

### 1. HISTORICAL ORIGINS OF INTERNATIONAL INSTITUTIONS

The process of international organization had its origins in the nineteenth century, largely in Europe. Innovations associated with the rise of industrialism and the introduction of new methods of transport and communication stimulated the creation of special-purpose agencies, usually called public international unions, designed to facilitate the collaboration of governments in dealing with economic, social, and technical problems. Notable among these were the International Telegraphic Union (1865) and the Universal Postal Union (1874), which survived to become specialized agencies of the United Nations system (the former under the title International Telecommunication Union) after World War II.<sup>258</sup> In the political field, an effort to institutionalize the dominant role of the great powers of Europe was undertaken at the Congress of Vienna in 1815.<sup>259</sup>

While the resultant Concert of Europe did not assume the character of a standing political organization, the same pattern functioned until World War I as the framework for a system of occasional great-power conferences which lent some substance to the idea that the European family of states constituted an organized entity. This concept was broadened by the Hague Conferences of 1899 and 1907, which admitted small states as well as great powers, and extra-European as well as European states, to participation in collective political deliberations.<sup>260</sup> Near the end of the nineteenth century, the establishment of the Pan American Union and the initiation of a series of inter-American conferences reinforced the Monroe Doctrine and Simón Bolívar's pronouncements by giving institutional expression to the idea that the states of the Western Hemisphere constituted a distinct subgroup within the larger multi-state system.<sup>261</sup>

These nineteenth-century beginnings provided, in large measure, the basis for the phenomenal development of international organization since World War I. Certain distinctions which emerged during this period—between political and non-political agencies, between the

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<sup>258</sup>Bowett's Law of International Institutions (eds. P. Sands and P. Klein), 5th edn, London, 2001

<sup>259</sup> Ibid, p.22

<sup>260</sup> Ibid, p.28

<sup>261</sup> Ibid, p.38

status of great powers and that of small states, between regional and geographically undefined organizations—were to prove significant in the later course of international organization. Basic patterns of institutional structure and procedure were evolved.<sup>262</sup>

The trend toward broadening the conception of international organization to include entities beyond the confines of the European state system was initiated. Most importantly, the dual motivations of international institution building—(a) the urge to promote coordinated responses by states to the problems of peaceful intercourse in an era of growing economic, social, and technical interdependence, and (b) the recognition of the necessity for moderating conflict in the political and military spheres became operative in this period.<sup>263</sup>

The establishment of the League of Nations and its affiliate, the International Labour Organisation, at the end of World War I represented the first attempt to combine into one general organization the disparate elements of organizational development which had emerged during the previous century.<sup>264</sup> The League was the first general international organization in several senses: (a) it pulled together the threads of the great-power council, the general conference of statesmen, and the technically oriented international bureau; (b) it was a multipurpose organization, although its primary focus was on the political and security problems of war and peace; and (c) it was, in principle, a world-wide institution, even though it retained much of the nineteenth-century emphasis upon the centrality of Europe in international affairs.<sup>265</sup>

After World War-II, the League was superseded by the United Nations, a general organization which derived its major features from the nineteenth-century heritage and the lessons of experience, both positive and negative, provided by the League. The United Nations was conceived as the central component of a varied and decentralized system of international institutions that would include both autonomous specialized agencies, following the pattern first set by the public international unions, and such regional organizations as existed or might be created by limited groups of states.<sup>266</sup> The organizational design formulated in the United

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<sup>262</sup> Ibid, p.44

<sup>263</sup> Ibid, p.48

<sup>264</sup> The United Nations and a Just World Order (eds. R. A. Falk, S. S. Kim and S. H. Mendlovitz), Boulder, 1991

<sup>265</sup> Ibid, p.54

<sup>266</sup> Ibid, p.65

Nations Charter called for the active coordination of the work of the specialized agencies by the central institution, primarily through the agency of its Economic and Social Council, and the utilization and control of regional agencies, largely through the Security Council.<sup>267</sup>

