

UNITED NATIONS ORGANISATIONS

The failure of the league of nations on the one hand and the horror and ruthless destructions caused by the Second World War on the second hand disturbed many mind. They expressed the desire to establish peace even when the war was in progress. The termination of the war, resulted in the creation of the United Nations organisations on October 24 1945. The United Nations was therefore founded in the Ashes of War that brought untold sorrow to mankind.

San Francisco conference 1945

San Francisco conference, officially known as the United Nations Conference on international organisation consisting of delegates of 50 Nations met on April 25 1945 to discuss the proposals made by the states.

The last session of the conference was held on June 25 1945, where the Charter was passed unanimously and was signed by all the 50 representatives on June 26 1945. Poland a signatory of United Nations signed the Charter on October 15 1945. The Charter was finally signed by 51 States. The United Nations did not come into existence at the time of signing of the charter. In many countries the Charter was required to be approved by their Congress or parliaments. It was therefore provided that the Charter would come into force when the governments of China, France, Great Britain, the Soviet Union and the United States and the majority of the other signatory states shall ratify it.

The United Nations came into existence on 24th October 1945 upon ratification of the Charter by 29 of the signatories including the five permanent members of the security council. It is to be noted that the name of the organisation "United Nations" was taken from the declaration of the United Nations and adopted in Tribute to the memory of Roosevelt who suggested it.

Preamble of the United Nations

The Preamble of the United Nations charter has set forth the basic aims of the United Nations which are

1. To save succeeding generations from the scourage of War
2. To reaffirm faith in fundamental human rights
3. To establish justice and respect for international obligations
4. To promote social progress and better standard of life.

The Preamble also affirms that in order to achieve these ends, the People of the United Nations are determined

1. To practice tolerance,
2. To live in peace as good neighbours,
3. To unite to maintain peace and security,
4. To ensure that armed forces shall not be used except in the common interest and
5. To employ International machinery for the social and economic betterment of all peoples.

Purpose of the United Nations

Article 1 of the Charter enunciates the purposes of the United Nations.

1. To maintain International peace and security
2. Develop friendly relations among Nations

3. Foster International cooperation in social, Economic, cultural and humanitarian matters
4. Develop respect for human rights and freedom
5. Take necessary steps to achieve these objectives

Principles of United Nations

Article 2 lays down the following basic principles to be observed both by UN and its members:

1. Basis of United Nations shall be sovereign equality of its members
2. The member states shall fulfill in good faith their obligations under the Charter. Ex, pacta sunt servanda
3. The member states shall settle their disputes by peaceful means
4. Member states shall not threaten or use force against territorial integrity or political independence of another member state
5. All member states are to assist the UN when it takes preventive or enforcement actions against a state
6. United Nations to ensure that 'non-member states' act in accordance with these principles so far as may be necessary for the maintenance of international peace and security. this right of the United Nations to lawfully affect non member states is supported by the decision of ICJ in ***reparation for injuries suffered in the service of the United Nations case***
7. UN shall not interfere in the matters, which are within the domestic jurisdiction of member states

Membership of the United Nations

The United Nations is an inter-governmental organisation in which sovereign independent States can only be members. According to Article 4, membership of the United Nations is open to all peace loving States which accept the obligations contained in the charter, and are able and willing to carry out them. However, no state has a right to be admitted as a member of the United Nations.

There are two types of members

1. ***original members***: those States who participated in the San Francisco conference on 25th of April 1945 and signed and ratified the charter
2. ***members subsequently admitted***: a state can be admitted when it is first recommended by a majority of members including all five permanent members of Security Council and later approved by two third majority of general assembly.

The ICJ in its advisory opinion on condition of membership in the United Nations 1948 said that in the absence of a favorable recommendation by the security council, the general assembly has no power to admit a new member on its own decision. On the other hand, the general assembly has the power to reject the recommendations of the security council for membership of a state.

Suspension and expulsion

Article 5 provides that a member state, against which preventive or enforcement action has been taken by the security council may be suspended by the General Assembly upon the

Recommendation of the security council.

Article 6 lays down that the general assembly may expel upon the Recommendation of the security council and member state which is persistently violating the principles contained in the charter.

GENERAL ASSEMBLY

General Assembly is one of the principal organs of the United Nations. Provisions relating to General Assembly are contained in chapter IV of the charter comprising of Article s 9 to 22.

Composition:

Article 9 of the Charter Lays down regarding the composition of the General Assembly by stating that the General Assembly shall consist of all the members of the United Nations. Each of them possess an equal status irrespective of its size, power or importance. Each member shall have not more than 5 representatives in the general assembly.

