *States are required to balance the impacts of sovereignty of States with basic norms of international law, particularly the notion of Human Rights.*

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In this regard, the Permanent Court of International Justice

"jurisdiction of a State is exclusive within the limits fixed by International Law ... using this expression in its wider sense, that is to say, embracing both customary law and general as well as particular treaty law".

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"[I]n cases of human rights violations, sovereignty is never a defense; in cases of gross violations of human rights, it has no role to play; it does not impede the Security Council from concluding that such violations create a threat to the peace and to draw the appropriate consequences in accordance with Chapter VII of the Charter; and it cannot even protect Heads of States from international prosecution".

***Alain Pellet** is a Professor at the University of Paris*

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6. State Succession

- *Refers to the replacement of one State by another State in the responsibility for international relations of territory.*
- ***Basic terminologies**:*

  *- **Predecessor State**: the parent State from which the new State is formed or territory transferred.*

  *- **Successor State**: refers to the new State supposed to inherit the predecessor State.*

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There are a couple of ways in which a new state can emerge. A state can become independent from a colonial power, entering the community of nations as a peer (as was common in the three decades following world war II) ; states can be created with the dissolution of a former state (for example, with the Soviet Union , Yugoslavia, and Czechoslovakia); States can also be created by combining previously independent states, etc

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- *it's important to differentiate between succession of States and governments.*
- *Regarding change of governments, the new ones are supposed to inherit all the rights and obligations of their predecessor.*

Do you think this sounds convincing?

In this regard, rules of international law do not have any place to entertain an issue other than governing the situation that way.

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On the other hand, the rules of int'l law are not clear on the succession of States.

Although since the Second World War some ninety colonies or other dependent territories, such as protectorates, protected states and trust territories, have attained independence, the practice of newly independent states has not been consistent. It is therefore not possible to promulgate a set of rules of customary law on state succession applicable in such situations. The most one can do is to summarize the main approaches which have been taken.

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- *But generally, there are two extremely opposite views on this particular issue.*
- *While the first proposes that a new State shall inherit all the rights and obligations of its predecessor [Universal Succession], the second theory says that the new State shall assume none of such rights and obligations of its predecessor [Clean Slate].*

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Universal succession

According to this view, a new state inherits all the treaty rights and obligations of the former power in so far as they had been applicable to the territory before independence.

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Clean Slate

- According to this theory, the state is free to pick and choose which treaties it will succeed to.
- However, this does not mean that deciding on the survival of treaties concluded by a predecessor state is totally left to the discretion of the new state.
- Usually, treaties which concern territorial rights, such as boundary treaties and those granting rights of navigation or passage, will bind the new state.

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Forms of Clean-slate theory

1. ***"Nyerere doctrine" (optional doctrine).*** *This came after "Julius Nyerere, the first president of Tanzania, considered that international agreements dating from colonial times should be renegotiated when a state becomes independent, as the nation should not be bound by something that the nation was not in a sovereign position to agree to at that time".*

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- *According to this doctrine, the state may not disregard the treaties immediately after its independence.*
- *Rather, it may make a unilateral declaration in such a way that for a specified period following independence, it would continue to apply all bilateral treaties validly concluded by its colonial power;*
- *and after that period, it would "regard such of these treaties which could not by application of the rules of customary international law be regarded as otherwise surviving, as having terminated".*

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2. ***"Tabula rasa":*** *This is a classical doctrine of clean-slate under which a new state starts without any of the obligations of the predecessor state.*

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International Organizations (IOs) as subjects of Int'l Law

- ***Definition**: we cannot find a single and universal definition of IOs; but different scholars tried to define them taking their distinct features into account. **Ex***

  - IOs are organizations set up by agreements b/n two or more States. [Ackhurst]

  - IOs are non-State entities with int'l legal personality separate from that of the personality of the States which established them. [Austin]

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It is therefore inevitable that we need to look into the distinct features of IOs in order to understand what their nature looks like.

1. Characteristic Features of IOs

A. IOs are, save exceptions, created by States

- *Members of IOs are primarily States.*
- *But, as an exception,*

  i. non-State entities like IOs may become members e.g. EC is a member of WTO

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ii. Not all entities founded by States are IOs. E.g. Basle-Milhouse Airport Authority, a joint venture b/n Fr. & Switzerland governed by French Law.