In actuality, the organizational system of the post-World War II era has involved the operation of approximately a dozen specialized agencies, many of them newly created, and coordinated with varying degrees of effectiveness by the United Nations.<sup>268</sup> The post-1945 system has also involved the proliferation of regional organizations of every sort, most of them functioning quite independently, without any genuine tie to the central organization. The term “United Nations system” may, therefore, properly be used to refer to the United Nations and the specialized agencies, but it does not embrace the considerable number of regional organizations which have developed independently.<sup>269</sup>

The total network of international institutions also comprises more than one hundred intergovernmental agencies outside the scope of the United Nations system, dealing with a vast range of problems and providing variety of mechanisms for the conduct of relations among states.<sup>270</sup> These are supplemented by approximately 1,500 non governmental organizations which promote international consultation and activity in specialized fields at the unofficial level (Yearbook of International Organizations 1962-1963).<sup>271</sup>

## **2. LEAGUE OF NATIONS- AN OVER VIEW**

The League of Nations was established at the end of World War I as an international peacekeeping organization. Although US President Woodrow Wilson was an enthusiastic proponent of the League, the United States did not officially join the League of Nations due to opposition from isolationists in Congress.<sup>272</sup>

The League of Nations effectively resolved some international conflicts but failed to prevent the outbreak of the Second World War. World War I was the most destructive conflict in

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<sup>267</sup> Ibid, p.77

<sup>268</sup>The Charter of the United Nations (ed. B. Simma), 2nd edn, Oxford, 2002;

<sup>269</sup> Ibid, p.65

<sup>270</sup> Ibid, p.67

<sup>271</sup> Ibid, p.72

<sup>272</sup> Ibid, p.77

human history, fought in brutal trench warfare conditions and claiming millions of casualties on all sides. The industrial and technological sophistication of weapons created a deadly efficiency of mass slaughter. The nature of the war was thus one of attrition, with each side attempting to wear the other down through a prolonged series of small-scale attacks that frequently resulted in stalemate.<sup>273</sup>

In the immediate aftermath of the war, American and European leaders gathered in Paris to debate and implement far-reaching changes to the pattern of international relations. The League of Nations was seen as the epitome of a new world order based on mutual co-operation and the peaceful resolution of international conflicts.

### **The establishment of the League of Nations**

The Treaty of Versailles was negotiated at the Paris Peace Conference of 1919, and included a covenant establishing the League of Nations, which convened its first council meeting on January 16, 1920. The League was composed of a General Assembly, which included delegations from all member states, a permanent secretariat that oversaw administrative functions, and an Executive Council, the membership of which was restricted to the great powers.<sup>274</sup>

The Council consisted of four permanent members (Great Britain, France, Japan, and Italy) and four non-permanent members. At its largest, the League of Nations was comprised of 58 member-states. The Soviet Union joined in 1934 but was expelled in 1939 for invading Finland.<sup>275</sup>

Members of the League of Nations were required to respect the territorial integrity and sovereignty of all other nation-states and to disavow the use or threat of military force as a means of resolving international conflicts. The League sought to peacefully resolve territorial disputes between members and was in some cases highly effective. For instance, in 1926 the League negotiated a peaceful outcome to the conflict between Iraq and Turkey over the province of Mosul, and in the early 1930s successfully mediated a resolution to the border dispute between

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<sup>273</sup> Ibid, p.82

<sup>274</sup> Ibid, p.85

<sup>275</sup> Ibid, p.89

Colombia and Peru.<sup>276</sup> However, the League ultimately failed to prevent the outbreak of the Second World War, and has therefore been viewed by historians as a largely weak, ineffective, and essentially powerless organization.<sup>277</sup> Not only did the League lack effective enforcement mechanisms, but many countries refused to join and were therefore not bound to respect the rules and obligations of membership.

### **3. UNITED NATIONS- PURPOSES AND PRINCIPLES**

The 20th century was a witness to two devastating world wars. The League of Nations often called the child of war was established immediately after the First World War. The main objective of the League of Nations was to establish peace and security in the world. The League of Nations was partially successful and partially failed to achieve its objective. It is evident from the fact that the Second World War was ample proof of the utter failure of the League of Nations to establish peace in the world.

