

International Organizations

Teaching Material

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**Prepared under the Sponsorship of the Justice and Legal System
Research Institute**

2009

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Preface

Modern legal education in Ethiopia began with the opening of the Faculty of Law at what was then called the University College of Addis Ababa in 1963. This Faculty remained the only center of legal education in the country until the establishment of the Faculty of Law at the Ethiopian Civil Service College and the decision of the Government, in 1990s, to open various universities in the regions and to allow private institutions to play a role in the higher education of the country. Currently, higher-level legal education is given in more than ten public higher institutions and at least five private higher education institutions.

Although the numbers of universities offering legal education has been increasing in our country, there were problems in these universities that need immediate solutions. This has necessitated reform in the legal education. One of the problems that call for the legal reform is that the existing curriculums do not give adequate choice to students for there are few elective courses. With a view to alleviating this problem, a number of elective courses are included in the new curriculum. One of these elective courses is “international organizations”.

This teaching material on “international organizations” explores the key legal principles governing international organizations. Within this general focus, the material reviews the nature, functions and the legal personality of international organizations. It also discusses conceptual issues facing international and regional organizations, such as competence of organizations, responsibility of international organizations, privileges and immunities, membership, dissolution and succession of international organizations.

Furthermore, the material explores questions relating to the role of the United Nations in the enforcement of international law. It concentrates, in particular, on the role of global and regional organizations for the maintenance or restoration of international peace and security under the UN Charter. To make the course more relevant to the professional needs and practical interests of students, the African Union, other African regional and sub-regional organizations are included to form specific areas of study. Where a given subject matter or issue relates to Ethiopia, this is dealt with.

CHAPTER ONE

PRELIMINARY REMARKS

Dear students, the term international organization is usually used to describe an organization set up by agreement between two or more states. It is different from the term “non-governmental organization” (NGO), which is set up by individuals or groups of individuals (such as Amnesty international or Greenpeace), although some non-governmental organizations are entrusted with certain functions by states; the outstanding example is the international committee of the Red Cross, which plays an important role in supervising the application of the Geneva Conventions to the laws of war.

There are now some 500 international organizations of very different types. This proliferation reflects the need for increasing cooperation between states to solve problems of a transnational nature. They can be classified under various criteria-for example, according to whether their membership is global or regional or according to their functions and tasks.

This teaching material deals with inter-governmental organizations created by states. Under this first chapter, we will see some important points that help to understand the remaining chapters of the material. At the end of this chapter the students will be able to:-

Define what international organizations are;

1. Analyze the functions of international organizations;
2. Describe the historical development of international organizations;
3. Classify international organizations based on different criteria; and
4. Assess different approaches to international organizations.

1.1 Meaning and scope of international organizations

Perhaps the most difficult question to answer, which, in some ways is a preliminary question, is: what exactly is an international organization? The short answer is, quite simply, that we do not know. We may, in most cases, be able to recognize an

international organization when we see one, but it has so far appeared impossible to actually define such organizations in a comprehensive way.

It is common in the literature to delimit international organizations in at least some ways. One delimitation often made depends on the nature of the body of law governing the activities of the organization. If those activities are governed by international law, we speak of an international organization proper, or at least of an intergovernmental organization. If those activities are, however, governed by some domestic law, we usually say that the organization in question is a non-governmental organization; examples include such entities as Greenpeace or Amnesty International. While the activities of such entities may be international in character and they may even have been given some tasks under international law, they do not meet the usual understanding of what constitutes an international organization.

An international organization has been defined “as a forum of co-operation of sovereign states based on multilateral international organizations and comprising of a relatively stable range of participants, the fundamental feature of which is the existence of permanent organs with definite competences and powers acting for the carrying out of common aims.

In the widest sense, international organization can be defined as “a process of organizing the growing complexity of international relations; international organizations are the institutions which represent the phase of that process. They are the expressions of and contributors to the process of international organization, as well as, the significant factors in contemporary world affairs.” Further” international organizations, as institutions may come and go in accordance with the significance of the dynamism of international relations. But international organization, the process, exists as an established trend. It was the stimulus of the existing process ready at hand that automatically led, after the collapse of the League of Nations, to the creation of new organizations like the U.N. Thus, international organization is the process by which states establish and develop format and continuing institutional structures for the conduct of certain aspects of their relationships with each other. It represents a reaction to the extreme decentralization of the traditional system of

international relations and the constantly increasing complexities of the interdependence of states’’

Following are the essentials of international organization, the institution:

- I. Its origin is based on multilateral international agreement.
- II. The institution has a personality of its own, which is distinct from that of its individual members
- III. It has permanent organs which carry out common aims.

As compared to the will of all members, its organs exhibit autonomy of will.

For the international lawyer, it goes without saying that the activities of those organizations that are subject to international law will be of most interest. Usually, those organizations will have a number of characteristics in common although, in conformity with the fact that their founding fathers are relatively free to establish whatever they wish, those characteristics are not more than characteristics. The fact that they do not always hold true does not, as such, deny their value in general.

One of those characteristics is that international organizations are usually created between states, or rather, as states themselves are abstractions, by duly authorized representatives of states. This, however, doesn't tell the whole story. For one thing, there are international organizations which are themselves members of another international organization and sometimes even founding members. The EC, thus, is a member of the FAO, and a founding member of the WTO. Still, we do not exclude the WTO and the FAO from the scope of international organizations simply because they count another organization among their members. Generally, then, it is not a hard and fast rule that international organizations can only be created by states.

Secondly, not all such organizations created by states are generally considered international organizations. States may, for example establish a legal person under some domestic legal system. Perhaps an example is the Basle-Milhouse Air-port authority, a joint venture, between France and Switzerland and governed French law.

Moreover, sometimes treaties are to be implemented with the help of one or more organs. For instance, the European Court of Human Rights is entrusted with supervising the implementation of the European Convention on Human rights. Yet, the Court is not considered to be an international organization in its own right; it is, instead, often referred to as a treaty organ.

In what exactly the distinction between an organization and treaty organ resides is unclear, and perhaps it may be argued that its importance is diminishing at any rate: scholars writing in the field of, for example environmental law, have more or less started to unite the two forms of cooperation, and use the rather generic term of “international intuitions”, as encompassing both treaty organs and international organizations. Others have pointed out that treaty organs endowed with decision-making powers may well be international organizations in disguise, and, in the political science literature, reference is often made to ‘international regimes’ or, again, ‘institutions’.

A second characteristic which many organizations (but again, not all) have in common is that they are established by means of a treaty, their creation was not brought about by some legal act under some domestic legal system, but was done in the form of a treaty, which international law in general terms defines as a written agreement, governed by international law. And as the treaty will be governed by international law, so too will the organization.

Not all organizations derive directly from a treaty, though. Some have been created not by treaty, but by the legal act of an already existing organization. The United Nations General Assembly, for instance has created several organizations by resolution: the United Nations Industrial Development Organization (UNIDO) and the United Nations Children’s Fund (UNICEF) come to mind, as do various institutions set up by the Nordic Council, including financial institutions such as the Nordic Investment Bank. Indeed, the Nordic Council itself originated as a form of cooperation between the parliaments of the five states concerned (Denmark, Finland, Iceland, Norway and Sweden), rather than being clearly treaty-based. The importance of this characteristic, then is above all to indicate that the creation of an international

organizations is an intentional act. Organizations rest upon conscious decisions of the states involved; they do not come out of the blue, and are not created by accident.

That said, a describable recent tendency is to remain nebulous about intentions when creating international institutions. In recent years, organizations such as the organization for security and Co-operation in Europe (OSCE), Asia- pacific Economic Co-operation (APEC), the Arctic Council and the Wassenaar Arrangement have been established, but with all of them it remains unclear whether they indeed are to be regarded as full-blown organizations rather than, say, frameworks for occasional diplomacy, and even whether their constituent agreements constitute treaties or not. The legal status and structure of the European Union have, likewise, been subject to debate, and the G-7(or -8; the confusion is telling in itself) defies any attempt at a definition and classification.

In order to distinguish the international organization from other forms of international cooperation, another often-mentioned characteristic holds that the organization must possess at least one organ which has a will distinct from the will of its member states. Where the collectivity merely expresses the aggregate opinion of its members, giving it the legal form of an international organization would, in the extreme, be a useless act. One might as well have appointed a spokesperson.

Important though the characteristic of a 'distinct will' is, it is also the most difficult in terms of both practice and theory. As several authorities have noted, in practice not all organizations usually referred to as international organizations possess this characteristic. In heretical terms, the characteristic of the distinct will goes to the heart of the entire concept of international organization: the problematic relationship between the organization and its member states.

In one way, an international organization is little more than the tool in the hands of the member states, and viewed from this perspective, the distinct will of the organization is little more than a legal fiction. Yet, the international organization, in order to justify its *raison d'être* and its somewhat special status in international law, must insist on having such a distinct will. For, otherwise, it becomes indistinguishable from other forms of cooperation, and if so, it will become extremely difficult to justify why,

for example, the constituent treaties of organizations warrant teleological interpretation, as is so often claimed, or why such constituent treaties appear to possess far greater possibilities for deriving implied clauses (in the form of implied powers) from them than regular treaties are said to do.

1.2 The Historical development of international organizations

The development of international organizations has been, in the main, a response to the evident need arising from international intercourse rather than to the philosophical or ideological appeal of the notion of world government. The growth of international intercourse, in the sense of the development of relations between different peoples, was a constant feature of maturing civilizations; advances in the mechanics of communications combined with the desire for trade to produce a degree of intercourse which ultimately called for regulation by institutional means.

The institution of the consul, an official of the State whose essential task was to watch over the interests of the citizens of this State engaged in commerce in a foreign port, was known to the Greeks and the Romans. It survives to this day as one of the less spectacular, but important, institutions of international law. The consul was not, however, concerned with representing his state as such, and for this purpose ambassadors were used, being dispatched for the purpose of a specific negotiation. By the fifteenth century this intermittent diplomacy had been replaced in the relations of certain of the Italian States by the institution of a permanent diplomatic ambassador in the capital of the receiving State, and the practice of exchanging ambassadors, complete with staff and embassy premises, is now a normal (albeit not compulsory) feature of relations between states. Consular and Diplomatic institutions can be found the origins of the subsequent and more complex institutions.

Although embryonic forms of international organizations have been present throughout recorded history, for instance, in the form of the so called amphictyonic councils of ancient Greece, the late-medieval Hanseatic League or such precursors as the Swiss Confederation and the United Provinces of the Netherlands, it was not until the nineteenth century that international organizations as we know them today were first established. Moreover, it was not until the nineteenth century that the

international system of states (at least within Europe) had become sufficiently stable to allow those states to seek forms of cooperation.

Situations soon arose in which the essentially bilateral relationships established by diplomatic embassies or missions were inadequate. For example, a problem would arise which concerned not two but many States, and whether what was proposed was a series of negotiations or even a formal treaty, there had to be found a means for representing the interests of all the states concerned.

The means was the international conference, a gathering of representatives from several states; simply diplomacy writ large. The peace of Westphalia in 1648 emanated from such a conference, as did the settlement after the Napoleonic wars in 1815 through the congress of Vienna and, even later, the post-1918 settlement negotiated at the Paris conference of 1919 and embodied in the Treaty of Versailles. After the watershed Westphalian peace of 1648, international so-called congresses' had become a regular mode of diplomacy: whenever a problem arose, a conference was convened to discuss it and, if possible at all takes steps towards a solution. After the defeat of Napoleon, a new development took place.

The Congress of Vienna of 1815 had seen the initiation of the "concert system" which, for the purposes of any study of international organization, constituted a significant development. As sponsored by the Czar Alexander I, what was envisaged was an alliance of the victorious powers pledged to conduct diplomacy according to ethical standards, which would convene at congresses held at regular intervals. In fact, four congresses were held between 1818 and 1822 - at Aix-la-Chappelle (1818), at Troppau and Laibach (1820, 1821), and at Verona (1822) - but the idea of regular congresses was later abandoned and meetings took place as occasion required. The attempt to secure regular meetings was, however, a significant recognition that the "Pace" of international relations demanded some institutions for regular multilateral negotiations.

Moreover, the Congress of Vienna (1815) and its aftermath launched some other novelties as well, the most remarkable of which was perhaps the creation of a supranational military force under the command of Wellington.

Clearly, any general post war settlement demanded a more general participation in the negotiations than could easily be achieved via the traditional methods of diplomatic intercourse. Bilateral negotiation also proved inadequate for other problems of a general nature. The congress of Berlin of 1871 was convened to consider the Russian repudiation of the regime for the Black Sea which had earlier been established at the Paris Conference of 1856; conferences met in Berlin in 1884 and 1885 to attempt to regulate the “Scramble for Africa” which led to commercial rivalry and political antagonism between the European powers. The Hague Conferences of 1899 and 1907 were an effort to secure, on a multilateral basis, agreement on different aspects of the law relating to the conduct of warfare on land and on the sea, and on the duties of neutral states.

The peace conferences of The Hague had given the small states a taste for international activism: in particular the 1907 conference approached universal participation, with forty-four states being represented. Moreover, due in part to its near-universal participation, organizational experiments took place, one of them being that recommendations (so-called ‘voeux’) of the conference were passed by a majority vote, instead of unanimity.

The “concert of Europe” remained a quasi- institutionalized system even after the Holy Alliance had broken up, until the First World War destroyed the balance of power on which it rested (or rather confirmed its demise); the London conferences of 1912-13, at the end of the Balkan Wars, were the last conferences or congresses convened within the framework of the “concert system.” The conclusion of a conference would normally be accompanied by a formal treaty or convention, or, where no such binding agreement was desired or obtainable, by a memorandum or minutes of the conference.

The disadvantages of this system of ad hoc conferences were, first, that for each new problem which arose a new conference had to be convened, generally upon the initiative of one of the states concerned. The necessity of convening each conference anew complicated and delayed international co-operation in dealing with the problem. Second, the conferences were not debating forms in the same way as the later assemblies of the League and the United Nations; delegations attended very much for

the purposes of delivering statements of State policy and, though concessions were often made, the conferences had a rigidity which disappeared in the later "Permanent" assemblies of the League and the United Nations. Third, the conferences were held by invitation of the sponsoring or host state; there was no principle of membership which conferred an automatic right to representation. Fourth, the conferences adhered to the strict rule of state equality, with the consequence that all states had an equal vote and all decisions required unanimity. As will presently be shown, there are matters in which it is necessary to subjugate the will of the minority to that of the majority if progress is to be made, and the unanimity rule represented a serious restriction on the powers of the ad hoc conference.

It might also be said to be a disadvantage of the conference system that, as a political body, the conference was not ideally suited to the determination of legal questions. There were many cases in which the issues before a conference, although of a primarily political character, involved questions of law, of the rights or duties of the states under international law. The Paris conference of 1856 and the Berlin Conference of 1871, in dealing with the regime in the Black Sea, dealt very largely with legal issues. However, it must be remembered that there existed side by side with the conference system the traditional means of solving legal disputes, by mediation, conciliation or arbitration although there was in this field, as in the field of political settlement, an equal need for the creation of some permanent machinery. It is also unlikely that a rigid separation between "Political" and "legal" questions can ever be achieved so as to allocate the latter exclusively to judicial tribunals; politics are rarely "pure" and political matters do not cease to be such because they involve legal rights.

However inadequate the system of ad hoc conferences was for the solution of the political problems arising from international intercourse, it was even more inadequate for the regulation of the relations between groups of people in different countries arising from their common interests. The nineteenth century saw, therefore, an impassive development of associations or unions, international in character, between groups other than governments. This was followed by similar developments between governments themselves in the administrative rather than the political field.

The private International unions or associations sprang from the realization by non-governmental bodies, whether private individuals or corporate associations, that their interests had an international character which demanded the furtherance of those interests via a permanent international association with like bodies in other countries. In those fields where co-operation between governments became imperative, there developed the public international unions; these were, in fact, an essay into international organization in the administrative sphere. The transition from private to public organizations was gradual, and no generally accepted definition of the public international union has ever been reached in general. However, they were permanent associations of governments or administrations based upon a treaty of a multilateral rather than a bilateral type and with some definite criterion of purpose.

Finally, the nineteenth century saw the creation of such institutions as the Rhine Commission, in order to deal with issues of navigation, or issues of pollution, on a regular basis. Following the establishment of the Rhine Commission in 1815, a number of other river commissions were established -managing the Elbe (1821), the Douro (1835) the Po (1849) - and, after the end of the Crimean War, the European Commission for the Danube in 1856. At roughly the same time, organizations started to be established by private citizens, in order to deal with international issues. Thus, in 1840, the world Anti-Slavery Convention was established, and in 1863 a Swiss philanthropist, Henry Dunant, Created the Red Cross.