B. Principally, IOs are established by means of treaties.

- *IOs are not created by some kind of legal act under a domestic legal system.*
- *Rather they are created by Agreements (Treaties) between States.*
- *However, not all IOs are formed by a treaty; they sometimes may derive their inception from a legal act of an existing IO. E.g. UNICEF is created by a resolution adopted by the UN.*

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C. IOs have Int'l legal personality enabling them to hold rights and obligations in the int'l plane.

D. IOs need to have at least one organ having a will distinct from the will of its member States…rights, duties, liabilities, … [Attributed Vs Implied powers]

E. The activities of the IOs are governed by int'l law.

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2. Classification of IOs

We may take into consideration different criteria in making classifications between IOs

a. *classification based on functions*

- *Some are created to engage in economic activities (WTO)*
- *Some others are formed to engage in areas of peace and security (UN)*
- *Some still are created as military alliances (NATO)*

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b. ***Classification based on membership***

- ***Some IOs are open for membership from anywhere in the world (open IOs)***
- ***Others are open only for a certain group of entities based on region, objective (closed IOs)***

C. ***Classification based on power***

e.g. Intergovernmental Vs Supranational

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3. Powers of IOs

Based on the nature of their sources, they are classified into two

- ***Attributed Power:*** *expressly vested in the org through constitutive instruments.*
- ***Implied Power:*** *exercised by the org for being deemed to be necessary for the fulfillment of the functions for which the org is established.*

THE UN SYSTEM

Structure of the UN

- Generally the UN has six principal organs:
  - The General Assembly
  - The Security Council
  - The Int'l Court of Justice
  - The ECOSOC (Arts 55 - 60)
  - The Secretariat (Arts 97 - 101) and
  - The Trusteeship (Arts 75 - 85) Counsel
- Some other organs and specialized agencies are subsequently created as the need to do so arise with changes and new dev'ts

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UN Specialized Agencies

- *Are autonomous orgs working with the UN*
- *May or may not hv bn created by the UN, but they r incorporated into the UN system by the ECOSOC acting under Arts 57 n 53 of the UN Charter.*
- *The UN has a total of some 15 (or more) specialized agencies: these are ....* *See next slide*

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1. *FAO (food & agricultural org) – Rome, Italy*
2. *ICAO (int'l civil aviation org) [the Chicago Convention]– Montreal, Canada*
3. *IFAD (int'l fund 4 agricultural dev't) – Rome, Italy*
4. *ILO (international labor org) – Geneva, Switzerland*

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5. IMO (int'l maritime org) – London, UK, created by the UN
6. IMF (int'l monetary fund) – Washington D.C., USA, incorporated to the UN
7. ITU (int'l telecommunication union) - Geneva, Switzerland
8. UNESCO (UN educational, scientific n cultural org) – Paris, France

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9. UNIDO (UN industrial dev't org) – Vienna, Austria
10. UPU (universal postal union) – Berne, Switzerland
11. World Bank Group - Washington D.C., USA
12. IBRD (int'l bank 4 reconstruction n dev't) – Washington D.C., USA

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13. IFC (int'l finance corporation) - Washington D.C., USA
14. IDA (int'l dev't association) - Washington D.C., USA
15. WHO (world health org) - Geneva, Switzerland

PRINCIPAL ORGANS OF THE UN

The General Assembly

- *for composition, power, functions, voting system and procedure, etc ... See Arts 9-22 of the UN Charter.*

The Security Council

- *for composition, power, functions, voting system and procedure, etc ... See Arts 23-32 of the UN Charter.*

The ICJ

- *See Arts 92-96 of the UN Charter*
- *Focus on Arts 93(2), 94(1)&(2), 95, 96.*
- *The ECOSOC (Arts 55 - 60)*
- *The Secretariat (Arts 97 - 101) and*
- *The Trusteeship (Arts 75 - 85) Counsel*

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Purposes and Principles of the UN

- ***The UN Charter is the core instrument which dictates the operation of the organization as a whole***
- ***Generally, the purposes and principles of the UN are provided for under Arts 1 and 2 of the Charter.***
- ***The member States are expected to act in accordance with the principles laid down under Art 2 to achieve the purposes stated under Art 1 of the Charter.***