Voting system:

Each member of the General Assembly has only one vote. Therefore, in the Assembly the principle of equality of the members is strictly observed. Decisions on important questions as laid down specifically under Article 18, para 2 of the Charter such as recommendation with respect of maintenance of international peace and security, election of non permanent members of the security council, election of members of the Trusteeship Council and economic and social Council, admission, Suspension and expulsion of members, Trusteeship questions and budgetary matters are taken by a two third majority of members present and voting. Other questions are decided by simple majority of the members present and voting.

Article 19 of the charter Lays down that a member shall have no vote in the General Assembly which is in arrears in the payment of its financial contribution to the organisation provided the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceeding two full years. The General Assembly May, nevertheless permit such a member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the members.

Functions and powers

functions and powers of the Assembly are laid down under Article 10 to 17 of the charter.

General functions : Article 10 confers upon the Assembly a very wide powers by providing that the Assembly May discuss any questions or any matters within the scope of the Charter or relating to the powers and functions of any organs provided for in the charter.

Promotion of international cooperation: Article 13 of the Charter has conferred to the Assembly specifically to initiate studies and make recommendations for the purpose of the promotion of international cooperation in two different fields.

Firstly, the promotion of international cooperation in political fields and encouraging the progressive development of international law and its codification

Secondly, the promotion of international cooperation in the economic, social, cultural, educational and health fields, and assisting in the realisation of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

Elective functions: the Assembly is commonly known as the central body of the United Nations because it collects some or all the members of all the other organs of the United Nations.

1. The Assembly elects all the ten non permanent members of the security council. Out of them 5 members are elected every year in accordance with Article 23 para 2 when equal number of members retire after completing the term of two years.
2. The Assembly Elections all the 54 members of the economic and social Council. Out of them 18 members are elected every year as per Article 61 para 3. The assembly elects some members of the Trusteeship Council Article 86
3. the Assembly elects 15 judges of the International Court of Justice. Judges are elected by a complicated system of parallel voting by the security council and the General Assembly independently of each other.
4. The secretary general of the United Nations is also appointed by the General Assembly on the Recommendation of the security council. Article 97
5. the Assembly Elects members for subsidiary organs which may be created by it under Article 22

It is to be noted that election to any of the three councils (Security Council, economic and social Council and Trusteeship Council) being important questions, requires two-thirds majority in accordance with Article 18 clause 2 of the charter

supervisory functions: the Assembly supervises the activities of the Other organs of the specialised agencies of the organisation. Therefore, it considers annual and special reports of the security council. Article 15 para 1.

it also considers the reports of the Other organs such as economic and social Council, Trusteeship Council, International Court of Justice and the secretariat. Article 15 para 2

SECURITY COUNCIL

Chapter V of the Charter consisting of Article 23 to 27 lays down the provisions relating to the security council.

COMPOSITION:

The council originally consisted of 11 members, but it was enlarged to 15 members in 1965 in accordance with an amendment to the Charter. out of 15 members, 5 are permanent members

The Other 10 members of the security council are called non permanent members. they are elected by the General Assembly for a term of 2 years, but each year selection of 5 members take place when the equal number of members retire after completing the term of two years. the above system was adopted so that there may not be complete renewal of all the non permanent member.

According to the last sentence of ***Article 23 Para 2, a retiring member is not eligible for immediate re election.*** considerations which are given for election of non permanent members are,

1. Firstly, the contribution of members of the United Nations to the maintenance of international peace and security and to other purposes of the organisation and
2. Secondly, the equitable geographical distribution. In order to have equitable geographical distribution, 5 members from Afro Asian nations, one from Eastern Europe, two from Latin America and two from Western countries are elected

The Charter also provides for the ***adhoc membership of the council under Article 31*** which Lays down the possibility of the participation of any member of the United Nations in the Council which is not a member. such members may participate in the Council, without having a right to vote, in the discussion of any question brought before the security council provided that in the view of the latter, the interest of that members are especially affected.

Article 32 stipulates that any member of the United Nations which is not a member of the security council, or any state which is not a member of the United Nations, shall be invited to participate without vote in the discussion before the Council, relating to the dispute to which it is a party.

voting procedure :

Each member state of the Security Council has one vote. decisions of the security council on procedural matters (time and place of meetings, adoption of procedural rules) are to be made by an affirmative vote of 9 members and decisions on all other substantive matters are to be made by an affirmative vote of nine members including the concurring vote of five permanent members. if a permanent member casts a negative vote on a substantive matter, the decision is blocked or vetoed i.e., does not come into existence.