1.2.1 The rise of modern organizations

It became clear that in many areas, international cooperation was not only required, but also possible. True enough, states were sovereign and powerful, but, as the river commissions showed, they could sometimes sacrifice some of their sovereign prerogatives in order to facilitate the management of common problems.

The most obvious area in which international cooperation may be required is perhaps that of transport and communication as indicated by the creation of those river commissions. Regulation of other modes of transport and communication quickly followed: in 1865 the international Telegraphic Union was established, followed in

1874 by the universal postal Union and in 1890 by the international Union of Railway Freight Transportation.

Still other areas did not lag considerably behind: in 1903 the International Office of Public Health was created, and in the field of economics the establishment of the Metric Union (1875), the International Copyright Union (1886), the International Sugar Union (1902) and the International Institute for Agriculture (1905) may be mentioned as early forerunners of present-day international organization. Indeed, some of these are still in existence, albeit under a different name and on the basis of a different constituent treaty: there runs a direct connection, for example, from the early international institute for Agriculture to today's FAO. Slowly but surely, more and more international organizations became established, so much so that public international law gradually transformed (or is said to be gradually transforming) from a law of co-existence to a law of cooperation. Many of the substantive fields of public international law are no longer geared merely to delimiting the spheres of influence of the various states, but are rather geared towards establishing more or less permanent mechanisms for cooperation. Around the turn of the twentieth century it appeared indeed to be common knowledge that the organization of interstate cooperation had become well accepted in international law.

The major breakthrough for international organization however, would be the year 1919 and the Versailles peace Settlement which followed the First World War. On 8 January 1918, US president Woodrow Wilson made his famous 'fourteen points' Speech, in which he called for the creation of a "general association of nations. Under specific covenants for the purpose of affording mutual guarantees of political independence and territorial integrity to great and small states alike.

Wilson's plea was carried on the waves of public opinion in many states and would lead to the formation of the League of Nations. And not only that: the international Labor Organization was also established at the 1919 peace Conference.

The League of Nations was the first international organization which was designed not just to organization operation between states in areas which some have referred to as 'low politics', such as transport and communication, or the more mundane aspects

of economic co-operation as exemplified by the Metric Union, but to have as its specific aims to guarantee peace and the establishment of a system of collective security, following which an attack against one of the member-states of the League would give the rest the right to come to the attacked state's rescue.

The League failed in its own overriding purpose: preventing war. On the ruins of the Second World War the urge to organize was given a new impetus. As early as August 1941, American president Roosevelt and British Prime Minister Churchill had conceded the Atlantic Charter, a declaration of principles which would serve as the basis, first, for a declaration of the wartime allies, and later, after the State Department had overcome President Roosevelt's initial reluctance to commit himself to the creation of a post-War organization, for the Charter of the United Nations:

Also during the war, in 1944, the future of economic cooperation was mapped in Bretton Woods, where agreement was reached on the need to cooperate on monetary and trade issues, eventually leading to the creation of the international monetary Fund and the General Agreement on tariffs and Trade, among others.

The resurrection of the largest battlefield of the Second World War, Europe, also came accompanied by the rise of a number of organizations. The Council of Europe was a first attempt, born out of Churchill's avowed desire to create the United States of Europe, so that Europe could become an important power alongside the US and the UK. To channel the American Marshall aid, the Organization for European Economic co-operation was created (In 1960 transformed into the Organization for Economic co-operation and Development), and a relatively small number of European states started a unique experiment when, in 1951, they created the supranational European Coal and Steel Community, some years later followed by the European economic Community and the European community For atomic Energy, all three of which have now been subsumed into the European Union. The northern and western states that remained outside would later create an alternative in the form of the European Free Trade Area, while the state-run economies of the east replied with the creation of the council for mutual Economic Assistance (usually referred to as Comecon).

The influence of the Cold War also made it felt through military cooperation in Europe. Western Europe saw the creation of the Pact of Brussels (which later became the Western European Union) and the North Atlantic treaty Organization. Eastern Europe saw the creation of the Warsaw Pact, while east and west would meet, from the 1970s onwards, within the framework of the conference on security and cooperation in Europe (CSCE), which in 1995 changed its name to reflect its increased organization structure into organization for security and co-operation in Europe (OSCE).

Moreover, elsewhere too organizations mushroomed. On the American continent, the early Pan-American Conference was recreated so as to become the Organization of American States. In addition, there are more localized organizations such as Caricom and Mercosur.

In Africa, the wave of independence of the 1950s and early 1960s made possible the establishment of the organization of African Unity in 1963, with later such regional organizations as Ecocas (in central Africa) and Ecowas (western Africa) being added. In Asia, some states assembled in Asean, for their security, Australia and New Zealand joined the US in Anzus. A relaxed form of cooperation in the Pacific Rim area, moreover, is channeled through Asia-Pacific Economic Co-operation (APEC).

In short, there is not a part of the globe which is not covered by the work of some international organization or other; there is hardly a human activity which is not, to some extent, governed by the work of an international organization. Even academic research is at the heart of the work of some organizations, most notably perhaps the International Council for the exploration of the sea (ICES) , originally set up as scientist's club, having Fridtjof Nansen as one of its founders, but later 'internationalized',

1.3 Approaches to international institutions

There are a number of different ways in which one can approach the phenomenon of international organization within the world order. The rationalist approach emphasizes the notion of a world order of states that is moving towards the more sophisticated

types of order found within states. It is progressive in that it believes in the transformation of a society of states into a true world community based upon the application of universally valid moral and legal principles. In other words, the development of the United Nations into a real world authority is seen not only as beneficial but also as, in the long run, inevitable. This is to be accomplished by the gradual increase in the influence and responsibility of the organization in all fields of international peace and security. Thus international organizations have a profound substantive as well as procedural purpose, and are intended to function above and beyond mere administrative convenience. To put it another way, the rationalists emphasize the role of such institutions as active performers upon the world stage rather than as mechanisms to greater efficiency.

Another general line of approach is the revolutionary one, which regards international institutions in terms of specific policy aims. Here, the primary aim is not the evolution of a world community of states based upon global associations as perceived by the rationalists, but rather the utilization of such institutions as a means of attaining the final objective, whether it be the victory of the proletariat or the rearrangement of existing states into, for example, continental units.

The third approach which may be noted is exemplified by the doctrine of realism. This centers its attention on the struggle for power and supremacy and eschews any concern for idealistic views. The world stage is seen as a constant and almost chaotic interweaving of contentious state powers, and international institutions are examined within the context of the search for dominance. Both the league and the UN were created to reinforce the status quo established after the world wars, it is stressed, although the latter institution is now seen as reflecting the new balance of power achieved with the growth of influence of the states of the third world. Since what can be described as a world order is merely a reflection of the operation of the principle of the balance of power, realists see the role of world organizations as reinforcing that balance and enabling it to be safely and gradually altered in the light of changing patterns of power; although, to be accurate, their overall attitude to such organizations is usually characterized by cynicism, as the inherent weaknesses in these organization have become apparent.

A more hopeful way of looking at the international institutions is to concentrate upon those areas where the interdependence of states has impelled them to create viable organs for co-operation. By this means, by identifying such subjects for international agreement, it is hoped to be able to encourage growing circles of cooperation which may eventually impinge upon the basic political areas of world peace. This functional approach appears as a cross between the nationalist and realist trends and is one much examined in recent years. This approach also emphasizes the pattern of institutional behavior and the operations of the relevant bureaucracies, including the way in which the tasks set for the organization are identified and completed. Decision-making analysis is another useful tool in this area

It is also possible to examine international organization in a variety of other ways, ranging from historical and comparative exposition to analysis of the legal rules underlying the establishment and operations of the particular institution.

Because of the great diversity of international and regional intergovernmental organizations, ranging from the United Nations to the North Atlantic Treaty Organization and the International Labour Organization, great difficulty has been experienced in classifying the relevant material. In this chapter, the simplest method of division into institutions of a universal character, regional institutions and the legal aspects of international institutions will be adopted. Within the relevant categories, the particular functions of different organizations, as well as their varying constitutional framework, will be briefly noted

1.4 The Chief functions of international organizations:

At present international organizations perform many functions and their functions are constantly increasing. Due to paucity of space it is not possible to mention here all the functions performed by international organizations. It will suffice to note here only those functions which are main in principle and which include other functions. Such functions are the following:-

- I. One of the main functions of international organizations is keeping intact the sovereignty of states and despite their different social systems, they establish and expand peaceful cooperation among them.

II. The second main function is to ensure that the competition going on among the individual states remains peaceful.

1.5 Classification of international organizations

In a very important sense, for the lawyer, each international organization is unique, based as it is on its own constituent document and influenced as its development will be by peculiar political configurations. Thus, labels should never be substituted for analysis, as Brownlie has pointed out. An academic textbook on international organizations is not complete without an attempt to classify the various organizations into different types, sorts, forms or categories. Perhaps the main reason for making such classifications resides in the academic psyche: all academic disciplines engage in classification for purposes of organizing knowledge, if nothing else, so legal academics should do the same. We can classify international organization based on different criteria. Some of them are the following.

1.5.1 Classification based on functions

A first point often made by scholars is that organizations may be classified in accordance with their stated functions. Thus, quite few are active in the economic field; others are engaged in peace and security, or can be classified as military alliances. Yet others deal with issues of nutrition, public health, and telecommunication or fisheries conservation, to name just a few possibilities. A distinction based on functions automatically suggests itself, and it is broadly possible to distinguish between the “political” organizations, concerned primarily with the preservation of international peace and security, and the administrative organizations of more limited aims. The distinction is perhaps more accurately stated as one between organizations of comprehensive competence and organizations of limited competence. *Prima facie*, one should also distinguish the institutions for the judicial settlement of disputes, such as the permanent Court of international justice. As we shall see, no rigid distinction in functions is made in practice. The “political” organization, the United Nations, has amongst its organs the Trusteeship Council, with primarily administrative functions, and the I.C.J., a purely judicial body. The co-

ordination achieved by bringing the specialized agencies into relationship with the UN also makes any clear classification by function difficult.

1.5.2 Classification based on Membership

Other classifications point to the membership of organizations as being of distinctive value. This method of classification base itself on the fact that some organizations are” global” whereas others are “regional”. Thus, some organizations aspire to universal or near universal membership, inviting in principle all states to join .The United Nations is a typical example, in principle open to all states as long as they meet certain requirements. Hence, the UN is often referred to as an ‘open’ organization, as are (although their membership does not compare to that of the UN) such organizations as the World Health Organization (WHO) and the World Trade Organization (WTO).

Other organizations however, may rest satisfied with a limited membership, and usually such limitations may derive from their overall purpose. Thus, many regional organizations, aiming to organize activities in a certain geographical region, are open only for states from that region. The European Union is only open for European sates; no Asian state can join the organization of African Unity, and the organization of American sates can only be joined by sates from the Americas. Within Europe at least (because of the diversity of the organizations involved), it has been possible to make the same broad division between organizations of general competence and those of limited competence.

The limitation is not always based on consecrations of geography, though. For instance, the organization of Petroleum Exporting Countries (OPEC) is a limited organization, but its membership spans the globe, including states from the Middle East, Latin America and Africa. Here, the ties are economic. Similarly the organization for Economic Co-operation and Development (OECD) has also, in addition to a large number of west European member-states, members from the Americas, Asia and Oceania, and the North Atlantic Treaty Organization (NATO) does justice to the Atlanticism in its name by including members from western and southern Europe as well as the US and Canada, whereas the French-speaking countries

are united in an organization devoted to francophonie'. Where membership is limited to states from a certain, region such organizations may be referred to as 'regional', but the more generic term used is often 'closed'.

1.5.3 Classification based on the kind of contracting parties

It has also been suggested that there is a fundamental distinction, and therefore a basis for classification, between organizations founded on a treaty between states and a treaty between governments. Jenks has described this distinction as having importance comparable to that of the classical distinction between a confederation and a federation in the evolution of the public law of the principal federal states. The idea is, essentially, that the inter-state treaty form embraces the totality of the state's institution, its legislative and judicial machinery as well as the administrative, whereas the inter-governmental treaty form embraces only the administrative. It would seem, however, that in practice the distinction is not regarded as having this significant difference in effect. The UN Charter itself refers indiscriminately to "peoples," "governments" and "states," so that it is difficult to see who the parties really are. Organizations like the IMF or the newer IMCO are based on inter-governmental treaties, whereas the FAO or WHO are inter-state; yet there is no observable difference in the view that States take as to their commitments according to the form used. The most that might be said is that, from the point of view of drafting technique, these variations leave much to be desired. The only possible justifications for the difference are first that the inter-governmental form would be satisfactory for a non-permanent organization, like UNRRA, and second that some States might find it easier, from their constitutional position, to accept the inter-governmental form. The distinction between inter-governmental and non-governmental organizations is, of course, a quite different matter.

1.5.4 Classification based on Intergovernmental or supranational

It is also possible to distinguish organization "Supranational," i.e. power to bind member states by their decisions, from those without such powers. But this is often the characteristic of particular organ, rather than the organization as a whole, and whilst the possession of such powers will be pointed out where they exist. As things

stand, there is only one organization which is usually held to be supranational in character: the EC. Hence, any description of supranational organizations will inevitably be based on the EC.

In comparison with other organizations, the EC possesses a few features which, in combination, render it distinct from the rest. First, under the constituent treaties, decisions which will bind the member –states can be taken by majority vote. Thus, it is entirely possible that a member – state will have to adopt a certain course of behavior which it itself vehemently opposes. Second, the product of those decisions is EC law which attains supremacy over conflicting domestic law, regardless of what the laws of the member-state stipulate and regardless of which one was enacted later. Third, much of the law promulgated by the EC may be directly effective in the legal orders of the member-states. Thus, much EC law may be invoked not just by one member-state against his or her own government, or in relations with employers or other relations of a private nature. It is in this sense that people often say that the member-states have transferred parts of their sovereignty to the EC, and it is in this sense that the EC. stands, in an almost literal way, above its member –States (hence the term ‘supranational’).

Some would go further and claim that on occasion, the member-sates are no longer allowed even to attempt to regulate behavior: the doctrine of pre-emption not only holds that member-state action can be overruled, but goes beyond this in saying that member-state action is no longer acceptable in some areas’

By contrast, the general rule among international organizations is that binding law-making decisions, at least on issues of substantive policy, can usually only be taken by unanimity, or consensus; that such rule does not usually work directly in the domestic legal orders of the member–states, and most assuredly that the member-states are not pre-empted from legislating. Here then, the organization does not rise above its member but remains between its members (intergovernmental)

Unit Summary

An international organization is, by definition, any organization with international membership, scope, or presence. However, in common usage, the term is usually reserved for intergovernmental organizations (IGO) such as the [U.N.](#), the Council of Europe, or the World Trade Organization, with sovereign states or other IGOs as members. Their scope and aims are most usually in the public interest but may also have been created with a specific purpose.

Legally speaking, an international organization may be established by a constituent document such as a [charter](#), a [treaty](#) or a [convention](#), which when signed by the founding members, provides the IGO with [legal recognition](#). International organizations so established are [subjects of international law](#), capable of entering into agreements among themselves or with states. Thus international organizations in a legal sense are distinguished from mere groupings of states, such as the [G-8](#) and the [G-77](#), neither of which have been founded by a constituent document and exist only as [task groups](#), though in non-legal contexts these are sometimes referred to erroneously as international organizations.

International organizations must also be distinguished from treaties. Many treaties (e.g., the [North American Free Trade Agreement](#) (NAFTA) or, in the 1947-1995 period, the [General Agreement on Tariffs and Trade](#) (GATT)) do not establish an international organization and rely purely on the parties for their administration becoming legally recognized as an [ad hoc](#) commission.

International organizations are developed mainly from the need of nations and governments to have a neutral forum where to debate and consider matters of importance to more than one particular nation. However, some IOs are also developed from the need of an either executive or enforcement body which could carry on multinational interests in a unified form.

Among the first IOs were the [Central Commission for Navigation on the Rhine](#), initiated in the aftermath of the [Napoleonic Wars](#), and the future [International Telecommunications Union](#), which was founded by the signing of the [International Telegraph Convention](#) by twenty countries in May 1865.

International organizations describe and define their purpose in their charter or other documents of creation. International Organisations exist with diverse aims, including but not limited to increase international relations, promote education, health care, economic development, environmental protection, human rights, humanitarian efforts, inter-cultural approach and conflict resolution.