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PRP1. ***Maintenance of Int'l peace and security***

- ***Explain this purpose***
- ***The Charter has provided for different principles, procedures and institutional arrangements helpful to attain this purpose.***

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Principles

- *All States shall refrain from the threat or use of force against the territorial integrity or political independence of any other State. Art 2 (4)*
- *Assisting the UN in any action it takes and refraining from assisting any State against which the UN is taking enforcement actions. Art 2 (5)*

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Procedures

- *The Charter has laid down quite a no. of procedures (some diplomatic and some legal) for the States to utilize in the event of disputes b/n them*
- *Pacific Settlement of Disputes: negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, etc Art 33*

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Institutional Arrangements

- ***The Organization has established different organs principally aimed at maintaining int'l peace and security***
- ***These include: the security council and the ICJ Arts Cha 4 Arts 23 ff***

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PRP2. Developing friendly Relations

- ***Based on this purpose, the Charter dictates a new norm: conducting relations with the rest of the world in a friendly and peaceful way***
- ***In time of peace:** acting in good faith esp when there are fierce competitions over immediate or long-term interests.*
- ***In time of war**: in accordance with IHL rules*
- ***In time of no peace no war**: settling disputes in accordance with pacific settlement of disputes*

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PRP3. ***Achieving Int'l cooperation***

- ***Achieving this purpose by solving int'l problems of an economic, social, cultural character***
- ***Encouraging respect for human rights and fundamental freedom for all***

i.e. principle of sovereign equality Art 2(1)

ORGANS OF THE UN

The General Assembly

Arts 9 ff

- Members: all member States each with not more than 5 members
- Functions & powers (Arts 11-17): discussing any matter (and making recommendations) within the scope of the Charter except a matter already on discussion by the UNSC Art 12 (1)

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Voting

- ***each member State has one vote***
- ***Decisions on important questions shall be decided by a two thirds Majority Vote (MV)***

  - recom on maintenance of peace n secu.

  - election of non permanent SC members

  - etc See Art 18 (2)
- ***Decisions on all other questions shall be decided by a majority vote of member States See Art 18 (3)***

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- *UNGA Resolutions: the Charter calls them "recommendations" under Arts 10 & 14.*
- *Practice reveals that UNGA Resolutions on matters internal to the UN are binding on all member States; these include*
  - *budgetary decisions*
  - *instructions to lower ranking organs*

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- ***Is recommendation by the UNSC necessary for the UNGA to decide on the issue of membership to the UN? Art 4(2) reads***

> ***The admission of any [] State to membership in the UN will be effected by a decision of the GA upon the recommendation of the SC.***

- ***ICJ gave advisory opinions on two occasions stating that the GA cannot decide on the issue of membership requests without the prior recommendation of the SC.***

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The Security Council

Arts 23 ff

- ***Members:*** ***initially were 11 in number among which China, France, Russia, UK and USA are permanent members***
- ***The number of non-permanent members grew to 10 in 1966.***
- ***Each member State shall have one representative in the Council***

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Criteria for membership to the SC

- ***contribution to the maintenance of peace & security and other objectives of the UN***
- ***Equitable geographical distribution***

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- *Objective:* *maintenance of international peace and security*
- *To achieve this mission, therefore, the SC is authorized to do everything necessary* *See Chapters 6, 7, 8 and 12*
- *Member States are then presumed to take the SC as their representative on issues affecting int'l peace and security* *Art 24 (1)*

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Obligation States owe the SC

Art 25

1. **To accept decisions passed by the Council**
2. To cooperate in the execution of the Council's decisions

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Voting (Art 27)

- Each member shall have one vote
- Procedural matters: affirmative vote of 9 members
- All other matters (substantive issues): require an affirmative vote of 9 members including the concurring votes of the veto powers
- Whether an issue is procedural or non-procedural is a non-procedural matter; hence double veto

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SC Resolutions

- *Resolutions made under Cha 7 are considered to be binding*
- *Where as resolutions under Cha 6 have no binding force under int'l law*