Further, the question whether a particular matter Falls within the category of procedural matter or not, also requires concurring vote of permanent members. Therefore, a Veto could be exercised here also. this constitutes the double Veto (first, by Casting a negative vote against calling the matter as procedural after which the matter becomes substantive and second, by

Casting other negative vote against this substantive matter) .

It may be noted that 5 permanent members do not enjoy any veto power in the general assembly

Veto power

In the San Francisco conference, the right of each of the big five to exercise a Veto on an action by the powerful Security Council provoked long and heated debate. at one stage the conflict of opinion on this question had threatened to break up the conference. the smaller powers feared that the big five could act arbitrarily but the great powers unanimously insisted on this provision as vital and emphasized that the main responsibility for maintaining the world peace would fall most heavily on them. Eventually the smaller power is conceded the point in the interest of the setting up of the world organisation.

The veto power was conferred to Big Five in a good faith because the framers of the Charter had realised that the co-operation of all the big powers is necessary for the maintenance of international peace and security.

The veto power of five permanent members is against the principle of sovereign equality enunciated in the charter - kelsen

Criticism of the veto power

The veto power vested in the hands of the permanent members has been criticized on many Grounds

- a) Firstly, it has created a difference between the permanent and non permanent member of the security council
- b) Secondly, it is an antithesis of the principle of sovereign equality of member states
- c) Thirdly, the fate of the world should not be left just in the hands of five permanent members of the security council
- d) Fourthly, it has ruled out the possibility of taking an action against the permanent members

FUNCTIONS OF THE SECURITY COUNCIL

A. MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY

The maintenance of international peace and security is the primary responsibility of the security council. The council performs the functions relating to the maintenance of international peace and security in two ways

1. by peaceful means
2. by taking enforcement action

1. By peaceful means: Chapter VI of the Charter provides the various modes by which the Council settles the disputes which are likely to endanger international peace and security. but a question arises how the Council would come to know about the existence of a dispute.

- a) When any member of the United Nations, whether a party to a dispute or not, bring any

- dispute before it under *Article 35 para 1*
- b) when a non member of the United Nations brings any such dispute under *Article 35 para 2*
 - c) when all the disputant parties refer a dispute under *Article 38*
 - d) when one of the disputant states refers dispute under *Article 37 para 1*
 - e) when the general assembly calls the attention of the security council under *Article 11 para 3* to situations which are likely to endangered international peace and security
 - f) when the secretary general of the United Nations under *Article 99* of the Charter brings to the attention of the council any matter which in his opinion may threaten the maintenance of international peace and security.

2. ***By taking enforcement action:*** once the Council has determined that there is a threat to peace or breach of the peace or an act of aggression has been committed, it is empowered to take enforcement action under chapter VII of the Charter which was recognised by the delegates to the San Francisco conference as the teeth of the United Nations.

Measures involving non use of force: Article 41 Lays down that the security council may call upon the members of the United Nations to take measures not involving the use of armed forces, i.e., measures where the armed forces are not employed. these measures include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio and other means of communication and the severance of diplomatic relations measures under Article 41 have been applied in many cases indifferent names such as economic sanctions, trade sanction, trade embargo, arms embargo, arial embargo and diplomatic sanctions.

Measures involving use of armed force: if the security council considers that measures provided for in Article 41 are not adequate or they have proved to be inadequate it may take such action by air or land forces as maybe necessary to maintain or restore international peace and security as provided under *Article 42*. these may include demonstrations, blockade and other operations by air, sea or land forces of members of United Nations.

B. MISCELLANEOUS FUNCTIONS

Besides performing its main responsibility for maintaining international peace and security, The council performs a number of other functions.

- a) The council may recommend the Assembly for admission of a state in the United Nations *Article 4 para 2*. the Assembly may admit a member only when the Council gives a favourable recommendation
- b) The Council has been empowered to recommend the Assembly to suspend (*Article 5*) or expel (*Article 6*) a member of the United Nations.
- c) The council recommends the Assembly for the appointment of the secretary general of the United Nations *Article 97*
- d) Amendment in the Charter comes into force for all members of the United Nations when they have been adopted by a vote of two third of members of the general assembly including all the permanent members of the security council *Article 108*

Economic and social Council the Preamble of the Charter proclaims that the people of the United Nations are determined to promote social progress and better standards of life in larger freedom further para 3 of article 1 today's down that it is a primary purpose of the United Nations to achieve International cooperation in solving International problems of an economic social cultural or humanitarian character and to promote and encourage respect for human rights and fundamental freedoms without distinction to race sex language or religion to achieve these ends the Charter established the economic and social Council which is one of the principal organs of the United Nations