Review Questions

1. What are international organizations? Is it possible to give a single workable definition for them? Give a workable definition of international organizations by using your own words.
2. Why do we study international organizations? And what are the purposes of having them?
3. Explain in clear terms the functions of international organizations
4. Describe the evolution of international organizations.
5. Assess in depth the criteria for classification of International organizations and classify the organization based on them.
6. Describe the different approaches to international Organizations

CHAPTER TWO

COMMON INSTITUTIONAL ISSUES

Dear student, as you might have recalled in our chapter one lesson; we have seen some general points concerning international organizations including definition, functions, historical development, classification and approaches to international organizations. In this chapter, an attempt will be made to discuss organisational issues applicable to all international organisations.

At the end of this chapter, the student will be able to:

- Explain how the personality of international organisations can be acquired;
- Identify powers of international organisations;
- Discuss the immunities and privileges possessed by international organisations;
- Highlight the laws governing the activities of international organizations;
- Discuss to what extent international organisations are held liable;
- Articulate major issues relevant to membership;
- List grounds of dissolutions of international organisations; and
- Identify rules governing succession of international organisations.

2.1. International Personality

Attribution of 'legal personality' means acceptance of an entity as having status, capacity and powers or, in brief, that it is a legal person. In the context of international law, the term is principally used to describe the legal existence of international organisations rather than the legal character or capacities of individual human beings. As something created by states within the legal framework governing the international community, an international organisation is a legal structure which owes its existence to some decision (generally by states, though possibly by other international organisations) to create it, to an agreement establishing the terms on which it is constituted and to the implementation of such decision and constitution.

The legal personality of an international organisation has the following characteristics:

- 1) Existence of an entity distinct from its creators;
- 2) The entity has the capacity and power to act under and be regulated by international law;
- 3) The organisation rather than its members acts on matters within its area of competence.

There are, however, no international law definitions, nor any set of rules, governing the personality of international organisations. Customary international law, the consensus of states in treaties and practice, decision of international tribunals and to some extent analogies with domestic law, are all regarded as sources for extraction and elaboration of the relevant principles.

In some cases, the constitution of an international organisation expressly provides for it to have personality of international organisation; but many, if not most, constitutions do not. However, the prevailing view is that even if there is no express provision, international personality is implicit. Further, most constitutions provide either that the organisation shall enjoy the legal capacity necessary to exercise its functions, or that it shall have legal personality and have the capacity to contract, to acquire and dispose of immovable and movable property and to institute legal proceedings.

The classic statement on recognition by international law of the personality of international organisations is that of the ICJ in its 1949 *Advisory Opinion on Reparation for Injuries*. The issue was whether the UN was a legal person which could bring a claim under international law against a *de facto* government of territory in which employees of the organisation had been killed or injured while performing their duties. The Charter of the United Nations does not state that the organisation has legal personality, though it does provide for legal capacity and privileges and immunities within the territory of member states. Nevertheless, the ICJ stated that:

...[T]he Court's opinion is that fifty States, representing the vast majority of the members of the international community, had the power, in conformity with international law, to bring into being an entity possessing objective international personality, and not merely personality recognised by them alone, together with capacity to bring international claims.

Before reaching this view about the objective personality of an international organisation, the Court examined the constitution of the organisation in question (the Charter of the United Nations) and the role and activities of the UN. It noted various provisions defining the position of members in relation to the organisation as indicative of a distinction between them as individual members and the UN as an entity separate from them. It observed:

Practice- in particular the conclusion of conventions to which the Organisation is a party- has confirmed this character of the organisation, which occupies a position in certain respects in detachment from its Members, and which is under duty to remind them, if need be, of certain obligations.

The Court attached importance to the power of the organisation to enter into international agreements, in particular the Convention on the Privileges and Immunities of the United Nations 1946, stating: 'It is difficult to see how such a Convention could operate except upon the international plane and between parties possessing international personality.

In the same case, the International Court made further observation on the nature of international personality:

It must be acknowledged that its Members, by entrusting certain functioning to it, with the attendant and responsibilities, have clothed it with the competence required to enable those functions to be effectively discharged.

Accordingly, the Court has come to the conclusion that the Organisation is an international person. That is not the same thing as saying that its legal personality and rights and duties are the same as those of the State. Still less is the same thing as

saying that it is a 'super-State', whatever that expression may mean. It does not even imply that all its rights and duties must be upon the international plane, any more than all the rights and duties of a State must be upon that plane. What it does mean is that it is a subject of international law and capable of possessing international rights and duties, and that it has the capacity to maintain its rights by bringing international claims.

Three points may be concluded for the ICJ opinion:

- 1) The Court indicates that an international organisation operates on the international plane;
- 2) An international organisation may maintain its rights by bringing international claims, to which the corollary must be that it may itself be subject to international claims;
- 3) The rights and duties of an international organisation, though it operates on the international plane, need not all be on that plane.

The notion of legal personality of an international character and the possibility that not all the operations of an international organisation need to be on the international plane lead to two aspects of the position of an international organisation under national law that must be considered:

- 1) The legal personality of an international organisation in municipal law;
- 2) What law governs transactions of an international organisation when it acts other than on the international plane?

2.1.1 Legal personality in municipal law

As noted above, most constitutions of international organisations provide in some way for the organisation to have the legal capacity necessary for it to carry out its functions or to enable it to undertake specific activities. Whether such a provision merely amounts to the member states constituting (and recognising the personality of) the organisation, or goes further and requires states to make provision in their own laws for the organisation to have legal capabilities to carry out its functions, will

depend on the circumstances of each case. For example, the scope of activities of an international organisation may be such that there is no need for legal capacities to be granted to it within national legal system, or that such capacities are required only in the state in which the headquarters are located or only in certain member states where transactions of a character that need to be subjected to national law are conducted. Dear student, do you know any specific Ethiopian domestic legislation authorising international organizations to carryout their functions in Ethiopian jurisdiction?

2.1.2 Which law governs transactions of an international organisation when it acts in national jurisdictions?

Perhaps the key issue to which attention should be drawn is whether:

- (1) national laws purport to grant (or actually do confer) corporate personality to an entity within the particular national legal system, i.e. a personality distinct from that described above as being created on the international plane; or
- (2) the national laws are simply attributing to the organisation particular capacities within the domestic system, taking as read (or ‘recognising’) the existence of the international organisation and fulfilling the obligation of a member state to confer the requisite of domestic capacities.

Of these two possibilities, the latter is the correct analysis in the case of international organisations of the character described above. Once it is accepted that an international organisation owes its corporate existence to public international law, national laws and domestic courts cannot regulate the constitution and internal order of the organisation. The proper law governing those matters is public international law. National laws and courts are limited to regulating those transactions of an international organisation which are subjected to national systems of law. Thus the attribution of legal capacities under national law does not create or augment powers in the constitution of the organisation. Those exist (or are absent) according to the parent treaty and any related international instruments. To be acknowledged and exercised within a national system of law, such powers and capacities may have to be clothed in appropriate national form; but this is a consequence of the international legal order of

certain states, not because properly constituted international organisations lack legal personality under international law.

The distinction between the existence of an international organisation as a corporate entity as a matter of public international law and the grant of legal capacities within a national system of laws, appears to be reflected in the United Kingdom in section 1 (2) of the International Organisations Act 1968. That section does not purport to give powers to create a body corporate but only to confer legal capacities on an existing organisation specified in an Order in Council.

Summing up the position as to the personality and legal capacities of international organisations in national law, the principle is that national laws may define the capacities granted (though if such capacities are not as extensive as required by the treaty creating an organisation, the state concerned may be in the breach of its international obligations). The extent to which the international organisation can exercise those capacities depends on its competence under its constitution. The latter is part of the internal law of the organisation and is regulated on the international plane and is not subject to the rules or provisions of municipal law.

2.2 Powers of International Organizations

As spelt out in the Advisory Opinion of the International Court on the *Legality of the Use by a State of Nuclear Weapons in Armed Conflict* brought by the World Health Organisation (ICJ Reports, 1996, para. 25), international organisations are unlike states that possess a general competence as subjects of international law. They are governed by the principle of speciality, so that, as in the International Court noted, they are invested by the states which create them with powers, the limits of which are a function of the common interests whose promotion those states entrust to them. Such powers may be expressly laid down in the constituent instruments or may arise subsidiary as implied powers, being those deemed necessary for fulfilment of the functions of the particular organisation. The test of validity for such powers has been variously expressed. The International Court in the *Reparation case* that:

[u]nder international law the organisation must be deemed to have those powers which, though not expressly provided in the charter, are conferred upon it by necessary implication as being essential to the performance of its duties.

In the *Effect of Awards of Compensation made by the UN Administrative Tribunal* case, the Court held that the General Assembly could validly establish an administrative tribunal in the absence of an express power since the capacity to do this arose, by necessary intendment, out of the Charter, while in the *Certain Expenses of the UN* case, the Court declared that when the organisation takes action which warrants the assertion that it was appropriate for the fulfilment of one of the stated purposes of the United Nations, the presumption is that such action is not *ultra vires* the organisation. The tests posited therefore have ranged from powers arising by necessary implication as being essential to the performance of constitutionally laid down duties, to those arising by necessary intendment out of the constituent instrument, to those deemed appropriate for the fulfilment constitutionally authorised purposes of the organisation. There are clearly variations of emphasis on such formulations. Nevertheless, although the functional test is determinative, it operates within the framework of those powers expressly conferred by the constitution of the organisation. Thus any attempt to infer a power that was inconsistent with the express power would fail, although there is clearly an area of ambiguity here.

Of great importance is the question of the capacity of international organisations to conclude international treaties. This will primarily depend upon the constituent instrument, since the existence of a legal personality on its own is probably insufficient to ground the competence to enter into international agreements. Article 6 of the Vienna Convention on the Law of Treaties between States and International Organisations (1986) provides that the capacity of an international organisation to conclude treaties is governed by the rules of that organisation. This is a wider formulation than reliance solely upon the constituent instrument and permits recourse to issues of implied powers, interpretation and subsequent practice. It was noted in the commentary of the International Law Commission that the phrase 'the rule of the organisation' meant in addition to the constituent instruments, relevant decisions and resolutions and the established practice of the organisation. Accordingly, demonstration of treaty-making capacity will resolve around the

competences of the organisation as demonstrated in each particular case by reference to the constituent instruments, evidenced implied powers and subsequent practice.

2.3 Privileges and Immunities

As discussed in the foregoing sub-section, international organisations perform various functions; such functions may be given to them either by the express stipulations of their respective constitutions or may arise ancillary as implied powers, being those deemed necessary for fulfilment of the functions of the particular organisation. In order to carry out these functions more effectively, states and their representatives benefit from a variety of privileges and immunities. International organisations will also be entitled to the grant of privileges and immunities for their assets, properties and representatives. The two situations are not, of course, analogous in practice, since, for example, the basis of state immunities may be seen in terms of the sovereign equality of states and reciprocity, while this is not true in respect of international organisations, both because they are not in a position of sovereign equality and because they are unable to grant immunities as a reciprocal gesture. The basis for the immunities accorded to international organisations is that they are necessitated by the effective exercise of their functions. The issue that deserves consideration here is the level of immunities in the light of such functional necessity.

As far as the UN itself is concerned, article 105 Of the Charter provides that:

1. The Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes.
2. Representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization.
3. The General Assembly may make recommendations with a view to determining the details of the application of paragraphs 1 and 2 of this Article or may propose conventions to the Members of the United Nations for this purpose.

These general provisions have been supplemented by the General Convention on the Privileges and Immunities of the United Nations (1946), and by the Convention on Privileges and Immunities of the Specialised Agencies (1947). These general conventions, building upon provisions in the relevant constituent instruments, have themselves been supplemented by bilateral agreements, particularly the growing number of headquarters and host agreements. The UN, for example, has concluded headquarters agreements with the United States for the Headquarters in New York and with Switzerland for the UN Office in Geneva in 1947. Such agreements, for example, provide for the application of local laws within the headquarters areas subject to the application of relevant staff administrative regulations; the immunity of the premises and property of the organisation from search, requisition and confiscation and other forms of interference by the host state; exemption from local taxes except for utility charges and freedom of communication.

It is clearly the functional approach rather than any representational perception that forms the theoretical basis for the recognition of privileges and immunities with respect to international organisations. This point has been made in case before domestic courts, but it is important to note that this concept includes the need for the preservation of the independence of the institution as against the state in whose territory it is operating. In *Mendaro v. World Bank*, for example, the US Courts of Appeals held that the reason for granting of immunities for international organisations was to enable them to more effectively pursue their functions and in particular to permit organisations to operate free from unilateral control by a member state over their activities within its territory.

With regard to the position of representatives of states to international organisations, article IV, section 11, of the UN General Convention (1946) provides for the following privileges and immunities:

- a) Immunity from personal arrest or detention and from seizure of their personal baggage, and in respect of words spoken or written and all acts done by them in their capacity as representatives, immunity from legal process of every kind;
- b) Inviolability for all papers and documents;

- c) The right to use codes and to receive papers or correspondence by courier or in sealed bags;
- d) Exemption in respect of themselves and their spouses from immigration restrictions, alien registration or national service obligations in the state they are visiting or through which they are passing in the exercise of their functions;
- e) The same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;
- f) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys; and also
- g) Such other privileges, immunities and facilities not inconsistent with the foregoing as diplomatic envoys, except that they shall have no right to claim exemption from custom duties on goods imported (otherwise than as part of their personal baggage) or from excise duties or sales taxes.

The question of privileges and immunities of representatives is invariably also addressed in headquarters agreements between international organisations and host states. Article V, section 15 of the UN headquarters Agreement (1947), for example, states that representatives are entitled in the territory of the US to the same privileges and immunities, subject to corresponding conditions and obligations, as it accords to diplomatic envoys accredited to it.

International agreements concerning privileges and immunities have been implemented into domestic law by specific legislation in a number of states, examples being the UK International Organisations Act 1968, and the US International Organisations Immunities Act of 1945. The usual pattern under such legislation is for the general empowering provisions contained in those Acts to be applied to named international organisations by specific secondary acts. In the case of the International Organisations Act 1968, for example, a wide variety of organisations have had privileges and immunities conferred upon them by Order on Council. In the case of the US Act, the same process is normally conducted by means of Executive Orders.

The range of privileges and immunities usually extended includes immunity from jurisdiction; inviolability of premises and archives, currency and fiscal privileges and freedom of communications. In the case of immunity from jurisdiction, section 2 of the UN General Convention 1946 provides that:

The United Nations, its property and assets wherever located and by whomsoever held, shall enjoy immunities from every form of legal process except in so far as in any particular case it has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure execution.

Other international organisations do not possess such a wide immunity. In many cases, actions brought against the particular organisations in domestic courts are specifically permitted. Waiver of immunity from process is permitted, but must be express.

2.4 The Law governing the activities of international organizations

International organisations are established by states by international treaties. Such instruments fall to be interpreted and applied within the framework of international law. Accordingly, as a general rule, the applicable or proper or personal law of international organisations that governs their activities is international law. In addition, the organisation in question may well have entered into treaty relationships with particular states, for example, in the case of a head quarters agreement, and these relationships will also be governed by international law. Those matters that will necessarily (in the absence of express provision to the contrary) be governed by international law will include questions as to the existence, constitution, status, membership and representation of the organisation.

However, the applicable law in particular circumstances may be a domestic law. Thus, where the organisation is purchasing or leasing land or entering into contracts for equipment or services, such activities will normally be subject to the appropriate national law. Tortious liability as between the organisation and private individual will generally be subject to domestic law, but tortious activity may be governed by international law depending upon the circumstances, for example, where there has been damage to the property of an international organisation by the police or armed

forces of a state. The internal law of the organisation will cover matters such as employment relations, the establishment and functioning of subsidiary organs and management of administrative services. The international law of an organisation, which includes the constituent instrument and subsidiary regulations and norms and any relevant contractual arrangements, may in reality be seen as a specialised and particularised part of international law, since it is founded upon agreements that draw their validity and applicability from the principles of international law.

2.5 Responsibility of International Organizations

The establishment of an international organisation with international personality results in the formation of a new legal person, separate and distinct from that of the states creating it. This separate and distinct personality necessarily imports consequences as to international responsibility, both to and by the organisation. The International Court noted in the *Reparation* case, for example, that 'when an infringement occurs, the organisation should be able to call upon the responsible state to remedy its default, and, in particular, to obtain from the state reparation for the damage that the default may have caused' and emphasised that there existed an 'undeniable right of the organisation to demand that its members shall fulfil the obligations entered into by them in the interest of the good working of the organisation'. Responsibility is a necessary consequence of international personality and the resulting possession of international rights and duties.