  - Cha 6: pacific methods

  - Cha 7: SC actions

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The ICJ

Arts 92 ff

- ICJ is the principal judicial organ of the UN
- Operates on the basis of the PCIJ Statute
- Any State shall comply with the court's decisions rendered in any case to which the State is a party …… Art 94 (1)

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Failure to comply with ICJ decisions

Art 94

The SC would take all measures necessary to give effect to the decisions of the Court upon complaints made by the other party to which decisions are entered into

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Jurisdiction of the Court

- ***The Court's j/n are of two types:***
  - ***Contentious Jurisdiction***
  - ***Advisory Jurisdiction***
- ***As per Art 34 paragraph one of the ICJ Statute, only States could be parties to cases before the Court***

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A. Contentious Jurisdiction

- *Refers to the capacity of the Court to decide disputes between States*
- *This kind of j/n may be assumed by the Court in either of the following ways*

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1. Special Agreement (Compromis)

Art 36 (1) of the Statute

- State parties to a dispute may reach an agreement (called Compromis) made specifically to clothing the court with j/n to entertain their case.
- Here the Court assumes J/n because the parties referred it to it.

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2. J/n provided for in Treaties

Art 36 (1) of the Statute

- *If an int'l agreement or Convention provides for the j/n of the court over a specific case, then the Court may assume j/n over the States which are parties to that specific dispute*

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3. Optional Clause System

Art 36 (2 &3) of the Statute

- States may at any time declare that they accept the Court's j/n to see their case.
- Here, no special agreement is required to confer j/n upon the Court – mere declaration may suffice for the Court to assume j/n

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4. Tacit consent

- **In addition, the court may assume j/n over cases b/n States through indirect ways…**
- **That is, if, for example, a State simply pleads on the merits of a case, when served with summons, without questioning the j/n of the court, then that's considered to be a tacit acceptance of the court's j/n.**

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B. Advisory Jurisdiction

Art 65 of the Statute

- Refers to the Court's j/n to give advisory opinions on matters referred to it by a legitimate organ
- The UNGA & UNSC are the two organs to which automatic right to request advisory opinion from the Court is accorded by Art 96 of UN Cha

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- *All other organs shall have the right to request advisory opinion from the Court only upon the fulfillment of the following THREE conditions* ***(Art 96(2) UN Cha)***

  - *authorization by the UNGA*
  - *only on legal matters*
  - *within the scope of their activities*

A NOTE ON AFRICAN UNION

Composition of AU

- ***AU has nine principal organs – Art 5(1) of the Constitutive Act (CA) of the Union***
- ***They are vested with different powers and responsibilities to work for the realization of the purposes of the Organization***

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The Organs of AU (Art 5/1)

- *The Assembly*
- *The Executive Council*
- *The PAP*
- *The Court of Justice*
- *The Commission*
- *The Permanent Representatives Committee*
- *The Specialized Technical Committee*
- *The Economic Social and Cultural Council*
- *The Financial Institutions*
- *In addition to this, other organs may be established by the Assembly*

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For the detailed discussion of the composition, powers, functions, voting systems and procedures etc of the different organs of the AU, and such other issues as purposes & principles of AU, membership, withdrawal, etc, refer the CA

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Background of the AU

- Pan African Movement (PAM) was the base for the foundation of the OAU
- It was initiated by black Americans the fathers or grand-fathers of whom were sold as slaves
- They were demanding RACIAL EQUALITY

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- *The mov't was started in the late 1890s and early 1900s in South American States like Trinidad and Tobago where big plantations were undertaken*
- *It began conducting big conferences – and organized a lot of them from 1900 – 1945*
- *The demand in all of which was – racial equality*

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- *Until 1945, almost all the attendants of the conferences came from western countries*
- *15-20 Oct 1945 – for the 1st time in the history of pan African Conferences, African people like Kwame Nkrumah (Ghana) and Jomo Kenyatta (Kenya) attended the conference*
- *These guys came up with a new demand*

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- *The new demand was:*

  - Liberty of Africa from colonial powers

- *A transformation from Racial equality to continental liberty*

- *They were heard saying: “why should we demand racial equality in the west while we can’t live it here in our nation?!”*

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This meeting was the most significant one in the mov'ts history for 3 reasons