The Second World War forced the states in the world to bear the effects of the war and to establish an international organisation, which would help in the peaceful settlement of disputes, and to ensure that peace and security could be established in the world. Subsequently, the then great nations of the world signed the San Francisco Conference on January 26, 1945, whereby the United Nations Charter was adopted and signed by 51 nations of the world, and it came into force on October 21, 1945, which is today celebrated as the United Nations Day.<sup>278</sup>

#### **PURPOSES OF UNITED NATIONS**

The purposes of the United Nations are enshrined in Article 1 of the Charter. According to Article 1, following are the purposes of the United Nations:

##### **1) To maintain international peace and security**

The most important responsibility of the United Nations is to maintain international peace and security. After having expressed their determination in the preamble "*to save succeeding generations from the scourge of war*" it was but natural and appropriate for the framers of the United Nations Charter to consider "Maintenance of International peace and security" as the first and foremost purpose of the United Nations. Article (1) provides that one of the purposes of the United Nations is to maintain international peace and security and to that end: "*to take effective*

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<sup>276</sup>S. Chesterman, T. M. Franck and D. M. Malone, Law and Practice of the United Nations, Oxford, 2008

<sup>277</sup> Ibid, p.24

<sup>278</sup> Ibid, p.28

*collective measures for the prevention and removal of threats to the peace and further suppression of acts of aggression or other breaches of peace, and to bring about peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international dispute or situation which may lead to breach of the peace.”*

**2) To develop friendly relations among nations:**

The second purpose of the United Nations is to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of people to take other appropriate measures to strengthen universal peace.

**3) International cooperation in solving international problems of economic, social and humanitarian character**

The third purpose of the United Nations is to achieve international cooperation in solving international problems of economic, social, cultural or humanitarian character and in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

**4) To make the United Nations a centre for the attainment of the above, and ends:**

The last purpose of the United Nations is to make it a centre for harmonising the actions in the attainment of those common ends.

**PRINCIPLES OF THE UNITED NATIONS**

Article 2 of the United Nations charter provides that the organization and its members, in pursuit of the purposes enshrined in article 1, shall act in accordance with the following principles:

**1) Principle of sovereign equality of all its members:**

The first principle of the United Nations is that the organization is based on the principle of sovereign equality of all its members. According to this principle, all the members of the United Nations are equal in the eyes of law irrespective of the size and strength.

**2) Principle of fulfilling obligations in good faith:**

The second principle of the United Nations is that all members, in order to ensure to all of them, the rights and benefits resulting from the membership, shall fulfil in good faith the obligations assumed by them in accordance with the present Charter.

**3) Peaceful settlement of international disputes:**

All members shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered.

4) **Principle of non-intervention:** All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or any other manner inconsistent with the purposes of the United Nations.

5) **Principle of assistance to UNO:**

The next principle is that all members shall give the United Nations every assistance in any common action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations in taking preventive or enforcement action.

6) **Principle of maintenance of international peace and security:**

The UN shall ensure that States which are not members of the United Nations act in accordance with these principles so far as may be necessary, for maintenance of international peace and security.

7) **Non-intervention in domestic matters of state:**

The last principle of the United Nations states that nothing contained in the present Charter shall authorise the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the members to submit such matters to settlement under the present Charter.

## **Membership**

According to the Charter of the United Nations, there may be two types of members:

- (i) Original members, and
- (ii) States which may be admitted to the United Nations in accordance with provisions of Article 4 of the Charter.

