

United Nations Convention on Law of the Sea

Prof (Dr). V. Balakista Reddy
Professor of International Law and Registrar
NALSAR University of Law, Hyderabad
www.nalsar.ac.in
• **E-mail: balakista@gmail.com**

Why Int. Orgs for Law of Seas?

- The Seas have historically performed two functions;
- First as a medium of communication, and
- secondly as a vast reservoir of resources, both living and non living,
- both of these functions have stimulated the development of the legal rules.
- The Historic function of the law of the sea has long been recognized as that of protecting and balancing the common interests, inclusive and exclusive of all peoples in the use and enjoyment of the oceans.
- A tangle of claims, spreading pollution, competing demands for lucrative fish stocks in seas, growing tension between coastal nations' rights to use these resources, fishermen, the prospects of a rich harvest of resources on the sea floor, the increased presence of maritime powers and the pressures of long-distance navigation and a seemingly outdated, freedom-of-the-seas doctrine
- - all these were threatening to transform the oceans into another arena for conflict and instability

Int. Orgs. as Subject of I.L

- International organization is an organization with an International membership, scope, or presence.
- An International organization is “a body that promotes voluntary cooperation and coordination between or among its members.
- L. Tunkin “ Int. org. as an association of states established on the basis of treaty in accordance with I.L. in order to achieve specific objectives”- (1) Association of states-IGOs and INGOs (2) setup by treaty, (3) established for specific purposes, (4) possess int. personality and (5) created in accordance with I.L.
- Kinds of Int. Orgs- Intended duration-Ad hoc, Provisional and permanent
- Nature of their powers-Legislative, Administrative, Judicial etc.,
- Character of their objectives-single or multipurpose
- Geographical- Global, Regional & sub regional

Supporting Cases

- Reparation for injuries suffered in the service of UN of 1949-
- (1) the court was asked to determine the capacity of UN, as an organ, to bring an international claim for compensation against a state
- (2) the Court said “UN is Int. person & it is subject of I.L. and capable of possessing rights and duties and can bring int. claims”.
- The above was reaffirmed by the ICJ in 1980 Interpretation of Agreement of 25th March 1951 between WHO and Egypt, the Court said” Int. orgns. are subject of I.L. and they are bound by any obligation incumbent upon them under general rules of I.L, under their constitutions or under int. agreements to which they are parties.
- 1. UN (immunities & privileges) Act 1947 to give effective to the Convention on the Privileges & Immunities of UN 1946
- UK made legislation to implement the 1994 convention on the safety of UN & Associated Personnel .
- In 1997 UK made legislation making crime under the above treaty is a crime under England.

History of Int. Organizations

- The first and oldest intergovernmental organization is the Central Commission for Navigation on the Rhine, created in 1815 by the Congress of Vienna.
- The Congress of Vienna was convened in 1815 by the four European powers which had defeated Napoleon.
- The first goal was to establish a new balance of power in Europe which would prevent imperialism within Europe, such as the Napoleonic empire, and maintain the peace between the great powers.
- The second goal was to prevent political revolutions, such as the French Revolution, and maintain the status quo
- Around 30 intergovernmental organizations were founded between 1864 and 1914. International institutions such as the International Telegraph Union (1865), the Universal Postal Union (1874), and the International Office of Public Health (1907) developed common technological standards and fostered economic globalization.

League of Nations

- The League of Nations was an international organization founded as a result of the Paris Peace Conference in 1919–1920.
- The League's **goals included disarmament, preventing war through collective security, settling disputes between countries through negotiation, diplomacy and improving global welfare.**
- The diplomatic philosophy behind the League represented a fundamental shift in thought from the preceding hundred years.
- The League lacked an armed force of its own and so depended on the Great Powers to enforce its resolutions, keep to economic sanctions which the League ordered, or provide an army, when needed, for the League to use. However, they were often very reluctant to do so.
- **Benito Mussolini stated that "The League is very well when sparrows shout, but no good at all when eagles fall out."**

Structure

- The League had three principal organs:
- a secretariat (headed by the General Secretary and based in Geneva),
- a Council, and an Assembly. The League also had numerous Agencies and Commissions. Authorization for any action required both a unanimous vote by the Council and a majority vote in the Assembly.
- Other bodies: The League oversaw the Permanent Court of International Justice and several other agencies and commissions created to deal with pressing international problems.
- These were the Disarmament Commission, the Health Organization, the International Labor Organization, the Mandates Commission, the Permanent Central Opium Board, the Commission for Refugees, and the Slavery Commission. While the League itself is generally branded a failure, several of its Agencies and Commissions had successes within their respective mandates.
- The League of Nations had 42 founding members excluding United States of America, 16 of them left or withdrew from the international organization.

Failures of the League Cont..

- The League did not succeed in the long term. The outbreak of World War II was the immediate cause of the League's demise, but the outbreak of the war exposed a variety of other, more fundamental, flaws.
- The League, like the modern United Nations, lacked an armed force of its own and depended on the Great Powers to enforce its resolutions, which they were very reluctant to do.
- Economic sanctions, which were the most severe measure the League could implement short of military action, were difficult to enforce and had no great impact on the target country, because they could simply trade with those outside the League
- On June 23, 1936, in the wake of the collapse of League efforts to restrain Italy's war of conquest against Abyssinia, British Prime Minister Stanley Baldwin told the House of Commons that collective security "failed ultimately because of the reluctance of nearly all the nations in Europe to proceed to what I might call military sanctions

Success of the League

- The Aaland Islands (1921) – Dispute between Sweden and Finland.
- Upper Silesia (1921) – Dispute over being part of Germany or Poland.
- Turkey (1923) - The League failed to stop a bloody war in Turkey (see League failures) but it did respond to the humanitarian crisis caused by this war.
- Greece and Bulgaria (1925) – dispute over the death of a Greek Soldier and Greece invaded Bulgaria.
- **Other successes:** The League also worked to combat the international trade in opium and sexual slavery and helped alleviate the plight of refugees, particularly in Turkey in the period to 1926.
- One of its innovations in this area was its 1922 introduction of the Nansen passport, which was the first internationally recognized identity card for stateless refugees.
- Many of the League's successes were accomplished by its various Agencies and Commissions.