1. ***Unprecedentedly huge number of attendants***
2. ***Unlike z previous ones, this conference was attended by indigenous black activists***
3. ***A new theme was framed – continental liberation from colonialism***

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- *Then people like Jomo Kenyta came back from western Universities and started running the mov't here in the African soil*
- *Ghana was liberated in 1957*
- *Then it proposed that the next Pan African Conference, which used to be held in the western soils till 1945, be held in the African Soil*

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- *As a result, it was conducted in December 1958 in Accra, Ghana*
- *Here – the theme of the mov't was officially declared to be "a fight for liberty" i.e.*

"a transformation from a demand of liberty to a fight for it"

- *Other themes included: promote economic cooperation and appropriate one another's culture*

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- *What's more is ... pioneers of the mov't were also transformed from being leaders to observers*
- *The reason was ...*

  - they had no leadership experiences in political activities

  - they were not born n brought up in Africa; hence they don't know the African soil

/...

- *Consequently, many African nations acquired their independence and new States emerged*
- *On the second conference of the PAM, held in 1960 in Leopoldville, Congo, there arose a fight among the attendants on the nature of the relation Africa shall keep with western world*

/...

- *As a result of the fight among them, two blocs emerged by April 1961 – the Casablanca and the Brazzaville (Monrovia).*

- *Up until 1963, they kept on deliberating on their differences (which were not clearly delineated)*

/...

The Brazzaville bloc

- Cameroon - Congo Brazzaville
- Cen. Afr. Rep. - Chad
- Ivory Coast - Madagascar
- Senegal

/...

The Casablanca bloc

- Ghana - Guinea
- Mali - Morocco
- Algeria - Libya
- Egypt

/...

Neutral (to the blocs) States

- Ethiopia
- Somali
- Nigeria
- Liberia
- Tunisia
- Sudan
- Congo Kinshasa
- Togo
- Sierra Leon

/...

Views of the two blocs

Though not clearly delineated, it essentially focuses on their political and economic outlooks

/...

- *The **Brazzaville** group thought embracing Pan African socialism would keep the former colonizers (or the west as a whole) at bay and deprive Africa of the potential aid needed for dev't that Europeans can provide*
- *The Casablanca bloc, on z other hand, equated western aid with panhandling and dependence and argued instead that Africa must develop its own common market for a viable dev't*

/...

- *But they finally wanted to reconcile and iron out their differences*
- ***In May 1963, a meeting was arranged and held in Addis Ababa which was attended by heads of States and Gov't***
- ***In his opening address, Emperor H/Sellassie emphasized the urgency of z formation of the African Unity with this speech:***

/...

Do you remember Bewketu

Seyoum's narration?

"This conference cannot close w/t adopting a single African Charter. We cannot leave here without having created a single African Organization ... if we fail in this, we will have shirked our responsibility to Africa and to the peoples we lead. If we succeed, then, and only then, we will have justified our presence here."

/...

Finally, with the exception of Togo, whose admittance to the Addis summit was refused following the assassination of its President Sylvanus Olympio, all the 31 independent African States became signatories and founding members of the Organization of African Unity (OAU).

/...

- *After the mid 1980s, however, things changed to the worst*
- *Famine, dictatorship, Coup d'état, ... prevailed all over Africa*
- *The Rwandan genocide incident took place in 1994 where more than 800,000 people were killed in less than three months*

/...

- *Because of such incidents, many people said OAU inefficient; it just failed to achieve the purpose it was established for*
- *But others argued that it was not a failure as no one shall be blamed for not achieving a purpose for which it was not established*

/...

- ***Though the OAU***

  - did not (and had no power to) intervene in the civil wars that devastated a number of African countries, &

  - could not (and had no power to) also intervene in the member countries where civilian gov'ts were overthrown in military coups;

  these were not the objectives for which it was established.

/...

- *The OAU was established principally with the objective of fighting colonialism;*

- *Though it does not sound moral, it was like saying ... "killing of Africans by whites is prohibited; but killing of same by Africans was not"*

/...

- *It was finally believed that the OAU was for the old generation and a new organization needs to be established for the new one*
- *Then, in 1999, the OAU member State leaders declared their intention to transform the OAU to AU*
- *Initially, many nations opposed it for fear of creating an org with power to intervene in a State's j/n*

/...