Composition provisions regarding the composition of the economic and social Council are laid down in article 61 of the charter The council consists of 54 members which are elected by the General Assembly before August 31 1965 The council had 18 members one third of the total members 18 members of the Council are elected each year for a term of three years retiring members are eligible for immediate re election elections to the Council are held in accordance with the principle of equitable geographical distribution the permanent members of the security council have no privileged position in the economic and social Council however they have served continuously as its member it is submitted that the composition of the ecosoc should be reformed

Voting system voting in the Council is simple and direct each member has one vote all decisions are taken by a simple majority of those present and voting

Powers and function regular sessions of the Council are held twice in a year the first session is usually devoted to social and human rights and the second session to economic and developmental matter the Council performs the following functions The council may make or initiate studies and reports with respect to international economic social cultural Educational Health and related matters article 62 para 1 The council may make recommendations for the purpose of promoting respect for and observance of human rights and fundamental freedoms for Pol article 62 para 2 to the Council may prepare draught conventions for submission to the general assembly on any subject falling within its competence article 62 para 3 The council make all International conferences on matters falling within its competence article 62 para 4 The council may make arrangements with the members of the United Nations to obtain reports on the steps taken to give effects to its recommendations and to the recommendations of the general assembly on matters calling within its competence article 64 The council may also furnish information to the security council and assist the security council upon its request article 65 The council also performs various functions under article 66 para 1 2 and 3

Trusteeship Council in International Relation for the first time and date system was introduced under the League of Nations to improve the well-being of The Peoples of the colonies and dependent territories however the system came to an end with The dissolution of the league when the united nations was established the mandate system was introduced

in the name of the Trusteeship system article 76 of the UN charter list down the following objectives of the Trusteeship system

The furtherance of international peace and security the promotion of the political economic social and educational advancement of the inhabitants of the trust territories and their progressive development towards self government or Independence the encouragement of respect for human rights and fundamental freedoms for all without distinctions as to race sex language or religion and the recognition of the interdependence of the people of the world and the ensuring of equal treatment in social economic and commercial matters for all members of the United Nations and their nationals and the equal treatment for the letter in the administration of Justice

Trusteeship Council chapter 13 of the Charter deals with the composition voting system procedure and functions and powers of the Trusteeship Council which is the principal organ of the United Nations

Achievements of the Trusteeship Council the Trusteeship Council has done A Remarkable work of the 11 territories placed under the Trusteeship system all have attained the objectives of the system either by becoming independent States or by

associating themselves with the neighbouring States palau an entity of the trust Territory of Pacific Island was the last such territory whose Trusteeship agreement was terminated by the security council on November 10 1994 in the light of the entry into force on October 1 1994 of a compact of free Association between palau and administering authority the United States

Suspension of the operation of the Trusteeship Council with the termination of the Trusteeship agreement for pulao the objectives of the Trusteeship Council has been fully attained the secretary general of the United Nations had recommended to the assembly in 1995 to proceed with steps to eliminate the Council by making amendments in the Charter but no step was taken the 2005 World Summit outcome reiterated that the Trusteeship Council no longer meets and has no remaining functions we should delete chapter 13 of the charter

International Court of Justice

The need for the establishment of a permanent Court to solve International dispute was felt in the first Hague conference. it was in the second Hague Peace Conference, the USA proposed for the establishment of such a court. the permanent Court of international justice was established in 1921 under the Covenant of the league of nations. after its dissolution, the new International Court of Justice started functioning on 18th April 1946 with the headquarters at the Hague.

The International Court of Justice may be looked upon as the successor to the permanent Court of international justice.

According to Article 92 of the charter, of the International Court of Justice is the principal judicial organ of the United Nations. the court carry out its functions according to the statute which is an integral part of the Charter. it may be noted that the statute of the court does not lay down expressly the objectives or the functions for which it has been established. However, its main objective are

- ✓ Firstly, to settle International disputes or situations which are submitted to it by the states in accordance with the principles of justice and international law
- ✓ Secondly, to render advisory opinion on legal questions to any body which has been authorised in accordance with the charter of the United Nations

Composition of the court

- ✓ The court consists of 15 judges (called as members of the court) according to Article 3 para 1 of the statute. However, two of them may not be nationals of the same state.
- ✓ The judges of the court are to be elected by the general assembly and by the security council independently Article 8.
- ✓ Those candidates who obtain an absolute majority of votes in the assembly and in the Council are considered as elected. judges are elected by these two organs of the United Nations from a list of persons nominated by the national groups in the permanent Court of arbitration Article 4 para 1

- ✓ A list of all the persons so nominated is prepared by the secretary general under Article 7 para 1 which is submitted by him to the general assembly and the security council Article 7 para 2

Article 20 of the statute Lays down that the judges before taking up their duties are required to make a solemn declaration in an open court that they will exercise their powers impartially and conscientiously. they should be the persons of high moral character. they are required to possess the qualifications required in their respective countries for the appointment in the highest judicial officers Article 2.