League of Nations and Law of Seas

- The 1930 Codification Conference was to be the only major multilateral attempt to codify International law during the lifetime of the League whose attention was consumed with more fundamental political crises during the 1930s.
- The League convened the 1930 Hague Codification Conference, which was attended by delegates from forty-seven governments, including states which were not members of the League.
- The issue of territorial waters was considered by the Second Committee of the Conference.
- Despite prolonged discussions, delegates failed to agree a treaty on territorial waters, although they did produce a set of draft articles that were subsequently circulated to governments.
- This text itself did not create legal obligations.

History and Establishment the of UN

- The UN was founded as a successor to the League of Nations, which could not prevent World War II.
- ATLANTIC CHARTER (August 14, 1941)- President Roosevelt and Prime Minister Churchill were in conference “somewhere at sea”—Atlantic Charter on 14 August. In this charter, they undertook to make joint efforts to end Nazism and expressed their faith in the principles of equality of nations, and prohibition of acquiring territories through conquest.
- **The United Nations Declaration: (January 1, 1942)**
- On New Year's Day 1942, President Roosevelt, Prime Minister Churchill, Maxim Litvinov, of the USSR, and T. V. Soong, of China, signed a short document which later came to be known as the United Nations Declaration and the next day the representatives of twenty-two other nations added their signatures.
- In this declaration states pledged to render cooperation to each other and they would not enter in to any agreement separately with enemy.

History Cont...

- **Moscow Declaration (October 30, 1943)**
- On October 30, 1943, the representatives of Britain, American, Russia and China assembled at Moscow and signed a Declaration Known as “Moscow Declaration”. They undertook to take **joint action against enemy**. They emphasized **the urgent need of the establishment of World Organization based on principle of equality of nations and to maintain international peace and security**.
- **Tehran Conference (December 1, 1943):**The next important event was holding of Tehran Conference wherein Churchill, Roosevelt and Stalin signed a declaration which further emphasized **the urgent need of establishment of an International Organization which should be capable of maintaining international peace and security**.
- **Dumbarton Oaks and Yalta:** In this conference all the matters relating to the composition, functions, principals, organs of the proposed.

History Cont...

- **YALTA CONFERENCE (FEBRUARY 11, 1945):** In this conference besides the foreign Ministers and military heads of Britain, America and Russia, Churchill and Roosevelt also participated.
- **This conference gave final shape to the proposed world organization.** Certain matters which were left unsettled in Dumbarton Oaks conference were resolved in this conference.
- **San Francisco Conference (June 25, 1945): the U.N Charter was voted and was ultimately unanimously adopted.** It was provided that the charter would come in to force only when it is signed and ratified by majority of states.
- This requirement was completed on October 24, 1945 and charter of U.N came in to force from that date.
- This conference was attended by 51 states who became the original members of U.N

Structure of UN

- The United Nations (UN) is an international organization whose stated aims are to facilitate cooperation in international law, international security, economic development, social progress, human rights, and achieving world peace.
- There are currently 193 member states, including nearly every recognized independent state in the world. The organization is divided into administrative bodies, primarily:
 - The General Assembly (the main deliberative assembly);
 - The Security Council (decides certain resolutions for peace and security);
 - The Economic and Social Council (assists in promoting international economic and social cooperation and development);
 - Trusteeship Council
 - The Secretariat (provides studies, information, and facilities needed by the UN);
 - The International Court of Justice (the primary judicial organ).

U.N CHARTER:PREAMBLE:

The Charter is the constituting instrument of the United Nations, setting out the rights and obligations of Member States, and establishing the Organization's organs and procedures.

WE THE PEOPLES OF THE UNITED NATIONS DETERMINED

- to save succeeding generations from the scourge of war,
- to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and
- to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained,

AND FOR THESE ENDS

- to practice tolerance and live together in peace with one another as good neighbours, and
- to unite our strength to maintain international peace and security, and
- to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and
- to employ international machinery for the promotion of the economic and social advancement of all peoples,
- It consists of 19 Chapters and 111 articles

LEGAL CHARACTER & PURPOSES OF UN

- Article 104 of the Charter, the organization shall enjoy in the territory of each of its members such legal capacity as may be necessary for the exercise of its function and the fulfillment of its purpose.
- Article 105 provides that the organization shall enjoy in the territory of each of its members such privileges and immunities as are necessary for the fulfillment of its purposes.

Article 1 of the Charter:

- to maintain international peace and security;
- to develop friendly relations among nations;
- to cooperate in solving international economic, social, cultural and humanitarian problems and in promoting respect for human rights and fundamental freedoms;
- to be a centre for harmonizing the actions of nations in attaining these ends. “the purpose of United Nation is world peace”.