Such rights and duties may flow from treaties, such as headquarters agreements, or from the principles of customary international law. The precise nature of responsibility will depend upon the circumstances of the case and, no doubt, analogies drawn from the law of state responsibility with regard to the conditions under which responsibility will be imposed.¹⁶⁵ In brief, one can note the following: The basis of international responsibility will be the breach of an international obligation and such obligations will depend upon the situation. The Court noted in the *Reparation* case that the obligations entered into by member states to enable the agents of the UN to perform their duties were obligations owed to the organisation. Thus, the organisation has, in the case of a breach of such obligations, 'the capacity to claim adequate

reparation, and that in assessing this reparation it is authorised to include the damage suffered by the victim or by persons entitled through him'. Whereas the right of a state to assert a claim on behalf of a victim is predicated upon the link of nationality, in the case of an international organisation, the necessary link relates to the requirements of the organisation and therefore the fact that the victim was acting on behalf of the organization in exercising one of the functions of that organisation. As the Court noted, 'the organisation . . . possesses a right of functional protection in respect of its agents'.¹⁶⁸

Just as a state can be held responsible for injury to an organization, so can the organization be held responsible for injury to a state, where the injury arises out of a breach by the organization of an international obligation deriving from a treaty provision or principle of customary international law. Again, analogies will be drawn from the general rules relating to state responsibility with regard to the condition under which responsibility is imposed.

The issue of responsibility has particularly arisen in the context of UN peace-keeping operations and liability for the activities of the members of such forces. In such circumstances, the UN has accepted responsibility and offered compensation for wrongful acts. The crucial issue will be whether the wrongful acts in question are imputable to the UN and this has not been accepted where the offenders were under the jurisdiction of the national state, rather than under that of the UN. Much will depend upon the circumstances of the operation in question and the nature of the link between the offenders and the UN. It appears, for example, to have been accepted that in the Korean (1950) and Kuwait (1990) operations the relationship between the national forces and the UN was such as to preclude the latter's responsibility.

2.6 Succession to international organization

The most well-known instance of succession of organizations is, in all likelihood, that of the dissolution of the League of Nations and the creation of the United Nations. Nonetheless, strictly speaking the case was not one of succession, if only for the

reason that both organizations existed simultaneously for half a year: the Charter of the UN entered into force on 24 October 1945, whereas the League Assembly decided on the dissolution of the League on 18 April 1946, the dissolution taking effect the next day.

Still, for most practical purposes the UN filled the spot left by the League: its functions are similar, as is, with a few important differences such as the veto, its institutional set-up. The similarities between the two are such that they are usually compared with one another. Indeed, the UN's draftsmen must have realized as much as briefly pointed out, they have attempted to get away from being associated with the League's not-so-glorious past by using different terms, such as substituting the Security Council for the Council, and the General Assembly for the Assembly.

To the extent that a transfer of functions, assets and liabilities, and staff occurred, it took place on the basis of the mutual agreement of the two organizations concerned (mostly in the form of parallel resolutions), and indeed several legal reasons suggest that it could hardly have been otherwise.

For one thing, there is almost always the problem of different membership. Where the successor organization does not have membership identical to the predecessor organization, anything other than agreement would be difficult to reconcile with the basic idea of consent: why should a member of the successor but not the predecessor be obliged to take on (part of) debts or functions or even staff of the predecessor?

Another problem is that, where a succession of organizations takes place, the usual scenario appears to be that the organizations concerned exist simultaneously for a while: the co-existence of the League and the UN appears to be far from exceptional. Thus, Chiu finds in an authoritative survey that in only one of seven cases was there no simultaneous existence. This concerned the subsumption of the International Technical Committee of Aerial Legal Experts (CITEJA) by the newly created International Civil Aviation Organisation (ICAO) in 1947, and the case is atypical at any rate as ICAO was created replacing not one but two predecessors. The other was

the International Commission for Air Navigation (CINA), which did co-exist some eight months with ICAO. Indeed, in a strict sense one can hardly even speak of succession where predecessor and successor exist alongside; it therefore seems to be a case of taking over certain of a predecessor's functions, assets and liabilities, and staff, rather than of succession strictly speaking. And then it is of course far from surprising that such 'succession' is practically always based on mutual agreement.

There is, however, one notorious exception when it comes to the functions of an organization, and that is the way the League of Nations' supervisory powers concerning South Africa's Mandate over South West Africa were transferred. As is well known, no explicit transfer thereof had taken place, which did not prevent the General Assembly, in the late 1940s, from claiming supervisory powers. When South Africa resisted, the ICJ was asked for an advisory opinion, and the Court found that indeed a transfer of powers had taken place, but it remains less than clear why exactly the Court thought so. Much in the reasoning suggests wishful thinking on the part of the Court, claiming that, even though the League had disappeared, the necessity of supervision of the Mandate continued to exist. Moreover, as the Court put it, the General Assembly had in practice taken over supervisory functions (never mind South Africa's lack of co-operation), and the 'dissolution resolution' of the League of Nations Assembly, while it remained silent on the topic, was nevertheless interpreted by the Court as 'presupposing' that the supervisory powers would be taken over by the UN.

All in all, there is much conjecture in the Court's reasoning, but then again any other option would have been vulnerable to criticism as well, and often to remarkably similar criticism. Thus, a finding that no supervision had been transferred would have an equally dubious basis: can one conclude from the absence of anything explicit on supervision that therefore supervision had come to an end, even in the face of humanitarian concerns? After all, the Mandate was created in the name of the sacred trust of civilization; South Africa's faithful adherence thereto seemed, in the 1940s, at least debatable.

2.7 Membership to international organizations

2.7.1 Admission and its procedure

Usually, the constituent treaties of international organizations control who can join the organization, under what conditions, and following which procedure. Often a distinction is made between original members and those who join later, with the original members (or the founder members) being those states that have expressed their consent to be bound by the Organization's terms before the Organization's constituent instrument entered into force, or before a certain specified date, or perhaps a combination thereof.

Dear student, who are the original members of the UN? To answer this question, we need to see Article 3 of the UN Charter. This article provides that the original members are those who either took part in the negotiations of the Charter and signed and ratified it, or had previously signed the 1942 Declaration by United Nations and subsequently signed and ratified the Charter. The latter construction was chosen so as to accommodate Poland, which had not been in a position to take part in the negotiations in San Francisco.

The distinction between original members and 'normal' members is, however, only rarely of great legal significance. Unless special provisions are made, normally speaking the difference entails certain practical benefits in favour of the original members; perhaps, as has been argued in a slightly different context, in order to compensate for the fact that original members may for quite some time be subjected to obligations such as not to defeat the organization's object and purpose prior to its establishment. Thus, an original member does not have to apply for membership; if admitted to the negotiations, nothing bars a state from becoming a member. Those not present, however, may be subjected to admission procedures.

When it comes to deciding on membership, the point of departure is that each and every organization will have its own rules on the matter. Thus, by way of example, Article 4, para. 1, of the UN Charter provides: 'Membership in the United Nations is

open to all other peace-loving states which accept the obligations contained in the present Charter and, in the Judgment of the Organization, are able and willing to carry out these obligations.' Article 4, then, lays down four conditions for membership. First, only states are allowed to join; other entities cannot join, although the founding members of the UN included several states which were not yet independent at the time: the two USSR republics Belarus and Ukraine as well as the British colony, India (which had already been a member of the League of Nations). Moreover, the status of Lebanon, Syria and the Philippines as independent states was not yet completely settled.

With the UN, membership is not open to the other international organizations. Other organizations may have different rules, though, and on this basis the European Community has become a member of such organizations as the Food and Agriculture Organization (FAO).

Secondly, states applying for admission must be peace-loving. Surely, that is an understandable requirement, seen in its historical context, and may have served for some time to come to terms with the aggressors of the Second World War and Franco's Spain. Presently, however, as a requirement for admission, the criterion of being peace-loving does not appear to be of too much weight, and understandably so. Not only is peace-lovingness to a large extent in the eye of the beholder, but it is also often thought that the best way to ensure a peace-loving attitude is actually to incorporate a potentially aggressive state in the UN. For, as long as it remains outside, it is also, as a matter of law, well-nigh untouchable; the cure of non-admission, then, may well be worse than the disease.

Third, aspirant UN members must accept the obligations of the Charter. This requirement amounts to little more than stating the obvious: an aspirant member that does not accept the Charter obligations clearly acts in bad faith, and reservations to the Charter, while not explicitly prohibited, are difficult to envisage. After all, reservations are not supposed to affect the object and purpose of the organization as indicated in the Vienna Convention on the Law of Treaties. And since the object and purpose of the Charter are quite broad by any standard, it follows that no reservation will stand a chance of success.

Fourth, aspiring members must be able and willing to carry out the obligations of the Charter. As a criterion, this too has not given rise to many problems recently; few states have ever been refused due to an alleged lack of ability to carry out the obligations following from membership. A similar criterion was used, however, in 1920 to deny admission of Liechtenstein into the League of Nations. Liechtenstein, being a micro-state in Europe, has traditionally placed many of its external affairs powers in the hands of Switzerland. Therefore, the Assembly of the League thought Liechtenstein would not be able to fulfil all obligations under the Covenant by which the League of Nations was established.

The political nature of admission follows also from the little caveat in Article 4: what matters is the judgment of the Organization. Thus, in theory it is possible that a state could apply for membership and would objectively meet all requirements, but still be refused, because a majority within the UN did not want it to be a member.

Such a situation occurred in the late 1940s when a number of states had applied for membership but did not get in, for reasons only loosely related to Article 4 (it concerned, amongst others, a number of states that had collaborated with Germany during the Second World War). The General Assembly, ultimately responsible for issues of admission, could not agree on whether to admit them, and it was decided to ask the ICJ for advice.

The ICJ held that the conditions mentioned in Article 4 are exhaustive: thus, states may not be refused for reasons other than those mentioned in Article 4, although it conceded that Article 4 itself is cast in broad terms and 'does not forbid the taking into account of any factor which it is possible reasonably and in good faith to connect with the conditions laid down' in it. Still, since admission depends on the judgment of the Organization, in the end all that can be said is that applications should be judged in good faith. Needless to say, this did little to resolve the problem which gave rise when sixteen new members were admitted by way of a package deal.

Article 4, para. 2, indicates the proper procedure for the admission of new member-states to the United Nations: the Security Council recommends, the General Assembly decides. As simple as this provision looks, it too came before the International Court

of Justice. In this case, the *Second Admissions* opinion of 1950, the main problem was the meaning of the word 'recommendation'. The General Assembly argued that, since the Security Council is only given the power to recommend (as opposed to making a binding determination), the General Assembly can also admit a member if the Council casts a negative vote.

The Court, however, disagreed: if the Security Council does not recommend a state for membership, then there is really no recommendation, and thus no basis for the General Assembly to act upon. Clearly, so the Court argued, the Charter had wanted to create some kind of balance between the two institutions, and thus made action by the Assembly conditional upon action by the Council. Neither could in isolation decide on membership. As the Court put it: 'The word "recommendation", and the word "upon" preceding it, imply the idea that the recommendation is the foundation of the decision to admit, and that the latter rests upon the recommendation. Both these acts are indispensable to form the judgment of the organization'. Indeed, the Council's recommendation, as the Court put it in unequivocal terms, is the 'condition precedent' to the Assembly's decision. An important implication is that, within the Security Council, the permanent members can use their veto. Thus, in 1975, the US vetoed the application of the two Vietnams.

In organizations other than the UN, admission of new members may be based on different considerations. Thus the ILO Constitution is open to UN members as well as other states aspiring to membership; no formal conditions are attached. The FAO Constitution provides that, next to original members, states may be allowed to join by a two-thirds majority provided they formally declare acceptance of the obligations of the Constitution. And the WHO Constitution simply says to 'be open to all States'.

Matters are a lot more complicated with the European Union, though. Article 49 holds that membership shall be decided unanimously by the Council, having consulted the Commission and having received the assent of the European Parliament. Apart from the consideration that, since the entry into force of the Amsterdam amendments in 1999, there are general requirements relating to respect for liberty, human rights, democracy and the rule of law, the difficulty resides especially in the circumstance that the precise conditions of membership are subject to agreement between the

members of the Union and the applicant states. Such accession agreement shall also be subjected to approval procedures in each of the member-states, making it possible that in the end the parliament of a single member-state is in the position to reject the application of an aspirant state.

In some cases, the connection between various organizations is so close that membership in one is impossible without membership in the other. Thus, membership in the World Bank is only open for members of the International Monetary Fund; with the ILO, membership follows by right for UN member-states, whereas for non-UN-members a special procedure is envisaged; and it has always been clear that a state could only join all three European Communities at the same time, and not join only one.

2.7.2 Withdrawal from membership

Especially in relation to amendments not accepted by all members, it may be useful to have some sort of provision concerning the possibility of withdrawal from the organization. After all, members who are forced to remain members against their wishes may find several ways of sabotaging the functioning of the organization, for instance by refusing to implement decisions or by implementing them incorrectly.

The issue assumed some prominence during the drafting of the United Nations Charter, when the drafters had to decide whether or not to insert a specific provision allowing for the withdrawal of a member-state. Earlier, with the League of Nations, a withdrawal provision had been given pride of place in the very opening article of the Covenant, in order to appease the expected opposition in the US Senate. With the UN, in the end, a withdrawal provision was not included, but on the idea, or so it seems, that such would be redundant rather than contrary to prevailing international law. Some argued that the right of withdrawal was customary in nature, others that it was merely an application of the *rebus sic stantibus* doctrine, and yet others that it was rather best perceived as inherent, following from the sovereignty of states.

Again, to the extent that constituent documents remain silent on the issue (which seems to be the standard case), some guidance can be found in the Vienna Convention on the Law of Treaties. Article 56 thereof deals with withdrawal from a treaty containing no withdrawal provisions, and lays down, as a general rule, that in such a case the treaty is not subject to withdrawal. Yet, Article 56 specifies two possible exceptions. First, where the right of withdrawal can nonetheless be established to have been the intention of the drafters, such intention must be honoured. Second, Article 56 provides that, in some cases, a right of withdrawal may be implied in the nature of an agreement. The thinking here, apparently, went first and foremost in the direction of treaties of alliance.

The guidance offered by Article 56, then, is of limited help when it comes to treaties establishing international organizations, and legal problems may well be aggravated by the circumstance that in case of a possible withdrawal not just the other member-states of the organization are concerned, but possibly also some of the organization's organs. Thus, it may well be argued that withdrawal from the European Union may involve the consent of the European Parliament or at the very least a proposal from the Commission. And that, in turn, has given rise to the thought that the member-states are no longer the sole masters of the treaty.

2.7.3 Expulsion from membership

Like the Covenant of the League of Nations, the UN Charter provides for expulsion. Article 6 holds that the General Assembly, upon the recommendation of the Security Council, may expel a member if it has persistently violated the principle is contained in the Charter.

Nevertheless, expulsion from organisations does occasionally take place. Thus, the IMF envisages expulsion if a member fails to meet its obligations although, with a nice euphemism, the Fund's Articles of Agreement refer to compulsory withdrawal rather than expulsion. On this basis, Czechoslovakia's membership came to an end in 1954.

A classic episode in the history of the Council of Europe concerned the situation of Greece, 'colonel's regime' in the latter part of 1960s. Greece, threatened by expulsion for its neglect of human rights, withdrew just before expulsion materialized.

Whether expulsion may take place in the absence of an explicit provision to that effect is debated. Some argue that, as constituent documents contain the terms upon which states join the organisation, no additional sanctions may be created without their consent; others might claim, however, that constituent documents are living instruments which are to serve the organisation and the majority of its membership. If this occasionally results in large-scale agreement to do something not initially envisaged (such as suspending a member's rights), then so be it. If other powers may be implied, then why not a power to expel?

2.7.4 State succession and membership

When states fall apart, come together, merge or gain independence, a question of importance is what will happen to the obligations incurred by the predecessor states. As far as obligations under customary international law are concerned, this is usually not thought to be much of a problem: a successor state will be as much bound by existing customary rules as its predecessor or predecessors.

With treaty obligations, things are already a lot less clear-cut. One thing to note is that succession does not guarantee continuity; in other words, a successor state may have (or be allowed) to start from scratch. In some cases, it is said that succession is, or ought to be perhaps, automatic; in other cases, so called 'newly independent' states are held to have the right to start with clean slate. This means that they do not succeed to any treaty obligations incurred by their predecessors.

Obviously, where a succession of states occurs, such succession may have important consequences when it comes to membership of international organisations. Again, the point of departure is that the rules of each international organisation will prevail. The problem, however, is that few organisations have their own rules on the topic, perhaps for two reasons. Firstly, issues of succession are relatively rare (or, more accurately, were thought to be rare when most constituent documents were drafted) and tend to

come in waves. Secondly, it is notoriously difficult to make rules on succession because the modalities of succession may differ greatly from case to case. While the merger of two states and the dissolution of another may both be classified as cases of succession, the differences between them are probably greater than what they have in common.