As regards the original members, Article 3 of the Charter provides that the original members of the United Nations shall be states which, having participated in the United Nations Conference on international organisation at San Francisco, having previously signed the Declaration of the United Nations on January 1, 1942 signed the present Charter and ratified it in accordance with Article 110. As regards admission of the members of the United Nations, Article 4 provides that states may be admitted to the United Nations on the affirmative

recommendations of the Security Council and by the election of the General Assembly by two-thirds majority.<sup>279</sup>

Since the admission of states to the United Nations is an important matter affirmative votes of nine members of the Security Council including five permanent members are necessary. Moreover, Article 4 provides the five requirements or conditions for the state to become a member of the United Nations. They are: (1) It must be a State; (2) It must be peace loving; (3) It must accept the obligations of the Charter; (4) It must be willing to carry out the obligations; (5) It must be able to carry out these obligations.<sup>280</sup>

### **Expulsion of a Member from the United Nations**

The provision regarding the expulsion of a member from United Nations is contained in Article 6 of the Charter. It provides that a member of the United Nations, which had persistently violated the principles contained in the present Charter, may be expelled from the organization by the General Assembly upon the recommendations of the Security Council.<sup>281</sup>

### **Suspension of Members**

The provision relating to the suspension of a member is found in Article 5 of the Charter. Article 5 provides that member of the United Nations against which preventive or enforcement action has been taken by the Security Council may be suspended from the exercise of the rights and privileges of membership by the General Assembly, upon the recommendations of the Security Council.<sup>282</sup> It further provides that the exercise of these rights and privileges may be restored by the Security Council.

## **4. STRUCTURE POWERS AND FUNCTIONS OF PRINCIPLE ORGANS OF THE UNITED NATIONS**

Following are the six principal organs of the United Nations:

### **4.1. GENERAL ASSEMBLY**

It is one of the principal organs and policymaking body of the United Nations. The General Assembly consists of all the members of the United Nations. Each member may have not more than five representatives in the General Assembly. At present, the General

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<sup>279</sup> Ibid, p.32

<sup>280</sup> Ibid, p.38

<sup>281</sup> Ibid, p.42

<sup>282</sup> Ibid, p.45

Assembly comprises of 192 members.<sup>283</sup> Each member of the General Assembly has one vote. Decisions on important questions are made by a two-thirds majority of the members present and voting. Such questions include matters relating to maintenance of international peace and security; the election of non-permanent members of the Security Council; the election of the members of the Economic and Social Council and Trusteeship Council; the admission of new members of the United Nations; the suspension of the rights and privileges of membership; the expulsion of members; questions relating to the operation of the trusteeship system; and budgetary questions. Questions on other matters, including the determination of additional categories of questions to be decided by a two thirds majority, shall be made by a majority of members present and voting.<sup>284</sup> Professor Leonard has classified the powers and functions of the General Assembly under five headings, they are as follows: *firstly*, Deliberative functions; *secondly*, Supervisory functions; *thirdly*, Financial functions; *fourthly*, Elective functions; and *lastly*, Constituent functions.<sup>285</sup>

The resolutions passed by the General Assembly are not binding upon the states in the international community. The General Assembly can deliberate on any matter within the scope of the United Nations Charter. However, when the Security Council is considering any matter the General Assembly will not interfere in the matter. Where the Security Council fails to maintain peace and security then the General Assembly shall assume the responsibility of maintaining peace and security under a resolution known as Uniting for Peace Resolution passed by it in the year 1950.<sup>286</sup>

#### **4.2. SECURITY COUNCIL**

The Dumbarton Oaks proposals emphasized the establishment of an executive organ, whose membership might be limited and which could be entrusted with the primary responsibility of the maintenance of International Peace and Security. In San Francisco Conference, it was finally decided to establish such an organ in the form of the Security Council. In accordance with the provisions of Article of the United Nations Charter, the Security Council is one of the principal organs of the United Nations. It

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<sup>283</sup> Ibid, p.55

<sup>284</sup> B. Conforti, The Law and Practice of the United Nations, 2nd edn, The Hague, 2000;

<sup>285</sup> Ibid, p.76

<sup>286</sup> Ibid, p.79

comprises of 15 members, five permanent members and 10 non-permanent members. China, Russia, America, France and Britain are the permanent members of the Security Council.<sup>287</sup> Before the amendment even without exercising Veto, the permanent members could prevent the Security Council from taking action on any matter because the Security Council then consisted of 11 members and action on ordinary or non-substantial matters required seven affirmative votes. If one permanent member voted against the proposal, Security Council could not take any decision on it.