Judges are appointed from different regions of the world i.e., 3 from Africa, 2 from Latin America, 3 from Asia, 5 from Eastern Europe and other states including States from Northern America and oceanic and 2 from Eastern Europe.

The judges are elected for a period of nine years Article 13 para 1

5 judges retire in every three years. The retiring judges are eligible for re election Article 13 para 1

Members of the court cannot be dismissed unless in the unanimous opinion of the other members, he has ceased to fulfill the required conditions under Article 18 para 1. the conditions which a member is required to fulfill are laid down under Article 16 and 17 of the statute. they are

- ✓ Firstly, no member May exercise any political or administrative function, or engage in any other occupation of a professional nature Article 16 para 1
- ✓ Secondly, no member of the court may act as agent, Council or advocate in any case Article 17 para 1
- ✓ thirdly, no member may participate in the decision of any case in which he has previously taken part as agent, Council or advocate for one of the parties Article 17 para 2

No member of the court has yet been dismissed

JURISDICTION

States: Article 34 of the statute lays down that “only States may be parties in cases before the court”. it implies that it is not necessary that the states should be sovereign and independent in order to become parties to the court. India was a party to the statute before it became independent.

1. ***Members of the United Nations:*** the charter of the United Nations under Article 93 para 1 provides that all members of the United Nations are ipso facto parties to the statute of the court which means that they all have automatic access to the court.
2. ***Non members of the United Nations-*** Article 93 para 2 of the Charter provides that non members of the United Nations may also become parties to the statute. they could do so only on conditions to be determined in each case by the General Assembly on the Recommendation of the security council.

Individual- individuals have no access to the court. neither the statute nor the rules of the court permit the individual to file petitions in the court. it has therefore always refused to entertain the petitions and request which have often been addressed to it by the individuals. individuals by himself has no locus standi before the court

Though the judgement of the court is final and without appeal, yet a state party may appeal for revision of judgement under certain circumstances. The court's decision has no binding force except between parties and in respect of that particular case only. Article 38 clause 1 of the statute of ICJ directs the court to apply International Law to disputes derived from International conventions, International customs, and general principles of law.

The court enjoys two types of Jurisdiction

✓ ***Contentious and advisory***

Contentious jurisdiction: it comprises the following kinds of cases

- ✓ all cases which the parties refer to it
- ✓ all matters specially provided for in the charter of the United Nations
- ✓ all matters specially provided for in the treaties and conventions in force

In all contentious cases, the court can exercise its jurisdiction only with the consent of the state parties to the dispute.

Advisory opinion: the ICJ may give an advisory opinion on any legal question, at the request of anybody thrice by, or in accordance with the charter of the United Nations to make such a request.

Acc to Article 96 of the Charter, the general assembly and the security council may request the advisory opinion of the court on any legal question.

an advisory opinion lacks the binding force of a judgement as in contentious case.

Judgement of the court

- ✓ The judgement of the court is final and without appeal Article 16
- ✓ the judgement shall state the reason on which it is based Article 56 para 1
- ✓ it shall contain the names of the judges who have taken part in the decision Article 56 para 2
- ✓ the judgement is signed by the president and by the registrar. it is read in open court after having been given due notice to the agent Article 58
- ✓ judgement once rendered by the court may be revised on an application for revision Article 61

Enforcement of the judgement

all the members of the United Nations are required to comply with the decisions of the court in accordance with Article 94 para 1 of the Charter.

a state party to the statute but not a member of the United Nations is also required to do so as it is one of the conditions for becoming a party to the statute.

if any party to a case before the court failed to perform its obligations under the judgement of the court; the other party may bring the matter before the security council in accordance with Article 94 para 2 of the charter

in case the security council decide upon measures to be taken to give effect to the judgement of the court, it has again a choice between two kinds of action, measures which may be taken either under Article 41 and 42 of the Charter. but again, decision to this effect may be made by a vote of 9 members including the concurring votes of the permanent members. it means the decision of the Council has to cross the barrier of the Veto. Hence, the judgement of the court cannot be enforced against permanent members of the Council or their client States.

SETTLEMENT OF DISPUTES

A disagreement between the parties may arise either on legal or political Grounds. legal differences according to oppenheim “are those in which the parties to the dispute base their respective claims and contentions on Grounds recognised by international law”. all other differences are usually referred to as political dispute.

whether a dispute is legal or political, depends more or less upon the attitude of States. if the states desire that a dispute is to be settled on the basis of law, the dispute is regarded as legal. if they fear that the decision might go against them, the dispute becomes political. it is therefore difficult to distinguish the dispute from legal to political.