If two members merge, and become one, then there is not much of a membership problem: the new state simply takes over, including possible obligations that one of the two previously existing states still need to fulfil.

Generally speaking, cases of succession to membership were traditionally considered from certain points: membership was deemed to be personal, attached to the (artificial) person of the state, and hence when a state disappeared (dissolved) its place could at best be taken by one successor state only. In the case of the dissolution of the former USSR, for example, all old USSR members agreed that Russia would be the continuation of the USSR, and therefore the Russian Federation continued to be a member of international organisations, while the other republics simply applied for admission as new states (except, with respect to the UN, Ukraine and Belarus, which had curiously been original members).

2.8 Dissolution of international organizations

The Constitutions of some international organisations contain express provisions with regard to dissolution. Article VI(5) of the Articles of Agreement of the International Bank for Reconstruction and Development, for example, provides for dissolution by a vote of the majority of Governors exercising a majority of total voting, and detailed provisions are made for consequential matters. Payment of creditors and claims, for instance, will have precedence over asset distribution, while the distribution of assets will take place on a proportional basis to shareholding. Different organisations with such express provisions take different positions with regard to the type of majority required for dissolution. In the case of the European Bank for Reconstruction and Development, for example, a majority of two-thirds of the members and three-quarters of the total voting power is required, and a simple majority vote is sufficient

in the case of the International Monetary Fund. Where an organisation has been established for a limited period, the constitution will invariably provide for dissolution upon the expiry of that period.

Where there are no specific provisions concerning dissolution, it is likely that an organisation may be dissolved by the decision of its highest representative body. The League of Nations, for example, was dissolved by a decision taken by the Assembly without the need for individual assent by each member and a similar process was adopted with regard to other organizations. It is unclear whether unanimity is needed or whether the degree of majority required under the constitution of the particular organization for the determination of important questions would suffice. The actual process of liquidating the assets and dealing with the liabilities of dissolved organizations is invariably laid down by the organization itself, either in the constitutional documents or by special measures adopted on dissolution.

Unit summary

There are organisational issues applicable to all international organisations. One of these issues is the legal personality of international organisations. Acknowledgment of the legal personality means acceptance of an entity as having status, capacity and powers or, in brief, that it is a legal person. The fact that an international organisation has legal personality may be expressly stipulated in the constitution of an international organisation. In the absence of such explicit stipulation, international personality is implicit in that it has personality to carry out its functions provided in its constituent instrument.

The acquisition of legal personality by international organisations enables them to exercise some powers. Such powers may be expressly laid down in the constituent instruments or may arise subsidiary as implied powers, being those deemed necessary for fulfilment of the functions of the particular organisation. Among others, international organisations have the capacity to conclude international treaties, sue or be sued and to own assets. In order that international organisations carry out their

functions more effectively, they will be entitled to the grant of privileges and immunities for their assets, properties and representatives. The basis for the immunities accorded to international organisation is that they are necessitated by the effective exercise of their functions.

As has been mentioned earlier, international organisations possess powers and duties. As a general rule, the applicable or proper or personal law of international organisations that governs their powers and obligations is international law. However, the applicable law in particular circumstances may be a domestic law. Where an international organisation breaches its international obligations and inflicts injury on states, it can be held responsible for injury to a state.

As international organisations compose of more than one state, as to which state shall be a member requires an answer. Usually, the constituent treaties of international organizations control who can join the organization, under what conditions, and following which procedure. Thus, it is a question answered by looking into the constituent instrument of each organisation. Once a state is admitted as a member, it may also opt for withdrawal from membership. The conditions under which a state may withdraw from membership may be provided in the constitution of the organisation. Where the constituent document remains silent on the issue, some guidance can be found in the Vienna Convention on the Law of Treaties. Article 56 thereof deals with withdrawal from a treaty containing no withdrawal provisions, and lays down, in principle, that in such a case the treaty is not subject to withdrawal. Yet, Article 56 specifies two possible exceptions. First, where a right of withdrawal can nonetheless be established to have been the intention of the drafters, such intention must be honoured. Second, Article 56 provides that, in some cases, the right of withdrawal may be implied in the nature of an agreement.

Review questions

1. What is the source of the international legal personality of international organisations?
2. What is the distinction between privileges and immunities that may be granted to states and international organisations?

3. Unlike states, international organisations will be held liable if they infringe their obligations imposed by international law and consequently cause injury to one or more states? What are the specific conditions under which responsibility on international organisations is imposed?
4. From your general Public International Law course, elaborate the circumstances that entail succession to international organisations?
5. Somaliland, which used to be part of Somalia, is currently a defacto state with well-functioning governmental structures. It is not yet, however, admitted as member of the UN. If Somaliland applies for membership of the UN, how likely is its application to be acceptable?

CHAPTER THREE

THE UNITED NATIONS SYSTEM

In the preceding two chapters, some general points relating to all international organization has been made. In this chapter, we will see the United Nations as an international organization. The UN is the biggest global international organization in terms of membership. Moreover, it is an international organization that plays a crucial role in the maintenance of international peace and security and the realization of human rights.

Generally, at the end of this chapter, the student will be able to:

- Trace the origin of the UN;
- Enumerate the purposes for which the UN is established;
- Identify the principles of the UN;
- Spell out criteria for membership in the UN;
- Write factors that may entail the amendment of the UN Charter;
- Identify the principal organs of the UN.

3.1 Origin

The major breakthrough for international organisation in general and the United Nations in particular would be the year 1919 and the Versailles Peace Settlement which followed the First World War. On 8 January 1918, US President Woodrow Wilson made his famous fourteen points' speech, in which he called for the creation of a general association of nations under specific covenants for the purpose of affording mutual guarantees of political independence and territorial integrity to great and small states alike.

Wilson's plea was carried on the waves of public opinion in many states and would lead to the formation of the League of Nations. The League of Nations was the first

international organisation which was designed to have as its specific aims to guarantee peace and the establishment of a system of collective security following which an attack against one of the member states of the League would give the rest the right to come to the attacked state's rescue. As Wilson himself noted in 1919, the beauty of the League was that it was to have unlimited rights of discussion on anything that falls within the field of international relations- and that it is specifically agreed that war or international misunderstandings or anything that may lead to friction or trouble is everybody's business, because it may affect the peace of the world. History, in its cruelty, has made clear that Wilson's hopes would remain futile. True enough, the League became a place of unlimited discussion and true enough, it paved the way for future developments: without the League, the United Nations would have looked different indeed. And even some practices developed in the UN were already tried and tested within the League, peace-keeping being a prominent example. But the League failed in its own overriding purpose: preventing war and aggression. For example, The League of Nations did nothing to prevent Italy from attacking Ethiopia in 1935.

Arguably, while drafting the Covenant, the politics of international law had temporarily been lost on the wave of good intentions. The Covenant made no meaningful distinction between great powers and small powers (except in composition of the Council), and made it possible, moreover, for its members to withdraw easily from the League: the option was gratefully used by, among others, Japan and Germany.

Moreover, in one of those great ironies of history, the United States Senate refused to grant approval to the American government to ratify, thus leaving the newborn organisation not only without one of its spiritual and intellectual parents, but also, and more importantly, without one of the two states that had emerged from the First World War as a global powerhouse. To add insult to injury, the other powerhouse-to-be (the USSR) was not admitted until late in the League's existence, joining as it did in 1934 only to be expelled again in 1939 after invading Finland.

On the ruins of the Second World War, the urge to organise was given a new impetus. As early as August 1941, American President Roosevelt and British Prime Minister Churchill had concluded the Atlantic Charter, a declaration of principles which would serve as the basis, first for a Declaration of the wartime allies, and later, after the State Department had overcome President's Roosevelt initial reluctance to commit himself to the creation of a post-war organisation, for the Charter of the United Nations.

In drafting the Charter, some of the lessons learned from the League's failure were kept in mind. First, a notorious distinction was to be made between the major powers and ordinary states. The major powers were to become permanent members of a new institution, the Security Council, which would only be able to take decisions if the five major powers were in agreement. Second, perhaps, mostly of psychological interest, but interesting nonetheless, the Charter did not and does not contain a withdrawal clause. Admittedly, this may not make withdrawal legally impossible, but it does create something of a political and psychological barrier. Indeed, in the more than fifty years of its existence, no state has formally withdrawn from the United Nations.

3.2 Purposes of the UN

Article 1 of the UN Charter sets out the purposes of the UN which are as follows:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;
2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;
3. To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and

encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and

4. To be a centre for harmonizing the actions of nations in the attainment of these common ends.

This article is not exhaustive. It does not set out all the purposes of the UN. For example, the responsibilities of the UN relating to non-self governing territories do not find a place in this article. The order to fisting, together with the content of subsequent Charter provisions, gives support to the view that the maintenance of peace and security is the primary purpose of the organisation. Furthermore, the purposes of the UN are set out in very wide terms and can be classified into four categories, namely, maintenance of international peace and security, development of friendly relation on the basis of equal rights and self-determination; international cooperation and human rights; and harmonising the actions of states.

The first purpose of the UN is to maintain international peace and security. Internal disorders fall within the concerns of the UN only to the extent that these affect international peace. The Charter of the UN recognises that international peace can be achieved in two ways; firstly, through peaceful settlement or accommodation, and, secondly, by having recourse to collective measures.

The second purpose of the UN is the development of friendly relations on the basis of equal rights and self-determination. The right of peoples and nations to self-determination is a fundamental human right. All peoples have the right of self-determination. By virtue of this right, they freely determine their political status and freely peruse their economic, social and cultural development. The right to self-determination crystallises the necessity of bringing speedy and unconditional end to colonialism in all its forms and manifestations. The principle demands that immediate steps should be taken to transfer all powers to the peoples of all territories not yet independent without any conditions or reservations.

The third purpose of the UN concerns international cooperation and human rights. The achievement of international cooperation and promotion of human rights underline the maintenance of international peace and security. The maintenance of international peace and security is not solely a matter of settling disputes or dealing with threats to peace or acts of aggression. There is also a need to create conditions other than purely political favourable to the existence of peace. This crystallises the need of international cooperation to promote human welfare in a world which no longer permits this objective to be adequately achieved by national action alone.

The fourth purpose of the UN is harmonisation of actions of nations. Undoubtedly, there must be harmonisation of policies and actions of states if the UN is to achieve practical results. The emphasis is on the necessity of agreement as a basis of action, particularly, agreement among the major powers. The resolutions should not only be adopted by majority votes but there is a pressing need for broad working consensus of Members of the UN in support of the decisions taken.

3.3 principles of the UN

Article 2 of the UN Charter enumerates the principles upon which the UN is based and these are as follows:

1. The Organization is based on the principle of the sovereign equality of all its Members.
2. All Members, in order to ensure them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the present Charter.
3. 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. 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 in any other manner inconsistent with the purposes of the United Nations.

5. All Members shall give the United Nations every assistance in any 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 the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security.

7. Nothing contained in the present Charter shall authorize 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; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

Each of these principles is discussed below.

3.3.1 Sovereign equality

The term ‘sovereign equality’ combines two distinct but closely related ideas, namely, ‘state sovereignty’ and ‘equality of states’. The expression ‘state sovereignty’ has been commonly interpreted to mean equality before the law. Therefore, it is inconsistent with substantial equality of participation and influence in international organisations. In the UN, Permanent Members of the Security Council enjoy special voting rights. The Charter gives to the votes of Permanent Members of the Security Council more decisive legal effects under certain circumstances than to the votes of non-permanent Members.

According to the report of the Technical Committee which considered the matter at San Francisco, ‘sovereign equality’ includes the following elements:

- 1) That States are judicially equal;
- 2) That each State enjoys the rights inherent in full sovereignty;
- 3) That the personality of the State is respected, as well as its territorial integrity and political independence;
- 4) That the State should, under international order, comply faithfully with its international duties and obligations.

These elements of sovereign equality were later approved and reaffirmed by the Special Committee established at the General Assembly's eighteen session to study certain principles of international law concerning friendly relations and cooperation among states.

3.3.2 Fulfillment of obligations

The Charter obligates the Member States to fulfil in good faith the obligations assumed by them. The principle is fundamental to the establishment of international legal order. Its logical inference is that members who do not fulfil their obligations are not in a position to demand the benefits of membership.

3.3.3 Obligations to settle disputes peacefully

The Member States are under obligation to settle their international disputes by peaceful means in such a manner that international peace and security and justice, are not endangered. This clearly indicates the primary concern of the UN with the maintenance of international peace and security. Pacific settlement of disputes is a precondition for the maintenance of international peace and security. It must be borne in mind that the peaceful settlement of disputes, one of the purposes of the UN, is intrinsically linked with the maintenance of peace and security. The obligation of pacific settlement of international disputes finds detailed expression in Chapter VI of the Charter.

3.3.4 Prohibition of use of force

Article 2(4) of the Charter of the United Nations provides that:

'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 in any other manner inconsistent with the Purposes of the United Nations.'

In 1986 this prohibition on the use of force, regarded as the cornerstone of the United Nations system, was found to be a rule of customary law by the International Court of Justice in the *Nicaragua Case*.⁷

Like the prohibition on murder in domestic society, this prohibition in international society is not always observed. However, it is recognized by states as a fundamental principle of the contemporary international legal order, as a norm with the status of *jus cogens*. States that violate this norm either do so covertly or seek to justify their action under one of the exceptions to the use of force in the UN Charter. None deny the existence of such a rule.

3.3.5 Assistance in preventive or enforcement action

Article 2, paragraph 5 of the Charter states:

All Members shall give the United Nations every assistance in any 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.

This principle contains two objectives. Firstly, Members are obligated to give to the organisation any assistance which their objectives under the Charter require of them. Secondly, members shall not strengthen the hands of a state which has violated its obligations under the Charter to the point where preventive or enforcement action has become necessary. Both the obligations mentioned above relate primarily to the maintenance of international peace and security. The United Nations practice shows that the principle contained in paragraph 5 of the Charter has received the attention of the General Assembly and Security Council on many occasions. On the issue of apartheid policy of South Africa Government, both the General Assembly and the Security Council utilised the language of article 2, paragraph 5 to mobilise pressure against South Africa.

3.4 membership of the UN

On the issue of the membership of the United Nations, there are two schools of thought. One school of thought is founded on the principle of universality. The thrust of this school is that United Nations was not intended to be a club of like-minded

States, and that there should be room within the organization for States with widely differing ideologies and different economic and political systems. This school is so popular that in the United Nations practice, there are frequent references to universal membership as the desired goal of the United Nations. Another school of thought, which is comparatively less popular, emphasizes that the Charter bases membership in the organization on the principle of 'selectivity', not 'universality'. Members are requested to be like-minded, at least to the extent that all must support the purposes and principles of the Charter and fulfil their obligations thereunder. Obviously, the first school of thought is based upon sound logical considerations inasmuch as universality is intrinsically linked with maintenance of international peace and security which is the primary aim of the United Nations.

The Charter of the United Nations, as discussed in chapter two, makes a distinction between original Members and future Members. As regards original Members, their participation in the organization is considered as acquired by right, while that of future Members is dependent on the fulfilment of certain conditions. The distinction does not imply any discrimination against future members. It is made on the grounds of necessity. Before new Members can be admitted, the organization must exist, which in turn implies the existence of original Members.

Article 3 of the United Nations Charter states that the original Members of the United Nations shall be the States which, having participated in the United Nations Conference on International Organization at San Francisco, or having previously signed the Declaration by United Nations of 1 January 1942, sign the present Charter and ratify it in accordance with Article 110. The word 'States' was not interpreted strictly as meant in international law; Some States such as Byelorussia, Ukraine, Philippines, India, Syria and Lebanon which participated in the San Francisco Conference were not fully independent States, but these were recognized as States within the meaning of Article 3.

Regarding admission of New Members, Article 4 of the United Nations Charter reads:

1. Membership in the United Nations is open to all other peace-loving States which accept the obligations contained in the present Charter and, in the

judgement of Organization, are able and willing to carry out these obligations.

2. The admission of any such State to membership in the United Nations will be effected by a decision of the General assembly upon the recommendation of the Security Council.

Another issue that deserves consideration concerning membership is suspension from Membership. Article 5 of the United Nations Charter makes provision for suspension from membership of the United Nations. It states:

A 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 recommendation of the Security Council. The exercise of these rights and privileges may be restored by the Security Council.

This provision has two aims. Firstly, it prevents a Member from hindering in any way the preventive and enforcement action being carried out by the Security Council. Secondly, it applies additional pressure upon the States to comply with the Council's directions. The exercise of rights and privileges may be suspended only if the Security Council recommends taking preventive or enforcement action against a member.