But, this is no more possible because now the Security Council consists of 15 members five permanent and 10 non-permanent members and in cases of all non-substantial or procedural matters nine affirmative votes are required. Thus, on a non-substantial matter, the Security Council can take a decision on the basis of affirmative votes of non-permanent members. 10 non-permanent members are elected by the General Assembly for a period of two years.<sup>288</sup> The primary responsibility of maintaining international peace and security in the world is that of the Security Council. In the discharge of this responsibility, the Security Council is empowered to take enforcement action against states, which regularly violate the principles of the United Nations Charter and the general rules of international law.<sup>289</sup>

The enforcement action includes: *firstly* warning, *secondly* economic sanctions, and *thirdly* use of force by land, air and sea. The resolutions passed by the Security Council are considered as a potential source of international law. They are binding upon the states in the international community.<sup>290</sup>

#### **4.3. ECONOMIC AND SOCIAL COUNCIL (ECOSOC)**

The Economic and Social Council consists of 54 members who are elected by the General Assembly, one third of its members are elected each year by the General Assembly for a term of three years. Prior to 31st August, 1965, the economic and social Council consisted of 18 members.

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<sup>287</sup> Ibid, p.85

<sup>288</sup> Ibid, p.88

<sup>289</sup> Ibid, p.98

<sup>290</sup> Ibid, p.112

This number increased to 27 by an amendment of the Charter in 1963, which came into force in 1965. Subsequent amendment to Article 61, which entered into force on 24th September, 1973, further increased the membership of the Council from 27 to 54. Since the membership of the UN has now increased to 192, a plea can be made for further increase in the membership of the Economic and Social Council to make it more representative.<sup>291</sup>

Each member of the Economic and Social Council is entitled to have only one representative in the Council. At present India is one of the members of the Council. Each member of the Economic and Social Council is entitled to have one vote. The additions of the Economic and Social Council are made by a majority of members present and voting.

#### **4.4. TRUSTEESHIP COUNCIL**

As provided under Article 86 of the Charter, Trusteeship Council consists of the following members of the United Nations: (a) Those members who are administering trust Territories; (b) The permanent members of the Security Council as are not administering trust Territories; (c) As many other members elected for three years term by the General Assembly is really necessary to ensure that the total number of members of the Trusteeship Council is equally divided between those members of the United Nations which administered trust Territories and those which did not. At present, trusteeship Council members are the United States as an administering authority and China, France, the Russian Federation and United Kingdom serve as permanent members of the Security Council. Each member of the trusteeship Council has one vote. The decisions of the Trusteeship Council are made by a majority of the members present and voting. That is to say, no member possesses veto power in the Trusteeship Council.<sup>292</sup>

#### **4.5. SECRETARIAT**

The Secretariat is one of the principal organs of the United Nations. The Secretariat comprises of a secretary general and such staff as the organization may require. The Secretary General is appointed by the General Assembly upon the

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<sup>291</sup>R. Higgins, *The Development of International Law Through the Political Organs of the United Nations*, Oxford, 1963

<sup>292</sup> *Ibid*, p.62

recommendations of the Security Council. He is designated as “The Chief Administrative Officer of the Organisation”. He is thus not only the chief administrative officer of the Secretariat, but of the whole organisation. It is his duty to present a report on the overall functioning of the United Nations Organization in the annual session of the General Assembly.<sup>293</sup> From the practice of the United Nations Organization, it can be seen that the Secretary General is appointed normally from a smaller and neutral state

## **5. INTERNATIONAL COURT OF JUSTICE**

### **5.1. HISTORICAL EVOLUTION**

The International Court of Justice is based upon a statute known as the statute of International Court of Justice. The statute of International Court of Justice originally belonged to the Permanent Court of International Justice which was established as the principal judicial organ of the League of Nations. Therefore, it is aptly stated that the International Court of Justice has stepped into the shoes of the Permanent Court of International Justice.<sup>294</sup>

According to Article 7 of the United Nations Charter International Court of Justice is one of the principal organs of the United Nations. It is the principal judicial organ of the United Nations Organization and is based upon a statute which is an integral part of the United Nations Charter. The World Court is the first truly permanent judicial international institution and it is served by an efficient registry.<sup>295</sup> All members of the United Nations organization are ipso facto the members of the Statute of the International Court of Justice. Any State, which is not a member of the United Nations organization may also become a party to the Statute of the International Court of Justice on the recommendations of the Security Council and on the conditions laid down by the General Assembly.