Principles of UN

Article 2 of the Charter:

1. The principle of Sovereign Equality of all members.
2. All members, in order to ensure to all of them, the rights and benefits resulting from the membership, shall fulfill in good faith the obligations assumed by them in accordance with the present charter.
3. Peaceful Settlement of International Disputes.
4. Principle of non-intervention.
5. The next principle is that all members shall give the United Nations every assistance in common action it takes in accordance with the present charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action.
6. The organization shall ensure that states which are not members of U.N act in accordance with these principles so far as may be necessary, for the maintenance of international peace and security.
7. Non- Intervention in domestic matters of state.

MEMBERSHIP

Article 4 of U.N Charter provides for the membership:{In 1945 - 51 Members and present 193}.

Two types of Members:

- (i) Original Members and (ii) States which may be admitted to the U.N in accordance with provisions of article 4 of the charter.

As regards to the admission of the members to United Nations, states may be and by the election of General Assembly by admitted to U.N on the affirmative recommendations of Security Council and by the election of General Assembly by 2/3 rd majority.

- Article 4 provides 5 requirements to become member of United Nations:
 - (i) It must be a state
 - (ii) it must be peace loving
 - (iii) It must accept the obligations of the charter
 - (iv) It must be willing to carry out these obligations
 - (v) It must be able to carry out these obligations.

As regards membership, I.C.J declared on March 5, 1950 that “it was necessary to have affirmative recommendation of S.C and G.A both before a member could be admitted in the organisation”.

Suspension and Expulsion of Member from U.N

- Article 5 of the charter provides for Suspension where a member can be suspended from the exercise of the rights and privileges of membership by G.A upon recommendation of S.C.
- Article 6 provides for Expulsion of a member which had persistently violated the principles contained in the charter by G.A on recommendation of S.C.
- A decision on it will require nine affirmative votes of S.C including those of the permanent members and a decision by G.A to two-thirds majority.

Organs of UN

Structure

- Six but now five principal organs of the United Nations, are the: General Assembly, Security Council, Economic and Social Council, International Court of Justice and Secretariat. The United Nations family, however, is much larger, encompassing 15 agencies and several programmes and bodies.

General Assembly :

- the General Assembly occupies a central position as the chief deliberative, policy-making and representative organ of the United Nations. Comprising all 193 Members of the United Nations, it provides a forum for multilateral discussion of the full spectrum of international issues covered by the Charter.
- It also plays a significant role in the process of standard-setting and the codification of international law. The Assembly meets in regular session intensively from September to December each year, and thereafter as required.

GA Cont..

- According to the Charter of the United Nations, the General Assembly may:
- Consider and make recommendations on the general principles of cooperation for maintaining international peace and security, including disarmament;
- Discuss any question relating to international peace and security and, except where a dispute or situation is currently being discussed by the Security Council, make recommendations on it;
- Discuss, with the same exception, and make recommendations on any questions within the scope of the Charter or affecting the powers and functions of any organ of the United Nations;
- Initiate studies and make recommendations to promote international political cooperation, the development and codification of international law, the realization of human rights and fundamental freedoms and international collaboration in the economic, social, humanitarian, cultural, educational and health fields.

VOTING: Each Member State in the Assembly has one vote. Votes taken on designated important issues, such as recommendations on peace and security and the election of Security Council members, require a two-thirds majority of Member States, but other questions are decided by simple majority.

Security Council

- The Security Council is the primary instrument for establishing and maintaining international peace.
- Its main purpose is to prevent war by settling disputes between nations. Under the charter, the council is permitted to dispatch a UN force to stop aggression. All member nations undertake to make available armed forces, assistance, and facilities to maintain international peace and security.
- The Security Council has 15 members. There are five permanent members: the United States, the Russian Federation, Britain, France, and China; and ten temporary members elected by the General Assembly for two-year terms, from five different regions of the world.
- Voting on procedural matters requires a nine-vote majority to carry. However, on questions of substance, the vote of each of the five permanent members is required. As of Jan. 2007, the ten elected nonpermanent members were Belgium, Republic of the Congo, Ghana, Indonesia, Italy, Panama, Peru, Qatar, Slovakia, and South Africa. In Jan. 2008 the terms of Republic of the Congo, Ghana, Peru, Qatar, and Slovakia will expire.

Security Council Cont..

- Under the Charter, the functions and powers of the Security Council are:
- to maintain international peace and security in accordance with the principles and purposes of the United Nations;
- to investigate any dispute or situation which might lead to international friction;
- to recommend methods of adjusting such disputes or the terms of settlement;
- to formulate plans for the establishment of a system to regulate armaments;
- to determine the existence of a threat to the peace or act of aggression and to recommend what action should be taken;
- to call on Members to apply economic sanctions and other measures not involving the use of force to prevent or stop aggression;
- to take military action against an aggressor;
- to recommend the admission of new Members;
- to recommend to the General Assembly the appointment of the Secretary-General and, together with the Assembly, to elect the Judges of the International Court of Justice

Veto Power

- Under Article 27 of the UN Charter, Security Council decisions on all substantive matters require the affirmative votes of nine members including concurring votes of 5 permanent members.
- A negative vote, or veto, by a permanent member prevents adoption of a proposal, even if it has received the required number of affirmative votes. Abstention is not regarded as a veto despite the wording of the Charter.
- Since the Security Council's inception, China has used its veto 6 times; France 18 times; Russia/USSR 122 times; the United Kingdom 32 times; and the United States 81 times. The majority of Russian/Soviet vetoes were in the first ten years of the Council's existence. Since 1984, China has vetoed three resolutions; France three; Russia/USSR four; the United Kingdom ten; and the United States 43.
- Procedural matters are not subject to a veto, so the veto cannot be used to avoid discussion of an issue. Veto and its Effect on the Efficiency of Security Council: Impaired the efficiency of Security council. In important matters, The responsibility of U.N as a whole does not come to an end and G.A can then take necessary action in the matter.
- The “right to veto” must be exercised reasonably, honestly in conformity with spirit of law with due regards to the interests of others