The distinction between legal and political dispute is important because in international law, the procedure for the settlement of dispute has been laid down for only legal disputes. In the case concerning border and Trance border armed action (Nicaragua vs Honduras) the court stated that the court is only concerned with cases involving a legal dispute.

Legal dispute may be settled in two ways. they are: amicable means or Pacific means of settlement and compulsive means or coercive means of settlement.

Amicable means/ Pacific means

The charter of the United Nations has recognised the Peaceful settlement of disputes as one of the principles of the United Nations. para 3 of Article 2 Lays down that ‘all members shall settle their International disputes by peaceful means’. the charter under Article 33 para 1 enumerates a number of peaceful means for the settlement of disputes.

Presently, the duty of a state to settle the dispute peacefully has become the customary rule of international law.

The various peaceful means for the settlement of disputes may be divided broadly into two categories. they are: extra judicial modes of settlement and judicial settlement.

In the extra judicial settlement, a dispute is settled by means of an agreement between the disputant states. such means of settlement are also sometimes known as political means or diplomatic procedures. the judicial settlement is a legal process which consists of settlement according to international law by an impartial third party, the outcome of which is largely binding on the disputant states.

Extrajudicial peaceful means

Negotiation:

- a) when the disputant states settle their disputes themselves by discussion or by adjusting their differences, the procedure is called negotiation.
- b) negotiation may be carried on either by the heads of the states or by their accredited representatives or by diplomatic agents.
- c) negotiation is the simplest form of settling the disputes.
- d) It helps the disputant parties to bring about the needed change by mutual consent.

negotiation has certain weaknesses

- a) on many occasions it becomes difficult for the disputant parties to ascertain the precise and correct facts which have given rise to a dispute
- b) the possibility of imposing influence by the big powers over its counterpart is Greater in negotiation.
 - In 1976, India and Pakistan settled their outstanding differences in the Simla conference.
 - Similarly, India and Sri Lanka settled their boundary disputes in 1974 by negotiation
 - the Farakka barrage issue was also settled through negotiations by India and Bangladesh in 1977

In all the above cases negotiations resulted in the conclusion of agreements

- Negotiations in the aerial incident case between Iran and USA

Good offices and mediation

when the parties are not inclined to settle their dispute by negotiation, or when they fail to settle their dispute by negotiation, they may take the assistance of a third-party in resolving their differences. the third party may be appointed by the parties themselves or by the security council. the third party may be a state or an individual - usually an eminent citizen of a third state.

the third party settles the dispute in two different ways which are - mediation and good offices.

- a) ***Mediation*** - when the third-party participates in the discussion along with the disputants, and also gives its own suggestions in resolving the dispute, the process is known as mediation. the mediator is required to be neutral and impartial. he must necessarily meet with them and enter into discussions.
- b) ***Good offices*** - when the third party arranges a meeting of the disputant parties so that they may settle the dispute by negotiation, or wherein he acts in such a way so that a peaceful solution may be reached, the act is called good offices. it is to be noted that in the case of good offices, the third party neither participates in the meeting nor gives its suggestions to the parties as in the case of mediation. The main function of the third party, offering its good offices, is to bring the parties together when they have failed to negotiate or where negotiations have earlier failed. once the parties have been brought together for the purpose of working out a solution of their controversies, the state or person rendering good offices has no further duties to perform.

Enquiry - when a commission is appointed, consisting of impartial investigators, for ascertaining the facts of the disputes, the process is called enquiry. the function of the commission is confined only to the ascertainment of the fact. Inquiry is constituted by special agreement between parties in the dispute.

Conciliation- when a dispute is referred to a Commission or a committee to investigate the basis of the dispute and to make a report containing proposals for settlement after finding out the facts, the process is known as conciliation. therefore conciliation is the process of settling a dispute where endeavours are made to bring the disputant parties to an agreement and to make a report containing the proposals for settlement. it is to be noted that the proposals of the commission are not binding on the states because of its not being a judgement of any Court or Tribunal.

conciliation differs from arbitration in the sense that the parties are free to disregard the proposals of the Commission, but the award of the arbitration is binding on the parties. it differs from commission of enquiry where the main object is to ascertain the facts. suggestions or proposals are not given in commission of enquiry as in the case of conciliation.

The general assembly under Article 10 and 14, and the security council under Article 34 may appoint a Commission to conciliate a dispute.