### **5.2. COMPOSITION OF THE COURT**

The International Court of Justice consists of 15 judges who are elected regardless of their nationality from among persons of high moral character and who possess the required qualifications in their respective countries, by the General Assembly and the Security Council

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<sup>293</sup> Ibid, p.22

<sup>294</sup>S. Rosenne, *The Law and Practice of the International Court, 1920–2005*, 4th edn, Leiden, 4 vols., 2006

<sup>295</sup> Ibid, p.43

separately. These judges are elected for a term of nine years and can also be re-elected after the expiry of their term.<sup>296</sup>

All the decisions of the court are taken on the basis of the majority of the judges. The president of the court is empowered to give a casting vote in case of a tie. It has become a well founded practice that five judges are from the five permanent members of the Security Council.<sup>297</sup> The court is constituted in such a way that Latin America, Europe, Africa and Asia are represented in it so as to represent the main forms of civilization and the principal legal systems of the world.<sup>298</sup> The permanent seat of the court is in Hague. Although all the judges may sit and decide a case but the required quorum for the court to take decisions shall be nine judges.

### 5.3. TYPES OF JURISDICTION OF THE COURT

Since there is no universal authority over the states in the international community, an international tribunal cannot exercise any kind of jurisdiction over the sovereign states without the states giving their consent.<sup>299</sup> The jurisdiction of the International Court of Justice is also on similar lines. This principle of consensual jurisdiction of the court can be noticed in many of the decisions rendered by the court, for instance, in the **Corfu Channel Case(United Kingdom v. Albania)**<sup>300</sup>, The court has held that the consent of the parties confers jurisdiction on the court.

#### **Doctrine of Forum Prorogatum**

The principle of forum prorogatum means jurisdiction can be conferred upon an existing tribunal not otherwise competent by the litigants during the proceedings, it is also known as prorogated jurisdiction and is found in the Roman Legal System. The principle of prorogated jurisdiction crept into many modern systems of law which developed from the Roman legal system. In the realm of international law the doctrine of forum prorogatum is the result of the pronouncements of both the Permanent Court of International Justice and the International Court of Justice.<sup>301</sup>

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<sup>296</sup> Ibid, p.52

<sup>297</sup> M. S. M. Amr, The Role of the International Court of Justice as the Principal Judicial Organ of the United Nations, The Hague, 2003

<sup>298</sup> Ibid, p.58

<sup>299</sup> Ibid, p.62

<sup>300</sup> ICJ Rep 1948, pages 15, 27.

<sup>301</sup> Fifty Years of the International Court of Justice (eds. A. V. Lowe and M. Fitzmaurice), Cambridge, 1996

The doctrine of forum prorogatum lays emphasis on the fact that acceptance of unilateral summons to appear before the court confers jurisdiction on the court. If the respondent state, either expressly or by implication from conduct submits to the court's jurisdiction, the court is irrevocably seized of the case. The International Court of Justice adopted the doctrine of forum prorogatum in the Corfu Channel Case.

## **KINDS OF JURISDICTION**

The International Court of Justice basically exercises two kinds of jurisdiction i.e. contentious jurisdiction and advisory jurisdiction. Contentious jurisdiction again is of two kinds namely voluntary jurisdiction and compulsory or optional jurisdiction.