Economic and Social Council

- **It** was established under the United Nations Charter as the principal organ to coordinate economic, social, and related work of the 14 UN specialized agencies, functional commissions and five regional commissions.
- ECOSOC consists of 54 members which are elected by G.A, one-third of its members are elected each year by the G.A for a term of 3 years. Each member of ECOSOC is entitled to have only one representative in the council. At present India is one of the members of the council.
- The current president of ECOSOC is Leo Merore, of Haiti. The president is elected for a one-year term and chosen amongst the small or middle powers represented on ECOSOC.
- ECOSOC serves as the central forum for discussing international economic and social issues, and for formulating policy recommendations addressed to Member States and the United Nations system. It is responsible for:

Cont..

- promoting higher standards of living, full employment, and economic and social progress;
- identifying solutions to international economic, social and health problems;
- facilitating international cultural and educational cooperation; and
- encouraging universal respect for human rights and fundamental freedoms.
- It is the duty of the U.N to encourage the achievement of International cooperation in solution of social, economical, educational, cultural and problems relating to health.

A new function of the Economic and Social Council is the Annual Ministerial Review (AMR). This was the result of the 2005 World Summit attended by Heads of State and Government.

Through this review, the ECOSOC will assess progress made towards the Millennium Development Goals, and also the implementation of the other goals and targets agreed at the major UN conferences and summits over the past 15 years.

International Court of Justice

- The International Court of Justice is the UN's principal judicial organ. Based in The Hague, Netherlands, the Court pursues two primary objectives:
- (1) settling legal disputes submitted by states in accordance with international law, and
- (2) advising on legal questions brought by authorized international organs and agencies.

The Court consists of 15 judges elected to 9-year terms by the United Nations General Assembly and the Security Council during independent sittings.

- The Court's jurisdiction and competency in settling disputes is dependent upon a state's acceptance of its jurisdiction thereof.
- The Court rules in accordance with international treaties, conventions, international custom, general principles of law, and, when relevant, judicial decision or teachings of the “most highly qualified publicists.”
- Article 59 of Statute of ICJ the decisions of the court shall not have a binding force except upon the parties to a dispute, and only in respect of a particular dispute between them.

The Secretariat

- The Secretariat is headed by the Secretary-General and such other staff as organisation may require., who acts as leader of the UN.
- Envisioned by Franklin D. Roosevelt as a "world moderator", the position is defined in the UN Charter as the organization's "chief administrative officer" in all meetings of the G.A, ECOSOC and performs such other functions as are entrusted to it.

The Charter also states that the Secretary-General can bring to the Security Council's attention "any matter which in his opinion may threaten the maintenance of international peace and security", giving the position greater scope for action on the world stage.

- The position has evolved into a dual role of an administrator of the UN organization, and a diplomat and mediator addressing disputes between member states and finding consensus to global issues.
- Secretary general makes annual report to the General Assembly on the work of the organisation.in fact, the annual session of the General Assembly begins with the discussion of the report of the Secretary General on the work of the organisation as a whole.

Major Achievements of U.N

- *"The UN was not created to take humanity to heaven but to save it from hell."* Former UN Secretary-General Dag Hammarskjold.
- **UNITED NATIONS ACCOMPLISHMENTS:**
- Deploying more than 35 peace-keeping missions. There are presently 16 active peace-keeping forces in operation.
- Credited with negotiating 172 peaceful settlements that have ended regional conflicts
- The UN has enabled people in over 45 countries to participate in free and fair elections.
- Development - The system's annual disbursements, including loans and grants, amount to more than \$10 billion.
- UNICEF spends more than \$800 million a year, primarily on immunization, health care, nutrition and basic education in 138 countries.
- UN Human Rights Commission has focused world attention on cases of torture, disappearance, and arbitrary detention and has generated international pressure.
- UN Conference on Environment and Development held in Rio de Janeiro in 1992, resulted in treaties on bio-diversity and climate change.

The United Nations and Law of the Seas

- At its first meeting in 1949, the Commission identified a provisional list of fourteen topics as suitable for codification.
- This list included the regime of high seas and the regime of territorial seas.
- It decided to prioritize the codification of the regime of the high seas and J.P.A. François was appointed as special rapporteur on the subject.
- Following a recommendation from the General Assembly, the Commission started work on the regime of the territorial sea at the third session of the Commission in 1951 and François was appointed as special rapporteur on this topic as well.
- In furtherance of its work on the high seas, the Commission submitted draft articles on the continental shelf and fisheries to the General Assembly in 1953.

UN Law of Seas

- The Commission recommended that the General Assembly adopt the articles on the continental shelf in the form of a resolution.
- Following this recommendation, the ILC duly submitted a single set of draft articles on the law of the sea to the General Assembly in 1956 along with a detailed set of commentaries.
- The draft articles formed the basis for discussions at UNCLOS I
- Firstly, the General Assembly recognized that the law of the sea raised issues of a political or technical nature, as well as pure questions of law.
- Secondly, the General Assembly, in a significant u-turn, also abandoned its determination to treat the law of the sea as a coherent whole.
- The mandate foresaw the adoption of more than one international convention on the subject.