BY THE UNITED NATIONS

Settlement of disputes by peaceful means is one of the principles of the United Nations as provided under Article 2 para 3 of the Charter. the two organs of the United Nations - general assembly and the security council - have been empowered to discharge certain functions in this regard.

General assembly- although, the Assembly has not been empowered to settle the disputes by any specific means. it may discuss a dispute under Article 11 para 2 and may make recommendations to the disputant parties under Article 14 of the Charter for the measures which they may take for the Peaceful adjustment of any situation, which it deems would likely to impair the general Welfare of friendly relations among Nations. recommendations may be made by the Assembly after discussion which may take place when the matter is brought before it by any member of the United Nations, or by the security council, or by a non member of the United Nations.

Security Council - various modes by which the security council settles the disputes peacefully are discussed in the previous lectures.

JUDICIAL SETTLEMENT

When a dispute is settled by the international Tribunal in accordance with the rules of international law, the process is called judicial settlement. at present the International Court of Justice is the most important International Tribunal. an international Tribunal is different from the municipal Tribunal. while the former applies rules of International Law, Municipal Law is applied by the municipal tribunals. Municipal Tribunal may also apply International Law, but to what extent, is a question which depends upon the relationship of Municipal Law and

international law. at present, arbitration and the settlement of disputes by the International Court of Justice are the important judicial modes of settlement of disputes.

ARBITRATION:

The charter of the United Nations under Article 33 para 1 has recognised arbitration as a mode for the settlement of disputes.

arbitration has been defined by the International Law Commission as “a procedure for the settlement of disputes between two States by a binding award on the basis of law and as a result of an undertaking voluntarily accepted”.

In the case concerning Maritime delimitation and territorial questions between Qatar and Bahrain *Qatar vs Bahrain 2001*, the International Court of Justice stated that the word arbitration, for the purpose of public International Law, usually refers to the settlement of differences between the states by judges of their own choice, and on the basis of respect for law.

It is important to note that before a dispute is referred to the arbitration the consent of parties is necessarily required to be obtained for doing so. the consent may be obtained either before or after a dispute has arisen between the parties.

Composition of arbitration:

Individuals constituting the arbitration Commission or Tribunal are called arbitrators.

1. They are appointed by the disputant parties themselves.
2. The composition of arbitral Tribunal is based on the principle that the arbitrators are chosen by the parties to the dispute, either by agreement between them or by a procedure laid down in the arbitration agreement.
3. The Tribunal may consist of a single arbitrator or of several arbitrators. As a rule, tribunals have 3 or 5 members.
4. If the disputant and parties fail to appoint the arbitrators, the appointment may be made by the president of the International Court of Justice or by the secretary general of the United Nations. the Kutch dispute between India and Pakistan was to be decided by three arbitrators. one appointed by India and one by Pakistan. the third arbitrator was to be appointed by the two arbitrators, so appointed by the parties. the two arbitrators, so appointed could not agree on the nomination of a third arbitrator and therefore it was agreed that the secretary general of the United Nations shall nominate the third arbitrator.
5. ***The decision of the arbitration, commonly known as award***, is binding to the parties.
6. However, if the arbitrators have exceeded their power or if they have been bribed or if they have given the award under the influence of coercion of any kind or if the award contains an error which is material as well as essential in the case, and has been caused through the malicious act of a party, the award may be disregarded.

INTERNATIONAL COURT OF JUSTICE

Before the creation of the International Court of Justice, disputes of the states could be decided by the permanent Court of international justice. at present, the International Court of Justice and the arbitration are the judicial modes for the settlement of disputes.

Both of them have certain common elements

1. Consent of the parties is essential before a case is heard by the court or by a Tribunal.
2. The judgement of the court and the award of the Tribunal is binding to the parties

However, the court differs from arbitration on many counts

1. While the court is a permanent court and is governed by a statute, the permanent Court of arbitration is neither a court nor is permanent. the arbitrator is appointed for the settlement of a particular dispute by the parties themselves.
2. While the judges in the court are elected by the general assembly and the security council of the United Nations, arbitrators are appointed by the disputant parties themselves.
3. While the judges in the court represent the main forms of Civilization and of the legal systems of the world, the constitution of the arbitration depends upon the consent of the parties.
4. The court being a permanent Court performs a number of functions which arbitrations do not perform.
5. The court is open to all the states. while all the members of the United Nations ipso facto are parties to the court, non members of the United Nations may also become a party to it after fulfillment of the conditions determined by the General Assembly on the Recommendation of the security council. it is not so with the case of arbitration.
6. The court applies rules in deciding cases as provided under Article 38 of the statute, whereas in arbitration rules are applied as decided by the parties themselves. cases could be decided by the general rules of international law as well as in accordance with the rules of equity or ex-acquo et Bono.
7. While the proceedings of the court are open to public, and records of the hearing and judgement are published, proceedings of the arbitration are not always open for public and the award of the Tribunal may not be published if the parties so desire.
8. while the court is an integral part of the United Nations charter, arbitration is established independently.