- *Finally, every African country except Morocco, signed the treaty of the Constitutive Act of the AU.*
- ***The AU was officially formed on July 9, 2002; in Durban, South Africa.***
- ***The AU, among others, has the power to intervene in a member State in respect of Grave circumstances: war crimes, genocide and crimes against humanity (Art 4/h/ CA)***

USE OR THREAT OF FORCE

War "theories"

- ***Just war:-*** *allowed to a sovereign State to wage a war against another (deemed to be a wrongdoer) to punish the latter*
- ***The UN system:-*** *use of force only in self or collective defenses*

/...

What is the essence of int'l law as regards the use of force/war in the int'l plane?

To prevent force from being used at all costs i.e. to set up a sort of impenetrable barrier to its use?

/...

- *If that were why int'l law was there, then every time an armed force was resorted to, one would have to say that the legal system has failed ... that it has broken down*
- ***But this is not right; it may it may be true that resort to force shows that diplomacy has failed; but not the law***

/...

Sir Franklin Berman

(Visiting Prof of Int'l Law in Oxford Univ...)

- ***For this scholar, int'l law has four functions in this vital area of the use of war***
- ***These are: (See next page)***

/...

1. *To define (and define properly) the very limited number of situations in which the use of force is permissible*
2. *To regulate and control the use of force even when it is permissible*
3. *To determine when force that has been used was not permissible; and*
4. *To regulate the consequences of resort to force, both permissible and impermissible*

/...

Use of force in the UN Charter

- *The Charter, under Art 2(4), prohibits the threat or use of force against any State*
- *Under Art 2(6), it further provides that even non-member States shall respect this principle (and all the other principles in general)*

/...

- *It is the mandate of the SC to determine whether there exists any threat to the peace, breach of the peace or act of aggression (Art 39 UNC)*
- *Then, if it finds out there is any of such situations, it would take actions deemed to be appropriate in line with Arts 41 n 42.*

/...

Art 41

Measures not involving use of armed force

- *Complete or partial interruption of economic relations*
- *Interruption of rail, sea, air, postal, telegraphic, radio and other means of communication*
- *The severance (interruption) of diplomatic relations*

/...

Art 42

Measures of the use of force

- ***Demonstrations***
- ***Blockade***
- ***Other operations by air, sea or land forces of members of the UN***

/...

Art 43

Assistance of Member States

- Member States are expected to provide armed forces, rights of passage, etc
- This may be done upon a call by the SC or special agreements b/n the Council and the State/s

/…

Inherent Right of Member States

Art 51

- *Member States have the right to resort to individual or collective self defense if an armed attack occurs against them, but until the SC takes measures necessary to maintain int'l peace and security*

/...

The Q is ---- what constitutes force?

Types of force

1. ***Retorison*** *- the adoption by one state of an unfriendly and harmful act, which is nevertheless lawful, as a method of retaliation against the injurious legal activities of another state. Ex. severance of diplomatic relations and the expulsion of aliens.*

/...

2. ***Reprisal*** *- Reprisals are acts which are in themselves illegal and have been adopted by one state in retaliation for the commission of an earlier illegal act by another state.*
3. *Self Defense:- what constitutes self defense? What does "armed attack" refer to?* *See next p.* *(ICJ's opinion on Nicaragua's case)*

/...

Elements of Self defense

The danger has to be one which is

a. imminent

b. serious and

The response to the danger should be

- proportional

/...

ICJ's opinion on Nicaragua's case

'armed attack' included not only action by regular armed forces across an international border, but additionally the sending by or on behalf of a state of armed bands or groups which carry out acts of armed force of such gravity as to amount to an actual armed attack conducted by regular armed forces or its substantial involvement there in.

/...

4. Anticipatory or pre-emptive self-defense:-

- *a response to an imminent threat of an armed attack before an actual attack breaks out*
- *Today, war instruments are so sophisticated that they can destroy the target in a few moments*
- *But a preemptive strike embarked upon too early might constitute an aggression*

STATE RESPONSIBILITY

Draft Arts on Responsibility of States for Int'lly wrongful act

- ***Adopted by the ILC – a UN body responsible for the codification and progressive dev't of int'l law***
- ***The Article is assumed to serve both purposes***

/…

Art 1

- *Internationally wrongful act entails int'l responsibility*
- *What are the elements of an int'lly wrongful act? See Art 2*

/...