**Voluntary jurisdiction** of the court applies to cases which are voluntarily referred to the court by the parties to the dispute as well as cases brought before the court by one of the parties and the other party impliedly or expressly accepts the jurisdiction of the court. Article 36(1) of the statute of the court lays down that voluntary jurisdiction is *“The jurisdiction of the court comprises all cases which the parties refer to it and all the matters specially provided for in the Charter of the United Nations or in treaties and conventions in force”*.

**Compulsory jurisdiction** or which is popularly known as optional clause on the other hand is contained in Article 36(2) of the statute which provides that states parties to the statute may confer compulsory jurisdiction on the court by making such a declaration in respect of any other state which also accepts similar obligations. This can be done without any special agreement and a state party to the statute may confer compulsory jurisdiction on the court in matters relating to

1. *Firstly*, interpretation of a treaty;
2. Any question of international law; and
3. *Thirdly*, the existence of any fact if established would constitute a breach of international obligations and
4. The nature and extent of the reparation to be made for the breach of an international obligation.

The clause gives option to the states to make their respective declarations for accepting the jurisdiction of the court. Where such a declaration is once made by a state, the jurisdiction of the court becomes compulsory in relation to other states accepting the same obligation. The significance of the optional clause is the fact that it provides a means of accepting compulsory

jurisdiction generally for all legal disputes and as against any state undertaking the same obligations.

**Interim Measures:** The statute of the International Court of Justice lays down that under Article 41 the court shall have the power to indicate if it considers that circumstances so require, any provisional measure which has to be taken to protect the rights of both the parties. When a case is pending before the court should not allow injustice by further delaying the final judgement and leaving the legal interests involved in the case entirely at the mercy of unavoidable circumstances.

Therefore the instrument of interim measures of protection originated for the purpose of ensuring interim justice pending the final judgement. The court grants interim relief only when there is every possibility of injury being caused to the rights of the parties which cannot be compensated and the ultimate goal of such an interim measure is to protect and secure the rights of the parties.

**Transferred Jurisdiction:** The International Court of Justice exercises another type of jurisdiction known as transferred jurisdiction. Article 36(5) of the statute of International Court of Justice states “Declaration made under Article 36 of the statute of the Permanent Court of International Justice and which are still in force shall be deemed, as between the parties to the present statute, to be acceptance of the compulsory jurisdiction of the International Court of Justice for the period which they still have to run and in accordance with their terms”. For instance if X and Y states conferred jurisdiction upon the Permanent Court of International Justice for a period of 15 years and the Permanent Court of International Justice was dissolved after expiry of 10 years, then the present court would exercise jurisdiction for the remaining period of 5 years.

**Revisional Jurisdiction:** Article 61 of the statute of International Court of Justice lays down the conditions for the acceptance of an application for revision. The conditions are as follows:

1. An application for revision of a judgement may be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgement was given, unknown to the court and also to the party claiming revision always provided that such ignorance was not due to negligence.

2. The proceedings for the revision shall be opened by a judgement of the court expressly recording the existence of a new fact, recognizing that it has such a character as to lay the case open to revision and declaring the application admissible on this ground.
3. The court may require previous compliance with the terms of the judgement before it admits proceedings in revision.
4. The application for revision must be made at least within six months of the discovery of the new fact.
5. No application for revision may be made after a lapse of ten years from the date of the judgement.

According to Article 62 of the statute, the court has the power to allow a state to intervene in a dispute to which it is not a party. It provides as follows:

1. Should a state consider that it has an interest of a legal nature which may be effected by the decision in the case, it may submit a request to the court to be permitted to intervene.
2. It shall be for the court to decide upon this request.

In the case of **Case Concerning Continental Shelf (Tunisia Vs Libya)**<sup>302</sup>, the dispute was between Tunisia and Libya relating to the delimitation of their continental shelf. While the court was considering the above case, another state Malta submitted a request to the court to permit it to intervene in the above dispute. Malta wanted the court to take into consideration its own interest in the continental shelf while fixing the limits of the continental shelves of states of Tunisia and Libya. The court allowed Malta to intervene.