UN Law of Seas: UNCLOS-I

- In 1956, the United Nations held its first Conference on the Law of the Sea (UNCLOS I) at Geneva, Switzerland.
- Eighty-six nations participated UNCLOS I resulted in four treaties concluded in 1958:
 1. Convention on the High Seas, entry into force: 30 September 1962
 2. Convention on the Continental Shelf, entry into force: 10 June 1964
 3. Convention on the Territorial Sea and Contiguous Zone, entry into force: 10 September 1964
 4. Convention on Fishing and Conservation of Living Resources of the High Seas, entry into force: 20 March 1966

UN Law of Seas: UNCLOS-I

1. **Convention on the High Seas**- Freedom of Navigation, Freedom of Overflight, Freedom of Fishing, Freedom to lay Cables and Pipelines
2. **Convention on the Continental Shelf**- Coastal nations have sovereignty right over the seabed and its resources, but not over the water and airspace above the seabed
3. **Convention on Territorial Seas and Contiguous Zones**
 - established sovereignty rights of passage through the territorial sea,
 - established the Contiguous Zone to extend 12 nautical miles from the baselines,
 - but failed to set standards of limits on the territorial sea
4. **Convention on Fishing and Conservation of the Living Resources of the High Seas**
 - established the right of coastal nations to protect living ocean resources

UN Law of Seas: UNCLOS-II

- The United Nations followed this in 1960 with its second Conference on the Law of the Sea (“UNCLOS II”). UNCLOS II did not result in any international agreements.
- During the six-week conference at Geneva, UNCLOS II did not achieve much. Generally speaking, the developing countries participated only as clients, allies, or dependents of United States or the former Soviet Union; there was no voice for countries of the third world or the developing nations.
- Goal was to resolve specific problems left by UNCLOS I
 - ❖ Width of Territorial Seas
 - ❖ Fisheries Limits
- The six-week Geneva conference did not result in any new agreements No agreement reached on either issue

UN Law of Seas: UNCLOS-III 1973-1982

- 585 Days over a 9-year period participation of 160 nations
UNCLOS is one of the largest history contains 320 articles and 9 annexes The agreement addresses a myriad of issues including
 - ❖ navigational rights of ships and aircraft,
 - ❖ limits on the extension of national sovereignty over the oceans,
 - ❖ environmental protection of the oceans, conservation of living resources and mining rights
- UNCLOS was first signed in December of 1982
- Treaty Came in to Force in 1994
- Many Nations have not Signed the Treaty

Cont..

- UNCLOS required 60 signatures for ratification and could only enter into force one year after the final nation had ratified or acceded to the treaty.
- The main reason many nations took so long to sign the treaty is because of Article 309, i.e,
"No reservation or exceptions may be made to this convention unless expressly permitted by other articles of this convention".
- Some of the terms of the agreement did not sit well with various nations

Important agreements reached at UNCLOS III

- territorial sea up to a limit not exceeding 12 nautical miles.
- Contiguous zone up to 24 nautical miles from the shoreline for purposes of enforcement of customs, fiscal, immigration, or sanitary laws.
- Exclusive economic zone up to 200 nautical miles from the shoreline for purposes of exploring and exploiting, conserving and managing the natural resources, whether living or non-living.
- The resources of the seabed and ocean floor and subsoil thereof beyond the limits of national jurisdiction are the common heritage of mankind. (to all)
- An International Seabed Authority will organize, carry out, and control activities associated with the exploitation of the resources of the international seabed.
- A parallel system will be established for exploring and exploiting the international seabed, one involving private and state ventures and the other involving the Authority.
- A so-called Enterprise will carry out activities in the international seabed for the Authority and will be responsible for transporting, processing, and marketing minerals recovered from the international seabed

Divisions of Ocean Areas

Baselines

The baseline is the boundary from which a nation may begin measurements to determine the portion of the adjacent oceans or continental shelf over which it may exercise sovereignty. Baseline is the low-water line along the coast

International Waters: Internal waters are those that are contained on the landward side of the baseline. These waters fall under the exclusive sovereignty of the nation in which they are contained.

Territorial Sea or Territorial Waters

- Extension of territorial sea
- Visual horizon theory: distance up to a man could see
- Horizon theory: where sky appears to fall on the earth, approx. 25 miles
- 24 hrs navigation by a ship
- Bynkershok: canon shot rule, 3 miles
- Galiani: italian jurist delinked territorial sea from canon shot.
- Problem of breadth of territorial waters
- Hague codification of 1930
- UNCLOS 1, 1958: Different countries, different proposals, min. 3, max, 12 miles
- UNCLOS 2, 1960: USA formula
- Drawing of baseline: lower water mark

Anglo-Norwegian fisheries case, 1951: UK v. Norway

- Points raised in the case:
- Validity of royal decree of 1935
- Fisheries zone, territorial sea, special characteristics of Norwegian coast
- Trace parallel method
- Straight baseline method
- Ten mile rule for base
- Length of straight baseline
- Economic dependency, etc.

Corfu channel case 1949: UK v. Albania

- ICJ laid down during peace time, warships did possess the right to innocent passage.
- Issue 1: Is Albania responsible for explosion and liable to pay compensation?
- Albania was responsible for causing damage to the UK warships,
- Compensation almost 844, 000 pounds ordered to be paid.
- Issue 2: has the UK violated I law by acts of the navy in international waters?
- No, right to innocent passage was held prominent.