Article 5 will be applicable if the Security Council recommends taking the measures open to it under Articles 41 and 42. It is worth noticing that the issue of suspension of a State from membership of the United Nations is treated as non-procedural and Security Council must make a recommendation by way of non-procedural vote, i.e. nine affirmative votes including the concurring votes of permanent members. To become effective, the recommendation of the Security Council must then be approved by two-thirds of the members present and voting in the General Assembly.' Thus, the suspension is a result of the joint action of the two organs, namely, the General Assembly and the Security Council. However, restoration of rights and privileges is left to the Security Council alone. This is done keeping in view the fact that it is the primary responsibility of the Security Council to maintain international peace and security. Furthermore, the Security Council, being in continuous session, can take this

action speedily. The association of the General Assembly in making such a decision may entail unreasonable delay.

As a concluding remark, it may be mentioned that the status of a suspended member would be analogous to that of a non-Member of the United Nations. Therefore, a suspended Member would lose its right to be represented and to vote in the General Assembly. It would not be eligible for election to Security Council, Economic and Social Council and Trusteeship Council. However, a suspended member would retain the right to bring to the attention of the General Assembly or the Security Council any dispute to which it was a party and to participate in the Council's discussion of that dispute. Furthermore, suspension would not necessarily deprive the Member of all rights of access to the International Court of Justice, since under certain circumstances, the Court is open to States not members of the United Nations.

Article 6 of the Charter deals with expulsion of a Member from the United Nations and provides as follows:

A Member of the United Nations which has persistently violated the principles contained in the present Charter may be expelled from the Organization by the General Assembly upon the recommendation of the Security Council.

The expulsion of a member from the United Nations is a measure of last resort and is to be taken only when a Member persists in ignoring its obligations. Like admission and suspension, a majority of two-thirds of those present and voting is required in the General Assembly for expulsion of a Member. This step can be taken only upon recommendation of the Security Council by a non-procedural vote. Thus, the Permanent Members and any Member supported by a Permanent Member are safeguarded against expulsion.

The philosophy behind inclusion of a provision for expulsion in the Charter is that the principal purpose of the United Nations is maintenance of peace and security, not universality; that expulsion would not necessarily bar subsequent readmission if such

a step were justified; and that the Organization should be able to oust Members that were admittedly incorrigible.

3.5 Amendment of UN Charter

Like any other domestic legislation, the UN Charter, which establishes the UN and on the basis of which it functions, may be subject to amendment. The conditions and the procedures under which the UN Charter may be amended are stipulated under article 108 and 109 of the UN Charter. Each of these provisions are replicated as follows:

ARTICLE 108

Amendments to the present Charter shall come into force for all Members of the United Nations when they have been adopted by a vote of two thirds of the members of the General Assembly and ratified in accordance with their respective constitutional processes by two thirds of the Members of the United Nations, including all the permanent members of the Security Council.

ARTICLE 109

1. A General Conference of the Members of the United Nations for the purpose of reviewing the present Charter may be held at a date and place to be fixed by a two-thirds vote of the members of the General Assembly and by a vote of any nine members of the Security Council. Each Member of the United Nations shall have one vote in the conference.
2. Any alteration of the present Charter recommended by a two-thirds vote of the conference shall take effect when ratified in accordance with their respective constitutional processes by two thirds of the Members of the United Nations including the permanent members of the Security Council.
3. If such a conference has not been held before the tenth annual session of the General Assembly following the coming into force of the present Charter, the proposal to call such a conference shall be placed on the agenda of that session of the General Assembly, and the conference shall be held if so decided by a majority vote of the members of the General Assembly and by a vote of any seven members of the Security Council.

3.6 Principal organs of the UN

The organisational structure of the UN is indicated in Article 7 of the Charter, which states that:

1. There are established as the principal organs of the United Nations;
 - A General Assembly
 - A Security Council
 - An Economic and Social Council
 - A Trusteeship Council
 - An International Court of Justice
 - And a Secretariat.

2. Such subsidiary organs as may be found necessary may be established in accordance with the present Charter.

The General Assembly and Security Council respectively represent (in a very general sense) bodies commonly found in international organisations, that is, a 'plenary' body (i.e. one in which the entire membership participates) and a smaller body composed of selected representatives which supervises the work of the organisation between periodic gatherings of the plenary. The UN differs from this model in that the Security Council has permanent members and a periodically elected membership, meeting whenever necessary. It also has a more specialised role than the executive body of many international organisations, being the organ charged with the primary responsibility for the maintenance of international peace and security. The UN has two further 'Councils', the Economic and Social Council and the Trusteeship Council, which, as well as the ICJ and the Secretariat, are designed as principal organs.

The headquarters of the UN is in New York but its operation and representation is worldwide. Thus a significant area of legal regulation arises from the relation of the UN itself with the host state for its headquarters, and its relations with each state in which it has representatives or in which it carries out its functions.

Herein below is a separate discussion of each organ of the UN.

3.6.1 The General Assembly

Assembly meets in regular annual sessions in General in the last months of each year. It also holds extra sessions when it is deemed required. For the conduct of its detailed work, the General Assembly divides the load among seven committees which are themselves plenary bodies. The Sixth Committee is known as the 'Legal Committee'. Some idea of the scope of its work can be seen from its agenda. Regular items include consideration of the Reports of the International Law Commission and of the UN Commission on International Trade Law. Other items concern international conferences and their products (such as those that produced the UN Law of the Sea Tribunal and the International Criminal Court), implementation of particular treaties of concern to the UN, relations with the host country (that is between the UN and the USA), and many other topics.

The main purpose of the work of the Sixth Committee is to enable members of the UN to oversee developments in international law and to consider legal matters of concern to the UN. The outcome of the Committee's work is expressed in draft resolutions which it puts to the plenary of the General' Assembly for the latter to adopt. The main significance for those studying 'International law lies in the substantive consideration of law that is revealed in the reports of the Sixth Committee and in the working processes of the UN in this area. The Reports contain the views of participating states on aspects of international law, and may therefore provide evidence of *opinio iuris* for customary international law. They also provide the preparatory work of the resolutions and may thus assist their interpretation.

The powers of the Assembly to make decisions that are binding on member states directly are limited. They do not even extend to all the important matters which the General Assembly addresses. Some assessment of what are considered to be 'important matters' can be deduced from the requirement that decisions of the General Assembly by a two-thirds majority, other matters being decided by simple majority (each member has one vote). On this criterion, important matters include: recommendations with respect to the maintenance of international peace and security, the election of the non-permanent members of the Security Council, the election of

the members of the Economic and Social Council, the election of members of the Trusteeship Council in accordance with paragraph 1 of Article 86, the admission of new Members to 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.

Of these, however, issues of international peace and security fall primarily within the remit of the Security Council; and providing a separate budget for peacekeeping is also a function of the growth in the role of the General Assembly, with a concomitant power to request special contributions, rather than part of the original scheme.

The role of the General Assembly in the admission of new members is discussed above. To put in brief, new members are admitted under Article 4, which provides:

- 1) Membership in the United Nations is open to all other peace-loving states which accept the obligations contained in the present Charter and, in the judgment of the Organisation, are able and willing to carry out these obligations.
- 2) The admission of any such state to membership in the United Nations will be effected by a decision of the General Assembly upon the recommendation of the Security Council.

It might be thought that a decision by the General Assembly under these provisions could provide a good indication of statehood: to qualify for admission to the UN an entity must be a state; therefore admission shows that a healthy majority recognise the candidate state. While this argument assists in the case of affirmative decisions in respect of new states, the opposite does not hold good. Political considerations may play a major part, and the ICJ has confirmed that the General Assembly has a discretion to take into account a wide range of factors. Rejection does not prove that an entity is *not* a state.

The other matter on which decisions of the General Assembly are mandatory is the organisation's budget. This links with national legal system in that payment of contributions is likely to be subject to authorisation processes of domestic law. The United Nations budgetary system imposes a penalty depriving members of their vote for failure to pay up. Nations systems therefore need to be operated in a way to enable regular payment. Article 17 and 19 of the UN Charter are relevant in this regard and are stated as follows:

Article 17

- (1) The General Assembly shall consider and approve the budget of the Organisation.
- (2) The expenses of the Organisation shall be borne by the Members as apportioned by the General Assembly.
- (3) The Assembly shall consider and approve any financial and budgetary arrangements with specialised agencies referred to in Article 57 and shall examine the administrative budgets of such specialised agencies with a view to making recommendations to the agencies concerned.

Article 19

A Member of the United Nations which is in arrears in the payment of its financial contributions to the Organisation shall have no vote in the General Assembly if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The General Assembly may, nevertheless, permit such a Member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the Member.

The power of the General Assembly to apportion the budget of the Organisation has been brought into the spotlight in recent years because of the automatic character of the sanction in Article 19 for non-payment. When the USA, as a persistently defaulting state, came very near to losing its vote in the General Assembly in recent years, the sanction had long since been applied on numerous occasions but, except in

the case of the rather distinct dispute about funding peacekeeping, non-paying states had not included the 'great powers'.

The automatic sanction in Article 19 first became significant when the USSR, its minions in the Eastern bloc and France refused to pay for the UN peacekeeping forces in Sinai and the Congo on the basis that these operations had not been constitutionally maintained under the authority of the Security Council but had nevertheless been funded by the General Assembly. When the ICJ confirmed the legality of the expenditure, after a session in which, to avoid the automatic effect of Article 19, all decisions were taken by 'consensus' (agreement without any actual vote), a special committee of the General Assembly affirmed the peacekeeping assessments but placed the earlier unpaid ones in a special account which the General Assembly decided would not count towards Article 19.

While this staved off application of Article 19 to the major defaulters, in 1968 Haiti and the Dominican Republic were excluded by the UN Secretariat from voting in the General Assembly, which confirmed the Secretary-General's view that such loss of rights occurred without any specific decision of the Assembly. Thereafter, an increasing number of states lost their votes in the 1980s and 1990s. However, though the number of defaulters is large at the beginning of any year, many states pay sufficient to reclaim their votes before the regular General Assembly session begins.

The reason why states are keen to retain their right to vote appears to be that the role of the General Assembly is perceived as greater than its actual powers suggest. This was persuasively explained by the UN Association of the USA in clarifying the consequences of the prospective loss (in fact averted) of the USA's vote.' This explanation pointed to examples of the influence of the General Assembly in world affairs, the control it exercises over the budget, and the great number of significant bodies whose composition is directly or indirectly controlled by the General Assembly. In the first category, the examples include instances where 'the Assembly by its own action crystallizes a common international policy'. These range from the Universal Declaration on Human Rights in early days, to the vote calling for a ban on driftnet fishing which led to Japan and the European Union changing their fishing

practices. Codification of international law is shown by several major examples, including the Convention on trafficking in narcotics, the global climate change Convention, and the Law of the Sea Convention.

The loss of participation in the budget speaks for itself. Loss of vote would inevitably mean loss of bargaining power on this. As regards appointments to other bodies, the General Assembly elects members of the Security Council and the Economic and Social Council. A state with no vote in the General Assembly would not be likely to be elected to the latter Council, and this effective bar would place a state which might have high expectations of participation in committees at a distinct disadvantage in that the Economic and Social Council in turn elects members of several important bodies, including: the Commissions on Human Rights, on Narcotic Drugs, on Sustainable Development, on the Status of Women, on Crime Prevention and Criminal Justice, on Social Development and on Population and Development among many other bodies of diverse functions. The General Assembly also has power to establish such subsidiary organs as it deems necessary for the performance of its functions.

3.6.2 The Security Council

The Security Council is the executive body of the United Nations and is given primary responsibility for the maintenance of international peace. It is composed of 15 members: five permanent members and ten non-permanent members, elected by the General Assembly for a term of two years. The five permanent members are /, China, France, Russia, the United Kingdom, and the United States.

The Security Council was constituted in 1945, and its permanent members reflect the power relations of that time. Today, states such as Germany and Japan probably have more claim to a permanent seat on the Security Council than the United Kingdom and France. Moreover, states such as India/ Brazil, South Africa, Egypt and Nigeria also lay claim to permanent membership. At present, there are serious efforts to change the composition of the Security Council by expanding the number of permanent members to include states which contribute most to the United Nations financially, militarily and diplomatically, and to achieve a fairer geographical distribution.

The Security Council is empowered to take decisions binding on all member states of the United Nations. But the price paid for this advance towards world government is high—the veto power vested in the five permanent members. While decisions on procedural matters in the Security Council are made by an affirmative vote of nine members, in terms of art 27(3), decisions on all other matters (non-procedural matters) are to be made 'by an affirmative vote of nine members including the concurring votes of the permanent members'. The question of how one distinguishes between procedural and non-procedural matters has been a highly controversial one. In the statement of the Sponsoring Powers at San-Francisco, it was declared that the issue of whether or not a matter was procedural was itself subject to veto. This double- veto constitutes a formidable barrier for the effective performance of the Security Council. This is because this veto has been invoked by all the permanent members when they have perceived their own interests to be threatened, and has deprived the Security Council of much of its effectiveness. Only since the end of the Cold War period in 1990 has the Security Council been able to operate as it was intended to do in 1945.

The severity of the veto has, to some extent, been ameliorated by the practice of abstention. Since the early days of the United Nations, the permanent members have not viewed an abstention from voting in the Security Council as a veto, and this has allowed many resolutions, that one or other of the permanent members was unable to support fully, to be adopted. The lawfulness of this practice was challenged in 1971 by South Africa, when the Security Council requested the International Court of Justice to give an advisory opinion on the legality of South Africa's presence in Namibia in a resolution adopted by 12 votes to none with three abstentions, including abstentions by the Soviet Union and Britain. In rejecting South Africa's argument that an abstention could not be described as a 'concurring' vote, as required by art 27(3), the Court held that states in the Security Council, particularly the permanent members, had 'consistently and uniformly interpreted the practice of voluntary abstention by a permanent member as not constituting a bar to the adoption of resolutions', and that this procedure had been 'generally accepted by Members of the United Nations and evidences a general practice of that Organization'.³⁶

An abstention from voting may be regarded as a 'concurring' vote, as the permanent member is present in the Security Council and able to make a considered choice on whether to vote or to abstain from voting. It is more difficult to treat the absence of a permanent member from the Council as a 'concurring' vote, despite the fact that permanent members are required to be present at the headquarters of the United Nations at all times. For this reason, serious doubt surrounds the legality of the Security Council resolutions of 1950, recommending that member states of the United Nations provide military assistance to South Korea to repel the armed attack of North Korea. These resolutions were adopted when the Soviet Union was absent from the headquarters of the United Nations, in protest against the United Nations' refusal to accept the communist government of China as the proper representative of China in the United Nations.

A dispute or situation likely to endanger the maintenance of international peace may be brought to the attention of the Security Council by any member of the United Nations, a non-member state prepared to accept the obligations for pacific settlement provided for in the Charter, the General Assembly, and the Secretary-General. The Security Council may respond by taking action under Chapter VI, Chapter VII, or the general powers contained in art 24.

Chapter VI

Chapter VI empowers the Security Council to address disputes which in its judgment do not threaten international peace, within the meaning of Chapter VII, but which, if continued, are '*likely* to endanger the maintenance of international peace and security' (emphasis added).⁴³ In such a case, the Security Council, acting under art 36(1), may '*recommend* appropriate procedures or methods of adjustment' (emphasis added) for settling the dispute. Article 25, which obliges member states to carry out *decisions* of the Security Council—as opposed to *recommendations*—is not applicable to Chapter VI. In law such recommendations enjoy the same status as recommendations of the General Assembly. Their political weight, however, is greater because of the greater authority vested in the Security Council. For example Resolution 242 of 1967, which lays down a number of conditions for peace in the Middle East, including the

withdrawal of Israeli forces from the occupied territories and recognition of the state of Israel, is widely seen as the blueprint for peace in the region.

Article 36(3) states that the Security Council, in acting under Chapter VI, should bear in mind that legal disputes should 'as a general rule' be referred to the International Court of Justice. In practice, the Security Council seldom follows this advice as there is a clear preference on its part for the political settlement of disputes. Probably the failure of the International Court, in the *Corfu Channel Case*, to accept such a referral as a basis for compulsory jurisdiction has also deterred the Security Council from making use of this power.

Chapter VII

The real power of the Security Council flows from Chapter VII, which permits it to take legally binding decisions under art 25 directing member states to impose economic sanctions or to use force to maintain international peace. Because of the serious consequences of such action, the permanent members of the Security Council have not hesitated to use their veto power to obstruct action of this kind where their interests have been involved. During the Cold War, both the Soviet Union and the United States used their vetoes liberally to protect their interests. China, France, and the United Kingdom have also made use of their vetoes on occasion. This explains why most of the forcible interventions of doubtful legality, threatening the peace of the world between 1945 and 1990, were not acted upon by the Security Council. Soviet intervention in Hungary (1956), Czechoslovakia (1968), and Afghanistan (1979) was not met with action by the United Nations any more than was the United States intervention in the Dominican Republic (1965), Vietnam (1965-73), Grenada (1983), or Panama (1989).