### **Advisory Jurisdiction**

Apart from the jurisdictions mentioned above the court also exercises advisory jurisdiction. According to this jurisdiction an advisory opinion under Article 96(1) of the statute is given by the court when the General Assembly or Security Council request for such an opinion on any legal question. Other organs of the United Nations and the specialized agencies can also seek advisory opinion from the court subject to the approval by the General Assembly in respect of legal questions arising within the scope of their activities.

Further if the General Assembly wants to seek advisory opinion from the court then under Article 18(2) of the charter two thirds majority is required. Similarly if the Security Council wants to seek advisory opinion from the court under Article 27(3) of the charter, then

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<sup>302</sup>ICJ Rep, 1982, page 49

affirmative votes of nine members including the votes of the five permanent members are required. The advisory opinion of the International Court of Justice is different from the judgement of the International Court of Justice because firstly, advisory opinion is not legally binding upon the requesting party, secondly advisory opinion does not give rise to *Res Judicata*, thirdly, there are no parties to the proceedings strictly speaking. On the other hand the contentious jurisdiction of the International Court of Justice contains all the three elements mentioned above. Therefore an advisory opinion is a weak legal statement when compared to the judgment of the court.

#### **5.4. LAW APPLIED BY THE COURT**

According to Article 38 of the Statute of the International Court of Justice, the Court shall decide the dispute submitted to it in accordance with international law and shall use the sources of international law in the following order:

**International Conventions:** Whenever a dispute is referred to the International Court of Justice by the States, the first endeavor on the part of the court would be to see whether there is any convention or treaty signed by the states in the international community and which would provide a solution to the dispute before it. In the event of such a treaty existing, the court would decide only in accordance with that treaty or convention. In the absence of a treaty or convention the court would fall upon the second source i.e. International Custom.

**International Custom:** This originally was the primary source of international law has been pushed down to the second place. Custom is usage or practice employed by the states in resolving their disputes. We have,

**General principles of law recognized by civilized nations:** It comprises of those legal principles which are common to and recognized as such by the principal legal systems in the world. Principles such as *Res Judicata*, Estoppel, Subrogation, Double Jeopardy and Principles of Natural Justice.

**Juristic works:** There are the published research works of highly qualified and eminent persons in the field of law as a subsidiary means for determining the rules of international law subject to the provisions of Article 59 of the statute of International Court of Justice. Article 38 of the statute of International Court of Justice also empowers the world court to decide cases in accordance with principle of *ex aequo et bono* if the parties agree thereto. The purpose of this

clause is to allow the court to apply principles of equity, if necessary in modification or even derogation of the law.

## **5.5. BINDING NATURE OF JUDGMENT**

Judgments delivered by the Court (or by one of its Chambers) in disputes between States are binding upon the parties concerned. Article 94 of the United Nations Charter provides that “each Member of the United Nations undertakes to comply with the decision of the Court in any case to which it is a party”.<sup>303</sup>

Judgments are final and without appeal. If there is a dispute about the meaning or scope of a judgment, the only possibility is for one of the parties to make a request to the Court for an interpretation. In the event of the discovery of a fact hitherto unknown to the Court which might be a decisive factor, either party may apply for revision of the judgment.<sup>304</sup>

As regards advisory opinions, it is usually for the United Nations organs and specialized agencies requesting them to give effect to them or not, by whichever means they see fit.

## **6. LEGAL STATUS OF INTERNATIONAL ORGANIZATIONS**

In the realm of International Law States are the primary subjects, according to traditional international law whereas, modern International Law has incorporated international organizations, international institutions and also certain other non-state entities such as, the Vatican City, even individuals today are considered as subjects of international law. With the end of the Second World War and the establishment of the United Nations Organization, the statesmen of the world at that point of time felt that the States in the international community should enter into treaties and agreements in order to lend support to the United National Organization in the maintenance of international peace and security. Therefore, a large number of international organizations such as, ILO and EU, had come into existence.<sup>305</sup>

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<sup>303</sup>Bowett's Law of International Institutions (eds. P. Sands and P. Klein), 5th edn, London, 2001

<sup>304</sup> Ibid, p.76

<sup>305</sup> Ibid, p.82