Characteristics of territorial sea

- Littoral or coastal states have supreme authority and sovereign jurisdiction over its sea, air and outer space.
- Merchant ships: right of innocent passage
- Warships have right of innocent passage
- during time of peace
- Reserve cabotage, right over living and non-living resources.
- **Problem of Breadth of Territorial sea**
- Hague codification of 1930: Under the league of nations has failed to definite Breadth of territorial sea.
- UNCLOS I 1958: Under the auspicious of I.L.C. Different countries, different proposals. Ex. Norway, Sweden 4 miles. Italy, Spain, Portugal, Mexico 6 miles. C.E.P. countries 200 miles. (1) Mini. – 3 miles; (2) Maxi. – 12 miles.
- UNCLOS II 1960: America proposed breadth of territorial sea. 6+6 formula.

Territorial Sea and UNCLOS III

- Littoral or coastal states have supreme authority and sovereign jurisdiction over its sea, air and outer space.
- Merchant ships: right of innocent passage
- Warships have right of innocent passage during time of peace
- Reserve cabotage, right over living and non-living resources

UNCLOS III and Territorial Water

- Art 2-33: various provisions
- 3- extent of territorial sea, 12 nautical miles
- Delimitation of TS between states of adjacent and opposite coasts. Agreement.
- Opposite states: median line
- Adjacent states: equidistant principle

Contiguous Zone

- Not much relevance in the context of EEZ
- Contiguous zone is that part of the sea which is beyond and adjacent to the territorial sea of the coastal state.
- According to Art 33 of the UN Convention on the Law of the sea, 1982. In a zone contiguous to its territorial sea, the coastal state may exercise the control necessary to;
 - (a) Prevent infringement of its customs, fiscal, immigration or statutory regulations with in its territory or territorial sea.
 - (b) Punish infringement of above regulation of the above regulations committed with in its territory or territorial sea thus the contiguous zone imposes certain restriction on the freedom of the high seas.

Exclusive Economic Zone

- Truman Proclamation of Sep.1945, which emphasized the need for protection of fisheries resources and notified the establishment of conservation zones in the high seas
- After the two proclamations by Truman, other states also started claiming the portions of the high seas
- Fisheries Jurisdiction Case – 1974 between UK VS Iceland
- UNCLOS III: rights and responsibilities of the coastal states, and rights and freedoms of other states jurisdiction and duties of coastal states in EEZ, breadth of EEZ as 200 nautical miles from baseline from which the breadth of the territorial waters is measured. Articles from 60 to 68 describe the conservation utilization and development of various resources.

EEZ Cont..

- a region that stretches a distance of no more than 200 nautical miles from a nation's baselines
- Within its EEZ, a nation may exploit the natural resources (both living and inanimate) found both in the water and on the seabed, may utilize the natural resources of the area for the production of energy (including wind and wave/current), may establish artificial islands, conduct marine scientific research, pass laws for the preservation and protection of the marine environment, and regulate fishing
- Article 56: Rights, jurisdiction and duties of the coastal State in the exclusive economic zone
 - (a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources
 - (b) rights - the establishment and use of artificial islands, installations and structures marine scientific research the protection and preservation of the marine environment.

EEZ Cont..

- Article 57 Breadth of the exclusive economic zone-The exclusive economic zone shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured Article 58 Rights and duties of other States in the exclusive economic zone - all the states whether coastal or land locked, enjoys freedoms of free navigation, over-flight, laying of submarine cables or pipelines.
- Article 59 Basis for the resolution of conflicts regarding the attribution of rights and jurisdiction in the EEZ - conflict should be resolved on the basis of equity. Article 60 Artificial islands, installations and structures in EEZ
- Article 61 Conservation of the living resourcesThe coastal State shall determine the allowable catch of the living resources in its exclusive economic zone.Article 62 Utilization of the living resources The coastal State shall promote the objective of optimum utilization of the living resources in the exclusive economic zone without prejudice to Article 61 The coastal State shall determine its capacity to harvest the living resources of the exclusive economic zone.
- Article 64 - Highly migratory species Article 65 - Marine Mammals

UNCLOS III and High Seas

- **Article 87** of the UN Convention on the Law of Sea 1982 provided that high seas are open for all the states, whether coastal or land locked. It also provides for the Freedom of the high seas,
- Freedom of the high seas is exercised under the conditions laid down by this Convention and by other rules of international law. It comprises, *inter alia*, both for coastal and land-locked States:
 - The freedoms are:
 - (a) Freedom of navigation;
 - (b) Freedom of over flight;
 - (c) Freedom to lay submarine cables and pipelines, subject to Part VI;
 - (d) Freedom to construct artificial islands and other installations permitted under international law, subject to Part VI;
 - (e) Freedom of fishing, subject to the conditions laid down in section 2;
 - (f) Freedom of scientific research, subject to Parts VI and XIII.

Continental shelf

- Continental shelf is defined as natural prolongation of the land territory to the continental margin's outer edge, or 200 nautical miles from the coastal state's baseline, whichever is greater.
- State's continental shelf may exceed 200 nautical miles until the natural prolongation ends, but it may never exceed 350 nautical miles, or 100 nautical miles beyond 2,500 meter isobath, which is a line connecting the depth of 2,500 meters.
- States have the right to harvest mineral and non-living material in the subsoil of its continental shelf, to the exclusion of others.
- Aside from its provisions defining ocean boundaries, the convention establishes general obligations for safeguarding the marine environment and protecting freedom of scientific research on the high seas, and also creates an innovative legal regime for controlling mineral resource exploitation in deep seabed areas beyond national jurisdiction, through an International Seabed Authority.
- Landlocked states are given a right of access to and from the sea, without taxation of traffic through transit states.