Since the end of the Cold War, the Security Council has found it possible to achieve consensus on the need for intervention to secure international peace in certain situations. Thus, action of some kind was taken under Chapter VII in response to Iraq's invasion of Kuwait (1990-1991); the conflicts in the former Yugoslavia, Somalia, Liberia, Rwanda and East Timor; and the failure of Libya to extradite the persons alleged to have been responsible for the bombing of Pan Am Flight 103

over Lockerbie. On the other hand, the Security Council was unable to reach agreement on action to be taken against Yugoslavia in respect of Kosovo (1999), and against Saddam Hussein's Iraq (2003), which resulted in action taken by western states without the authorization of the Security Council.

In order to trigger action under Chapter VII, it is necessary for the Security Council to determine, under art 39, that the situation in question constitutes a 'threat to the peace, breach of the peace, or act of aggression'. This is a political decision made by a political body subject to the possibility of a veto by one of the permanent powers. For this reason, none of the above interventions on the part of the Soviet Union or the United States was found to constitute a threat to international peace. Where the interests of the permanent members of the Security Council are not involved, the Security Council has, particularly in recent years, had less difficulty in making such a determination.

Three types of responses to a 'threat to the peace' are provided for in the Charter. A fourth—legislation—is in the process of emerging in the practice of the Security Council.

(a) Provisional measures

Article 40 provides for the adoption of provisional measures, such as a cease-fire or withdrawal of forces, before enforcement action is taken.

(b) Non-forcible measures

Article 41 authorizes the Security Council to direct member states to take measures not involving the use of force to implement its decisions. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio and other means of communication, and the severance of diplomatic relations.

Little use was made of this power during the Cold War outside southern Africa. Comprehensive economic sanctions were imposed on Rhodesia from 1966 to 1979, and in 1977. The Security Council responded to the suppression of political

opposition in the wake of the killing of Steve Biko by adopting a limited and cautiously worded resolution under art 41 directing states to impose an arms embargo on South Africa

Since 1990, greater use has been made of art 41. In 1990, economic sanctions were imposed against Iraq following its invasion of Kuwait. In 1992, the Security Council imposed a mandatory arms and air embargo on Libya as a result of its failure to extradite the suspected bombers of Pan Am Flight 103. In 1991-1992, an embargo was imposed on the supply of arms to the territories formerly comprising Yugoslavia and later economic and diplomatic sanctions were imposed on Serbia and Montenegro. In 2005, economic sanctions were imposed on Sudan in response to human rights violations committed in the Darfur region.

That the measures listed in article 41 are not exhaustive is shown by the establishment of international criminal tribunals for the former Yugoslavia and Rwanda under this provision. The international civil administrations for Kosovo, East Timor and Iraq were also established by resolutions adopted under art 41. In the case of Kosovo and East Timor, civil administration was transferred to bodies functioning under the control of a Special Representative of the UN Secretary-General, known as UNMIK and UNTAET, respectively. In the case of Iraq, civil administration was, in terms of the Security Council resolution, vested in the United States and the United Kingdom.

(c) Forcible measures

Article 42 provides that, should the Security Council decide that the measures provided for in art 41 would be inadequate or have proved to be inadequate, 'it may take such action by air, sea or land forces as may be necessary to maintain or restore international peace and security'.

In 1945, it was contemplated that such action would be taken by a United Nations force set up by agreements entered into between the Security Council and member states, in terms of art 43, making military contingents available to the Security Council. This force would be placed under the command of a Military Staff

Committee provided for in art 47. This scheme has failed to materialize because, as a result of the Cold War, no force has been established under art 43.

Consequently, the only enforcement action taken against states under art 42 has been action *authorized* by the United Nations and not action taken by the United Nations itself. Although this practice is not explicitly approved by art 42, it constitutes the exercise of an acceptable implied power. Authorization by the Security Council to states to use force legitimizes the use of force under the Charter, but it results in operations that are not kept under the strict control of the United Nations.

In 1950, at the time of North Korea's invasion of South Korea, the Security Council was able to adopt three resolutions as a result of the fortuitous absence of the Soviet Union from United Nations headquarters. These resolutions determined the invasion to be a breach of the peace and recommended that member states 'furnish such assistance to the Republic of Korea as may be necessary to repel the armed attack' and that such forces should be made available 'to a unified command under the United States'. Although under the command of the United States, the various contingents did fly the United Nations flag together with their own flags.

The next instance of United Nations-authorized force occurred in 1966, shortly after Rhodesia's unilateral declaration of independence, when the Security Council called on the British government to enforce an oil boycott against Rhodesia by preventing 'by the use of force if necessary the arrival at Beira of vessels reasonably believed to be carrying oil destined for Rhodesia'. Shortly afterwards a British warship intercepted a Greek tanker on the high seas and forced it to divert its course from Beira. Thereafter British warships maintained a patrol in the area to prevent oil tankers from entering the port of Beira.

The most dramatic, and effective, action taken with United Nations authorization was that against Iraq in 1991. After Iraq's invasion of Kuwait in August 1990, the Security Council adopted a number of resolutions directing states to impose economic sanctions on Iraq. When this appeared to have no effect, the Security Council adopted Resolution 678, authorizing member states, in co-operation with the government of Kuwait, 'to use all necessary means' to ensure the withdrawal of Iraqi forces from

Kuwait. As a consequence twenty-two states under the leadership of the United States sent forces to the Gulf, and within five days of the start of the ground offensive, Iraqi forces were removed from Kuwait. United Nations involvement in this action, after the adoption of Resolution 678, was even more limited than in the case of Korea. In these circumstances, it has been argued by commentators that the operation in the Gulf War was an exercise in collective self-defence rather than an example of United Nations action under art 42.

(d) Legislation

The Security Council is not a world parliament. It is empowered by Chapter VII and art 25 of the Charter to adopt legally binding decisions in situations that it determines threaten international peace, but its role is 'not to create or impose new obligations having no basis in the Charter, but rather to identify the conduct required of a Member State because of its pre-existing Charter obligations'. Consequently, the Security Council does not legislate, it enforces Charter obligations. In recent years, however, the Security Council has adopted resolutions under Chapter VII that have all the appearances of legislation: they are general and abstract in character; they are phrased in neutral language, apply to an indefinite number of cases and are not limited in time; they do not name states; and although triggered by a particular situation they are not restricted to it. Three resolutions illustrate this development: Resolution 1373 (2001), adopted in the wake of the terrorist attacks in the United States on 11 September 2001, which decides that states shall 'prevent and suppress the financing of terrorist acts', freeze the funds of terrorists, take steps to prevent the commission of terrorists acts and criminalize the perpetration of terrorist acts; Resolution 1540 (2004), which imposes obligations on states to prevent non-state actors from acquiring weapons of mass destruction; and Resolution 1566 (2004), which in condemning 'all acts of terrorism' and calling upon states 'to co-operate fully in the fight against terrorism' provides a comprehensive definition of terrorist acts.

The Security Council is using its enforcement powers to adopt normative resolutions that are legally binding on all members of the United Nations. In so doing, it has assumed the role of international law-maker. Such a legislative role may be justified if it is restricted to action taken under Chapter VII, designed to maintain international

peace and security and confined to subjects that threaten international peace, as this would seem to serve the objects and purposes of Chapter VII. Resolutions 1373, 1540 and 1566 fall into this category of action. Clearly this legislative role, in which a 15-member Council takes decisions that bind 191 states, must be exercised with care—as consent is still seen by many states to be the foundation of international law.

3.6.3 The Economic and Social Council

Much of the work of the United Nations in the economic and social sphere of activity is performed by the Economic and Social Council, which is a principal organ of the UN. It has the capacity to discuss a wide range of matters, but its powers are restricted and its recommendations are not binding upon UN member states. It consists of fifty-four members elected by the Assembly for 3 year terms with staggered elections and each member has one vote. The Council may, by article 62, initiate or make studies upon a range of issues and make recommendations to the General Assembly, the members of the UN and to the relevant specialised agencies. It may prepare draft conventions for submission to the Assembly and call international conferences. The Council has created a variety of subsidiary organs ranging from nine functional commissions (including the Statistical Commission, the Commission on Human Rights, the Commission on the Status of Women and the Commission on Sustainable Development) to five regional commissions (on Africa, Asia and the Pacific, Europe, Latin America and the Caribbean, and Western Asia) and a number of standing committees and expert bodies (including the Commission on Transnational Corporations; and Committee on Natural Resources; and the Committee on Economic, Social and Cultural Rights). The Council also run variety of programmes including the Environment Programme and the Drug Control Programme, and has established a number of other bodies such as the Office of the UN High Commissioner for Refugees and the UN Conference on Trade and Development. Its most prominent function has been in establishing a wide range of economic, social and human rights bodies.

3.6.4 The Trusteeship Council

The Trusteeship Council was established in order to supervise the trust territories created after the end of the Second World War. Such territories were to consist of mandated territories, areas detached from enemy states as a result of the Second World War and other territories voluntarily placed under the trusteeship system by the administering authority (of which there have been none). The only former mandated territory which was not placed under the new system or granted independence was South West Africa. With the independence of Palau on 1 October 1994, the last remaining trust territory, the Council suspended operation on 1 November that year.

3.6.5 The Secretariat

The Secretariat of the UN consists of the Secretary-General and his staff, and constitutes virtually an international civil service. The staff are appointed by article 101 upon the basis of efficiency, competence and integrity, 'due regard' being paid 'to the importance of recruiting the staff on as wide a geographical basis as possible'. All member states have under-taken, under article 100, to respect the exclusively international character of the responsibilities of the Secretary-General and his staff, who are neither to seek nor receive instructions from any other authority but the UN organisation itself. This provision has not always been respected.

Under article 97, the Secretary-General is appointed by the General Assembly upon the unanimous recommendation of the Security Council and constitutes the chief administrative officer of the UN. He or she must accordingly be a personage acceptable to all the permanent members and this, in the light of effectiveness, is vital. Much depends upon the actual personality and particular outlook of the particular office holder, and the role played by the Secretary-General in international affairs has tended to vary according to the character of the person concerned.

Apart from various administrative functions, the essence of the Secretary-General's authority is contained in article 99 of the Charter which empowers him to bring to the attention of the Security Council a matter which he feels may strengthen the maintenance of international peace and security, although this power has not often

been used. In practice, the role of the Secretary-General has extended beyond the various provisions of the Charter. In particular, the Secretary-General has an important role in exercising good offices in order to resolve or contain international crises.

3.6.6 The International Court of Justice

As mentioned in relation to powers and functions of international organisations, one of the tasks of international organisations is dispute settlement. Organisations whose membership is open to all states may have a general role in settlement of disputes within their defined sphere of activities. Regional organisations offer general for dispute settlement among their geographically limited membership. Specialised agencies may have mechanisms for settlement of disputes of a kind particularly associated with their particular activities. Under this sub-section, we will discuss the role of the International Court of Justice (ICJ) in settling disputes.

3.6.6.1 A brief history of international adjudication

Before a permanent international court was established in 1920, arbitration was the only method for the judicial settlement of disputes, states parties to a dispute would, typically, select suitable arbitrators, who would then choose an umpire.

In 1899 and 1907 a Permanent Court of Arbitration was created. In reality this institution was not a court, but simply an arrangement to facilitate the appointment of arbitrators. States party to the arrangement appointed jurists to a panel from which parties to a dispute might select arbitrators. This machinery was frequently invoked before the establishment of a real international court in 1920. It has survived the creation of a permanent international court and may still be utilized by some one hundred states that are parties to the conventions establishing the Permanent Court of Arbitration.

The Covenant of the League of Nations contemplated the establishment of a genuine world court, but left it to a later multilateral treaty- the Statute of the Permanent Court of International Justice- to implement the goal. As a result, the Permanent Court of International Justice (PCIJ) was not institutionally linked to the League of Nations, unlike its successor, the ICJ, which was established by the Charter of the United Nations and which forms an integral part of the UN system. The PCIJ was one of the most successful international institutions of the inter-war years.

In 1945 the PICJ was replaced by the present ICJ. As neither the United Nations nor the Soviet Union, the two superpowers in the post-World War II order, had been signatories to the Statute of the PICJ, there were sound political reasons for creating a new court of which they could claim membership. Also the framers of the Charter considered it desirable to integrate the new court in the UN system. This was done by designating the ICJ as the principal judicial organ of the UN, and by incorporating the Statute of International Court of Justice into the Charter. In reality the ICJ is not a successor to the PCIJ, but a continuation of the old court. It retains its seat at the Hague, under a largely unchanged statute, and the ICJ has relied on the jurisprudence of the PCIJ as if it were the same court. The principal difference between the two courts is that whereas only states committed to international adjudication became signatories to the Statute of the PCIJ, all member states of the UN automatically become parties to the ICJ's Statute on the signing of the Charter.

3.6.6.2 Composition and voting procedure of the ICJ

The ICJ, situated at the Peace Palace in the Hague, comprises of 15 judges of recognized competence in international law who together represent the main forms of civilization and the principal legal systems of the world. They are elected by the General Assembly and Security Council and hold office for nine years. When the court was first constituted in 1946, five judges were elected for three years, five for six years, and five for nine years. Consequently, elections to the court are now held every three years for five judges. The President, who holds office for three years, is elected by the court. Nine judges constitute a quorum. All questions are decided by a majority of the judges present. In the event of equality of votes, the President has a

casting vote. In 1966, Sir Percy Spender of Australia, the President of the Court, secured a 'technical victory' for South Africa in its dispute with Ethiopia and Liberia over South West Africa/Namibia when he exercised both a deliberative and a casting vote in favor of a finding that the applicants lacked the necessary standing to bring the complaint.

Although judges are required to recuse themselves from cases in which they have been personally involved as a counsel or in some other capacity, they are not required to recuse themselves when their own national state is a party to a dispute. Moreover, if a party to a dispute has no national on the Court, it may appoint a judge ad hoc to sit on the Court for that particular case. The non-recusal of national judges and the appointment of judges ad hoc are practices, rooted in the composition of early arbitration tribunals, that to some extent undermine the character of the Court—particularly as judges ad hoc and national judges seldom find fault against their own state or the state that has appointed them.

3.6.6.3 Jurisdiction of the ICJ

The ICJ exercises two jurisdictions. First, it hears disputes between states and gives binding judgments on such disputes. Such proceedings are described as contentious proceedings. Secondly, the Court may give advisory opinions at the request of designated organs of the UN and specialized agencies of the UN. The composition of the court is unaffected by the nature of the proceedings and the same rules of international law are applied in both cases. However, different procedural and jurisdictional rules govern the two proceedings and this makes it necessary to consider these two jurisdictions or competences separately.

3.6.6.3.1 Contentious proceedings

Only states may be parties to disputes before the ICJ, in terms of article 34 of the Statute. The exclusion of international organizations, non-governmental organizations, multinational corporations, and individuals from access to the Court in contentious proceedings may be explained on the ground that states were the only actors in the international legal arena when the Statute was drafted in 1920. This is no longer the case, and today there are calls for an expansion of access to the Court. The weakness of the present rule is illustrated by the *South West Africa Cases* of 1960-1966. Here, a dispute developed between the UN and South Africa, over the statute of

South West Africa, after South Africa had refused to accept the UN as the successor to the League of Nations in respect of the international supervision of the mandated territory. The UN obtained three advisory opinions from the ICJ, holding that South Africa was obliged to account to the UN for its administration of the territory, but these were ignored by South Africa. As the UN was itself prevented from instituting contentious proceedings against South Africa because of article 34 of the Statute, Ethiopia and Liberia brought proceedings, in effect on behalf of the UN, in order to obtain a binding judgment confirming the advisory opinions. This strategy failed when the ICJ, in 1966, held that the two applicant states had no legal interest in the matter, essentially on the ground that the dispute was between South Africa and the UN.

I) Jurisdiction

The ICJ is open only to states that are parties to the Statute (that is, members of the UN) and states that have been permitted to use the Court under the conditions laid down by the Security Council. The ICJ does not, however, have compulsory jurisdiction over all such states or over all disputes of international law between these states. It has jurisdiction only over those states which consent to the Court's jurisdiction and only in respect of those disputes which such states consent to be heard by the Court.