Art 2

- *A state's conduct, an act or omission, is an int'lly wrongful act if it*

a. *Is attributable to the State under int'l law, and*

b. *Constitutes a breach of an int'l obligation of the State*

/...

Art 3

Characterization of a State's act

- *Characterizing it as an int'lly wrongful act shall be governed by int'l law*
- *It doesn't matter if a national law characterizes the act as lawful*

/...

Attribution of conduct of a State

- *Conduct of organ of a State – Art 4*
- *Conduct of persons or entities exercising gov't al authorities – Art 5*
- *Ultra-vires by an organ or State – Art 7*
- *Conduct of an insurrectional mov't – Art 10*
- *Conduct acknowledge and adopted by a State as its own – Art 11*

/...

- *Aid or Assistance in the commission of a wrongful act - Art 16*
- *Self Defense - Art 21*
- *Act of force majeure – Art 23*
- *Necessity – Art 25*

/...

Consequences of State Responsibility

- ***Continued duty of performance – Art 29***
- ***Cessation and non-repetition – Art 30***
- ***Reparation – Art 31***

/...

Forms of Reparation

- *Restitution – Art 35*
- *Compensation – Art 36*
- *Satisfaction – Art 37 (acknowledgment of the breach, expression of regret, formal apology, etc)*

ALTERNATIVE DISPUTE RESOLUTION (ADR) METHODS

What's ADR?

- ***Used to describe a wide variety of dispute resolution mechanisms that are short of, or alternative to, full-scale court process.***
- ***Generally, ADR methods may be classified as negotiation, conciliation/mediation and arbitration.***

/...

NEGOTIATION

- *Create a structure to encourage and facilitate direct negotiation between parties to a dispute , without the intervention of a third party*
- *It has a non-binding effect on the parties and depends very much on their willingness to reach a voluntary agreement*

/...

MEDIATION and CONCILIATION

- These are very similar coz
  - they both interject a third party b/n the disputants
- And they do this either
  - to mediate a specific dispute or
  - to reconcile their r/ship

/...

- ***Mediators and conciliators simply facilitate communication or may help direct and structure a settlement***
- ***Both do not have the authority to decide or rule on a settlement***

/...

- *Mediation:-*
  - *Acts as an “agent of reality” to help the parties frame the issues, recognize self interest as well as the interest of the other side*
  - *The mediator may meet the parties together or individually, as z case may be*
  - *A meeting b/n one party and z mediator is called caucus*

/...

- *Conciliation:-*
  - *The conciliator may or may not be totally neutral to the interests of the parties*
  - *Frequently used to restore the parties to a pre-dispute status quo, after which other ADR techniques may be applied*
  - *Is used even when the parties are unwilling or unprepared to come to the bargaining table*

/...

ARBITRATION

- *A system which authorizes a third party to decide how a dispute should be resolved*
- *Arbitration programs may be either binding or non-binding*
- *Their binding nature is determined by the choice of the parties to the dispute*

/...

- *Binding Arbitration:-*

  - produces a 3rd party decision z parties must follow even if they disagree with z result – much like a judicial decision

- *Non-binding Arbitration:-*

  - produces a third party decision that the parties may reject

/...

Characteristics (Advantages) of ADR

- Informal:- less formal than judicial processes
- Application of equity:- i.e. rather than stringent rules of law
- Direct participation and communication b/n the disputants – more direct dialogues

/...

- *Maintain privacy*
- *Maintain relationship*
- *Minimize cost*
- *Resolve disputes quickly (justice delayed and justice denied)*
- *Increase access to justice for disadvantaged groups*

/...

Limitations of ADR

- ***Do not set precedent or established standards (and thus similar cases may be disposed differently)***
- ***Cannot correct systemic injustice – as they often reflect accepted norms of society, they may apply societal rules which are even discriminatory (against certain groups)***

/...

- *Do not work well in the context of extreme power imbalance b/n the parties*
- *Do not have educational or punitive or deterrent effect on the society (as they are not public)*

Q. Which of these disadvantages apply in ADRs applicable to resolve disputes b/n subjects of int'l law?