IMO Background

- Established by the Convention on the International Maritime Organization, 1948, Specialized agency of the UN, Arguably one of the most successful intergovernmental organizations
- UN Maritime Conference adopts Convention on the Inter-Governmental Maritime Consultative Organization (IMCO)
- **1982 Name was changed in International Maritime Organisation (IMO)**
- **IMO's mission statement**
- The mission of IMO) is to promote safe, secure, environmentally sound, efficient and sustainable shipping through cooperation.
- This will be accomplished by adopting the highest practicable standards of maritime safety and security, efficiency of navigation and prevention and control of pollution from ships, as well as through consideration of the related legal matters and effective implementation of IMO's instruments with a view to their universal and uniform application.

Background Cont...

- It has always been recognized that the best way of improving safety at sea is by developing international regulations that are followed by all shipping nations and from the mid-19th century onwards a number of such treaties were adopted.
- Several countries proposed that a permanent international body should be established to promote maritime safety more effectively, but it was not until the establishment of the United Nations itself that these hopes were realized.
- In 1948 an international conference in Geneva adopted a convention formally establishing IMO (the original name was the Inter-Governmental Maritime Consultative Organization, or IMCO, but the name was changed in 1982 to IMO).
- The IMO Convention entered into force in 1958 and the new Organization met for the first time the following year

Background Cont...

- IMO's first task was to adopt a new version of the International Convention for the Safety of Life at Sea (SOLAS), the most important of all treaties dealing with maritime safety.
- This was achieved in 1960 and IMO then turned its attention to such matters as the facilitation of international maritime traffic, load lines and the carriage of dangerous goods, while the system of measuring the tonnage of ships was revised.
- But although safety was and remains IMO's most important responsibility, a new problem began to emerge - pollution.
- The growth in the amount of oil being transported by sea and in the size of oil tankers was of particular concern and the **Torrey Canyon** disaster of 1967, in which 120,000 tonnes of oil was spilled, demonstrated the scale of the problem.

Background Cont...

- During the next few years IMO introduced a series of measures designed to prevent tanker accidents and to minimize their consequences.
- It also tackled the environmental threat caused by routine operations such as the cleaning of oil cargo tanks and the disposal of engine room wastes - in tonnage terms a bigger menace than accidental pollution.
- The most important of all these measures was the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78).
- It covers not only accidental and operational oil pollution but also pollution by chemicals, goods in packaged form, sewage, garbage and air pollution.

Purposes of IMO

- Article 1 – states the purposes of the organization are:
- To provide machinery for co-operation among Governments in the field of governmental regulation and practices relating to technical matters of all kinds affecting shipping engaged in international trade,
- To encourage the removal of discriminatory action and unnecessary restrictions by Governments affecting shipping engaged in international trade
- To provide for the consideration by the Organization of matters concerning unfair restrictive practices by shipping concerns in accordance with Part II;
- To provide for the consideration by the Organization of any matters concerning shipping that may be referred to it by any organ or specialized agency of the United Nations;
- To provide for the exchange of information among Governments on matters under consideration by the Organization