COMPULSIVE OR COERSIVE MEANS

Compulsive or coersive means for the settlement of disputes are non peaceful methods. such measures involve a pressure or force on a state to settle the dispute.

RETORTION-

Retortion is the technical term for retaliation. it is based, to some extent, on the principle of tit for tat. when an act is done by a state similar to that done earlier by another state, it is called retortion. the purpose of retortion is to take retaliation.

for instance, if the citizens of a state are given unfair treatment in another state through rigorous passport regulations the former may also make similar rigorous rules in respect of the citizens of the latter state. if a state imposes restrictions of the entry of nationals of another state, the latter may also impose similar restrictions.

REPRISALS –

The term reprisals includes the employment of any coercive methods by a state for the purpose of securing redress. Therefore, the main purpose of the reprisals is to compel the delinquent state to discontinue the wrong doing, or to pursue it, or both. If a dispute has arisen due to an unjustified or illegal act of a state, the other state may take any coercive measure against that state to settle the dispute.

Formally, reprisals were restricted only to the seizure of the property or persons. But later, it included other methods as well such as bombardment, occupation of territories of a state, seizure of ships, freezing of Assets of its citizens and taking any kind of property belonging to it. Therefore, it may be applied not only against the state but against the citizens of that state as well.

Prohibition on reprisals: after the creation of the United Nations, the principles of non use of force and of peaceful settlement of disputes have generally become a part of jus cogens, and therefore the use of force in reprisals has been prohibited. It is clear from Article 2 para 4 of the charter of the United Nations which prohibits the use of force by a state against the territorial integrity or political independence of another state or in any other manner inconsistent with the purposes of the United Nations.

Reprisals have also been forbidden expressly by some Human Rights conventions. For instance, Article 33 of the Geneva Convention relating to the protection of civilian persons in time of war of August 12 1949 forbids reprisals against persons protected therein. Therefore, a state has been prohibited to use forces in reprisals. Other actions may be taken by a state in reprisals. However, they shall be lawful as long as they do not affect international peace and security.

Reprisals and war: it is to be noted that reprisal is different from war because in the former there is an absence of intention of War. It is the intention which primarily distinguishes reprisal from war. The acts taken in reprisals are illegal and are taken exceptionally, by a state for the purpose of obtaining justice. In reprisals, a state takes law into its own hands.

EMBARGO

The term embargo is of Spanish origin. Originally, it means detention, but in international law it has the technical meaning of detention of ships in port. Such an operation is initiated in accordance to an order issued by State authorities in order to limit or interrupt or terminate its trade and economic relations with another state.

The purpose of such an embargo is to exert financial or economic pressure on the other state. Embargo at present may be applied by a state, individually or collectively, under the authority of the United Nations. If embargo is applied by a state, it should not endanger international peace and security. If it does so, it would become illegal. Collective embargo may be applied under the authority of the Security Council against a delinquent state.

PACIFIC BLOCKADE

When the coast of a state is blocked by another state for the purpose of preventing Ingress or egress of vessels of all Nations by the use of warships and other means in order to exercise economic and political pressure on that state, the act is called blockade. when blockade is applied during peace time, it is called as Pacific blockade.

The essential requirements for Pacific blockade are similar to those of blockade which is applied during the time of War.

Blockade has been regarded as one of the coercive means for the settlement of disputes because it consists in temporary suspension of Commerce of the offending state by closing of access to its coasts. blockade is a measure for the settlement of dispute which is taken normally by the powerful States.

After the creation of the United Nations, application of Pacific blockade has become illegal in view of the fact that it threatens peace and security. the blockade of the ports or coasts of a state by the forces of another state qualify as an act of aggression in accordance with para 3 of Article 3 of the resolution adopted by the General Assembly which laid down the definition of aggression. therefore blockade is not permissible recourse to settlement of disputes.

It is to be noted that at present while blockade is illegal when it is applied by a state individually, collective blockade applied under the authority of the security council to settle the dispute is lawful.

It is also to be noted that after the establishment of the United Nations a state has been substantially prevented from taking compulsive measures to settle the disputes. any measure which is likely to threaten international peace and security has become unlawful. therefore reprisals, embargo and blockade are lawful as long as they do not affect international peace and security. the only permissible coercive action which a state may take is the retaliation, wherein normally international peace and security is not affected. However, if it does so, it would also become unlawful.