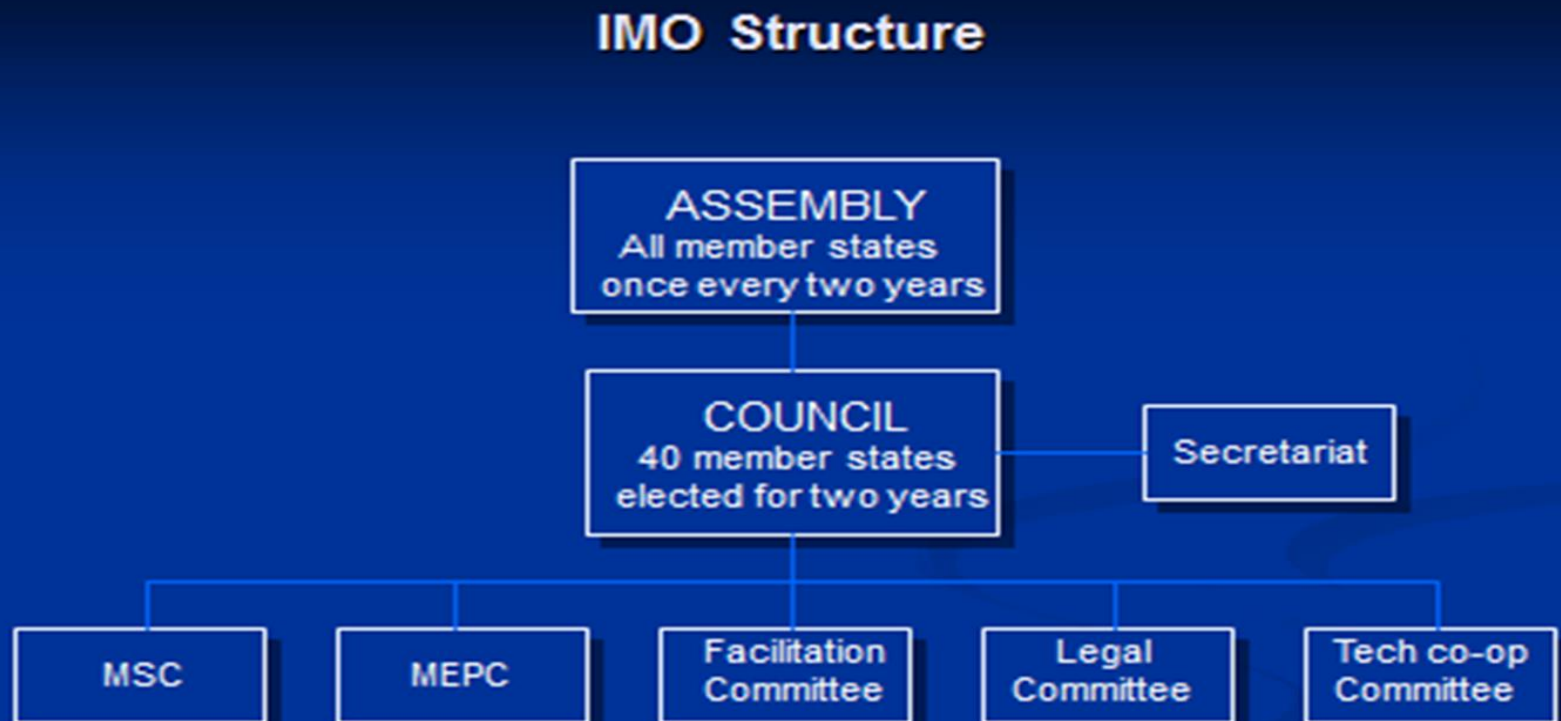
Functions of IMO

- Article 2 – states that IMO provides for the drafting of conventions, agreements or other suitable instruments; provides machinery for consultation among Members and exchange of information; facilitates technical co-operation.
- Article 3 – states that for matters “capable of settlement through the normal processes of international shipping business”, the IMO should recommend their resolution in that manner.
- **ADMISSION AND MEMBERSHIP TO IMO**
- IMO currently has 174 Member States and three Associate Members.
- Non-governmental international organizations that have the capability to make a substantial contribution to the work of IMO may be granted consultative status by the Council with the approval of the Assembly.
- IMO may enter into agreements of cooperation with other intergovernmental organizations on matters of common interest with a view to ensuring maximum coordination in respect of such matters.

INSTRUMENTS OF IMO

- One of the main aims of IMO is to ensure co-operation among maritime governments of the world. It also uses a number of instruments to implement and maintain the highest standards in areas of maritime safety, prevention of marine pollution, and shipping navigation and trade.
- The 5 important instruments of IMO are:
 - Conventions
 - Protocols
 - Amendments
 - Recommendations, codes, and guidelines
 - Resolutions

Structure of IMO



Assembly

- This is the highest governing body of the organization.
- It consists of all the member states and it meets once every two years in regular sessions, but may also meet in an extraordinary session if necessary.
- The assembly is responsible for approving the work programme, voting the budget and determining the financial arrangements of the organization.
- The assembly also elects the council.

Council

- The council is a prestigious institution to be a part of.
- It is elected by the assembly for the two-year terms beginning after each regular session of the assembly.
- The council is executive organ of the International Maritime Organisation and is responsible, under the assembly for supervising the work of the organization.
- Between sessions of the assembly, the council performs all the functions of the assembly, except the function of making the recommendations to the governments on the maritime safety and pollution prevention which is reserved for the assembly by Article 15(j) of the convention.

Maritime Safety Committee (MSC)

- The Maritime Safety Committee is the highest technical body of the organization.
- It consists of all the member states.
- The functions of the Maritime Safety Committee are to consider any matter within the scope of the organization concerned with the aids to navigation, construction and equipment of vessels, manning from a safety standpoint the rules for the prevention of the collisions, handling of the dangerous cargoes, maritime safety procedures and requirements that directly affect the maritime security.

The Marine Environment Protection Committee (MEPC)

- MEPC consists of all the member states of the international maritime organization, is empowered to take any decision with respect to the scope of the organization concerned with prevention and control of pollution from ships.
- In particular, it is concerned with the adoption and amendment of conventions and other regulations and measures to ensure their enforcement.
- MEPC was established as a subsidiary body of the assembly but later on, in 1985 it was raised to the full constitutional status.

Legal Committee

- The legal committee is empowered to deal with the legal matters of the organization and helps in deciding the right way even out of the wrong way.
- The Committee consists of all Member States of IMO.
- The committee works together for the administration as well as the organization of the International Maritime Organization.
- The Legal Committee is also empowered to perform any duties within its scope which may be assigned by or under any other international instrument and accepted by the Organization.

Technical Cooperation Committee

- The technical cooperation committee is required to consider any matter within the scope of the organization concerned with the implementation of the technical cooperation projects for which the organization acts as the executing or cooperating agency and any other matters related to the organization's activities in the technical cooperation field.
- It also consists of all the member states of the international maritime cooperation, and was established in 1969 as a subsidiary body of the council.

Facilitation Committee

- The facilitation committee was established as a subsidiary body of the Council in May 1972 and became fully institutionalized in December 2008 as the result of an amendment of the International Maritime organization at their own convention.
- It consists of all the member states of the organization and deals with International Maritime Organization's work in eliminating unnecessary formalities and the red tape in international shipping by implementing all the aspects of the convention on facilitation of the International Maritime Traffic 1965 and any matter within the scope of the IMO and international maritime traffic.

Secretariat

- The Secretary-General of the Organization is Mr. Kitack Lim (Republic of Korea) who was appointed to the position with effect from 1 January 2016, for an initial four-year term.

IMO'S CONTRIBUTION TO INTERNATIONAL MARITIME LAW

- Maritime Security and international regulations in maritime transportation of CBRN materials
- Wider initiative to counter terrorism
- 2005 Protocol to the SUA Convention
- Marine Environment
- Pollution Prevention- Oil, Chemical, Sewage, Garbage, etc.