Consent, the basis of jurisdiction, may be given in a number of ways which are provided for in article 36 of the Statute. This provision reads:

- 1) The jurisdiction of the Court comprises all cases which the parties refer to it and all matters especially provided for in the Charter of the United Nations or in treaties and conventions in force.
- 2) The states parties to the present Statute may at any time declare that they recognize as compulsory ipso facto and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:

- a. the interpretation of a treaty;
 - b. any question of international law;
 - c. the existence of any fact which, if established, would constitute a breach of an international obligation;
 - d. the nature or extent of the reparation to be made for the breach of an international obligation.
- 3) The declarations referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain states, or for a certain time.
 - 4) Such declarations shall be deposited with the Secretary-General of the United Nations, who shall transmit copies thereof to the parties to the Statute and to the Registrar of the Court.
 - 5) Declarations 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 acceptances 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.
 - 6) In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.

Because much of the Court's jurisprudence is devoted to the interpretation of article 36, it is necessary to examine the various ways in which the Court may obtain jurisdiction.

A) Cases which parties refer to the court (special agreement)

The ICJ has jurisdiction over a dispute referred to it by states in a special agreement or *compromis*. For example, in 1996, Botswana and Namibia signed a special agreement requesting the Court to resolve a dispute between them concerning the boundary around Kasikili/Sedudu Island and the legal status of the island.

If one state unilaterally applies to the Court to hear a dispute, and the respondent state conducts itself in such a manner that an agreement to accept jurisdiction may be implied, the Court may exercise jurisdiction in terms of the doctrine of *forum prorogatum*. It was on this basis that the Court held that it had jurisdiction to hear a dispute between the United Kingdom and Albania, arising out of the sinking of British destroyers in the Corfu Channel in 1946. Here the Court inferred consent from an ill-considered letter to the registrar of the ICJ from the Albanian government in which it protested its innocence for the sinking of the destroyers and accepted the jurisdiction of the Court (which it later sought to withdraw) in response to a unilateral application by the United Kingdom. The refusal of Albania to comply with the adverse finding by the Court (ordering it to compensate the United Kingdom for the loss of the destroyers) raised doubts about the wisdom of exercising jurisdiction on the ground of implied consent. Despite this, states continue to make unilateral applications to the Court with the hope that the respondent state will consent to the Court's jurisdiction. In 2003, the Republic of Congo (Brazzaville) succeeded in such an attempt when France consented to the Court's jurisdiction in an application alleging that, in attempting to prosecute a Congolese minister and to seek to examine the Congolese president as witness, France had violated the principle of sovereign equality of states and the immunity of a foreign head of state.

Cases provided for in treaties or conventions in force (compromissory clause)

Frequently bilateral or multilateral treaties contain a clause in which parties accept the Court's jurisdiction for any dispute that might in the future arise relating to the treaty in question. Such a clause is known as a compromissory clause. In this respect article 37 of the Statute plays an important role as it provides that a reference in a pre-1946 compromissory clause to the PCIJ shall be construed as reference to the ICJ. There are nearly three hundred bilateral and multilateral treaties with compromissory clauses conferring jurisdiction on the ICJ and many of the cases brought before the Court have invoked such a clause as a basis for jurisdiction.

It was a compromissory clause that gave the ICJ jurisdiction in the *South West Africa Cases*. Article 7 (2) of the Mandate for South West Africa provided that:

The Mandatory [that is, South Africa] agrees that, if any dispute whatever should arise between the Mandatory and another Member of the League of Nations relating to the interpretation or the application of the provisions of the Mandate, such dispute if it cannot be settled by negotiation, shall be submitted to the Permanent Court of International Justice...

The claim of Ethiopia and Liberia, ex-members of the League of Nations, that there was a dispute between them and South Africa that could not be settled by negotiations, was upheld by the Court in 1962, when it found that it had jurisdiction, under article 7 (2) of the Mandate and article 37 of the Statute, to hear the dispute involving the international status of South West Africa and the compatibility of apartheid with the provision in the Mandate obliging South Africa to promote to the utmost the well-being of the inhabitants of the territory. In so ruling, the Court dismissed a number of preliminary objections raised by South Africa against the continued validity of article 7(2).

C) Matters specially provided for in the UN Charter

Article 36 (1) suggests that the Charter of the UN provides for compulsory jurisdiction in certain cases. In fact the only provision in the Charter on this subject is article 36(3), which authorises the Security Council to recommend to states that legal disputes should be referred to the ICJ. In 1948 in the *Corfu Channel Case* Britain argued that such a recommendation of the Security Council conferred compulsory jurisdiction on the Court. Although the Court found it unnecessary to consider this argument (as it found that it had jurisdiction on the basis of *forum prorogatum*), seven judges submitted a joint separate opinion denying that such a recommendation could give the Court compulsory jurisdiction. Although the Court itself has yet to decide on this issue, no further attempt has been made to establish the jurisdiction of the Court in this manner.

D) Optional clause

Article 36 (2) of the Statute, known as the ‘optional clause’, is the most important and controversial, mechanism for conferring jurisdiction upon the Court. Essentially, it represents a compromise between those states which favour compulsory jurisdiction

and those which oppose it, as it allows states to 'opt in' for compulsory jurisdiction by accepting the compulsory jurisdiction of the Court in relation to any other state that likewise accepts such jurisdiction. During the League of Nations period and the first decade of the UN (i.e before the expansion of the membership of the UN) a substantial majority of states had made declarations under article 36 (2) accepting the Court's compulsory jurisdiction. Since then the number of acceptances has greatly diminished and today a third of the states party to the Statute (sixty-four in 2005) have made declarations under article 36(2). Equally disturbing is the fact that Britain is the only permanent member of the Security Council to have done so.

The obvious explanation for the decline in the acceptance of the optional clause is that, unlike the position that pertained under the League of Nations, all member states of the United Nations are automatically parties to the Court's Statute, whether they approve of the judicial settlement of disputes or not. Consequently, a number of states which are ideologically opposed to international adjudication are parties to the Statute.

Another reason that has been advanced for this decline is that the manner in which states attach reservations to their declarations of acceptance has effectively undermined the value of the system of compulsory jurisdiction.

Article 36(3) contemplates that reservations may be made on grounds of reciprocity or time. The latter permits a state to limit its acceptance to a specified period. The former ensures that jurisdiction is conferred on the Court only to the extent to which the two Declarations coincide in conferring it, which enables a Party to invoke a reservation to that acceptance, which it has not expressed in its Declaration. Thus, in the *Norwegian Loans Case* (France v Norway) Norway, the respondent, successfully invoked a reservation excluding the Court's jurisdiction in domestic disputes as determined by France, contained in France's declaration of acceptance, against France (the applicant state), despite the fact that it had made no such reservation itself.

States have gone beyond the limits of article 36 (3) in the reservations attached to their declarations. A common reservation, which was contained in South Africa's 1940-1955 declaration, excludes disputes with regard to questions which by international law fall exclusively within the jurisdiction of the reserving state. No real

objection can be raised to such a reservation as it allows the Court, acting under article 36 (6), to determine whether the dispute is domestic or not.

Some states, inspired by the United States, have gone further and excluded domestic disputes as determined by the reserving state. Thus South Africa's 1955 Declaration under article 36 (2) excluded from the compulsory jurisdiction of the Court 'disputes with regard to matters which are essentially within the jurisdiction of the Government of the Union of South Africa as determined by the Government of the Union of South Africa'.

The principal objection to such a reservation, known as the automatic reservation or Connally Amendment (named after the United States Senator responsible for proposing such a reservation), is that it violates article 36 (6) by denying the competence of the Court to make such a determination. Despite a number of strong individual judicial opinions, particularly by Judge Lauterpacht, holding that such reservations are invalid, the court has failed to make such a finding. Its decision in the *Norwegian Case*, however, has discouraged states from persisting with such reservations. If a state that does not include an 'automatic reservation' in its declaration may nevertheless rely on such a reservation in the applicant's declaration because of the principle of reciprocity, it follows that a state with an automatic reservation will seldom be able to bring proceedings against another state. Consequently, most states which maintained such reservations have terminated their declarations of acceptance of the Court's jurisdiction. The United States withdrew its declaration of acceptance in 1985, after the ICJ has exercised jurisdiction over the claims of Nicaragua against the United States arising out of the latter's support for covert military groups (the *Contras*) operating against Nicaragua government.

A reservation to a declaration under article 36(2) may be contrary to international law. Thus, in a dispute between Spain and Canada over the arrest of a Spanish fishing vessel on the high seas, the ICJ upheld the validity of a Canadian reservation excluding from the Court's compulsory jurisdiction, disputes over measures taken by Canada against foreign fishing vessels on the high seas. The ICJ, in the *Fisheries Jurisdiction Case*, stated that there is no rule that requires 'that reservations be interpreted so as to cover only acts compatible with international law...this is to confuse the legality of the acts with consent to jurisdiction'.

The ICJ has acknowledged that a declaration under the optional clause constitutes a standing offer by a state to other states that have not yet made such a declaration to do so and to seize the jurisdiction of the Court in respect of that state. As article 36 (2) does not require that a period of time must elapse between the deposit of a declaration and the filing of an application, a state may deposit a declaration, immediately file an application against a state that has accepted the optional clause, and then, soon afterwards, terminate its declaration. 'Trial by ambush', as this practice is known, has, unfortunately, been allowed by the ICJ. A state that accepts the optional clause may, however, protect itself against such a strategy by requiring in a reservation, as Britain has done, that the declaration of the other party should be deposited no less than a year prior to the filing of an application.

E) Third Parties

Strict adherence to the principle of consent to the jurisdiction of the Court has resulted in the ICJ's refusing to pronounce on a dispute between two states which will affect the rights of a third state not party to proceedings. In the *Easter Timor Case*, the ICJ held that it could not pronounce on a dispute between Portugal and Australia, relating to the latter's recognition of Indonesia's jurisdiction over the territory of East Timor in a treaty of cooperation between Australia and Indonesia over the use of continental shelf of the 'Timor Gap' between Australia and East Timor, on the ground that this would require a ruling on the lawfulness of Indonesia's occupation of East Timor. Indonesia was not a party to the proceedings before the Court. Portugal's argument that an obligation *erga omnes*- the right to self-determination- was involved, and that this took precedence over strict observance of the requirement of consent, was dismissed by the Court. The Court held:

Whatever the nature of the obligation involved, the Court could not rule on the lawfulness of the conduct of a state when its judgement would imply an evaluation of the lawfulness of the conduct of another state which is not a party to the case. Where this is so, the Court cannot act, even if the right in question is a right erga-omnes.

Article 62 of the Court's Statute permits a state that considers that it has an interest of a legal nature which may be affected by the decision in the case between two other states, to request that it be allowed to intervene in the proceedings. In practice, the Court has adopted a strict approach to the granting of intervention to third parties. In 1990 the Court permitted Nicaragua to intervene in a dispute between Honduras and El Salvador over the legal regime of the waters of the Gulf of Fonseca.

II) Admissibility

Preliminary objections that suspend a hearing on the merits are of two kinds: First, pleas to jurisdiction in which the respondent disputes the competence of the Court to hear the case, principally on the ground of some fault in the instrument of consent; secondly, pleas to admissibility in which the respondent objects to the claim on the basis of some defect in the applicant's claim or standing that is related to the competence of the Court. Examples of such pleas are the failure to exhaust local remedies, absence of a legal interest in the issue, and a defective nationality where the applicant state seeks to protect a national.

Both types of pleas are generally raised as preliminary objections with no clear attempt made to distinguish between the two. However, after the Court has satisfied itself that it has jurisdiction or competence to hear the dispute it may either dispose of the pleas of admissibility at the preliminary stage or join them to the issues to be considered at the hearing on the merits. Normally, the Court will indicate clearly its decision to defer a finding touching on admissibility to the hearing on the merits.

The controversy surrounding the decision of the ICJ in the South West Africa Cases of 1966 essentially involved the question of categorisation of one of South Africa's preliminary objections. In 1962, at the commencement of the proceedings in the *South West Africa Cases*, South Africa raised several preliminary objections to the claims of Ethiopia and Liberia arising out of the Mandate for South West Africa. Some, which concerned the interpretation of article 7(2) of the Mandate and competence of the Court to hear the dispute, were clearly pleas to jurisdiction. The third objection, that the dispute did not affect the material interests of the applicants or their nationals, was dismissed by the Court in 1962, without any attempt to categorise it as a plea to jurisdiction or to admissibility. Although this objection certainly had features of

admissibility and could have been deferred to the hearing on the merits, the Court declined to do so and instead rejected it. In 1966, after the Court had heard lengthy argument on the merits of the case- i.e. on the status of South West Africa and the compatibility of apartheid with the Mandate agreement – it returned to this preliminary issue and, without pronouncing on the merits of the case at all, held that the applicant states had failed to establish any legal interest in the subject-matter of their claims. It accordingly dismissed the claims which, in both legal and political terms, constituted a major victory for the apartheid state.

The extraordinary reversal of the 1962 judgement can only be explained by changes in the composition of the Court, which saw the thin majority of eight to seven of 1962 disappear as a result of the death, recusal, and illness of three judges believed to be well disposed to the applicants. This transformed the minority of 1962 into an eight to seven majority in 1966, consisting of the votes of seven judges and the additional casting vote of the president, Sir Percy Spender of Australia. The new majority, in effect reversed the 1962 finding on the interest of the applicants, which most students of the Court believed had been finally decided in 1962.

This decision, which undoubtedly, bought time for the policy of the apartheid, seriously undermined the reputation of the Court, as the unwarranted reversal of the Court's earlier judgement was construed by developing states as a colonialist and racist act. Although the 1971 *Namibia* Opinion went some way towards restoring the reputation of the Court in the eyes of developing states, it was not until the Court ruled in favour of Nicaragua against the United States some twenty years later that the judgement in the 1966 *South West Africa Cases* was at last forgotten.

III) Proceedings

The proceedings before the Court, which are governed by the Statute and Rules adopted by the Court, broadly resemble the proceedings before municipal courts. There are written and oral proceedings, but judges intervene less than do common law judges in the oral hearings. Although evidence is usually documentary, it is possible for parties to call witnesses. Indeed in the South West Africa Cases, South Africa called fourteen expert witnesses to testify on the 'positive' features of apartheid. English and French were the Court's two official languages.

All questions are decided by a majority of judges present. The Court delivers a composite majority judgement containing the names of those judges who endorse it. Individual judges are permitted to submit either concurring or separate opinions.

IV) Non-Appearence

In a number of controversial cases, the defendant state has refused to appear in Court. France refused to appear in court when its nuclear tests programme in the South Pacific was challenged by Australia and New Zealand in 1974; Iran adopted a similar approach in respect of the United States' claim for the release of hostages in Iran in 1980; and the United States itself withdrew from proceedings in the *Nicaragua case*, after the Court had ruled that had jurisdiction. In such a case, the Court may decide in favour of the plaintiff state, after it has satisfied itself that it has jurisdiction and that the claim is well-founded in fact and law.

V) Judgement and its enforcement

Pending its final judgement, the Court may indicate, if it considers the circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party. In deciding whether to grant provisional measures, the Court does not have to be satisfied that it has jurisdiction to hear the case: it is sufficient if there is a *prima facie* basis for the exercise of jurisdiction. Before 2001, there was no certainty as to whether an order to provisional measures was legally binding. Certainly, states behaved as if such orders were not legally binding, as there were many instances in which states refused to carry out provisional measures.

In 2001, in the *La Grand Case*, the Court finally held that provisional measures are legally binding. Although this decision is to be welcomed, it provides a new incentive to states to commence proceedings on a shaky jurisdictional foundation in the hope of getting at least the short-term benefit of an order for measures, and this is all the more attractive if the order is immediately binding. This requires the Court to adopt strict approach to 'shaky jurisdictional arguments' in requests for provisional measures. Where there is no reasonable possibility that the applicant state will establish jurisdiction in the future, the Court should strike the case from its roll in order to discourage futile requests for provisional measures. The final judgement of the Court,

which may take the form of a declaratory judgement, reparation, assurances, of non-repetition or other forms of satisfaction, is binding.

Although no appeal is allowed, provision is made for the revision of judgement if decisive new facts later become available. Article 94 of the Charter empowers the Security Council to enforce the judgement in the event of non-compliance, presumably by economic sanctions in the final report. This power is subject to the veto of the permanent members, which explains why in the few instances of non-compliance no decision on enforcement has been sought from the Security Council.

There has been a high level of compliance with the decision of the ICJ, although there are notable exceptions- such as the *Corfu Channel Case*, in which judgement debt of 1949 was only paid in 1992; the *Hostages Case*, in which Iran refused immediately to release American diplomats held hostage; the Nicaragua case, in which the United States was found to have unlawfully used force against Nicaragua; and the *La Grand Case*, in which the United States failed to provide foreign prisoners in US goals with consular assistance. In recent years, the ICJ has been busier than ever and has heard more cases of high political importance than it did previously. In these circumstances one might have expected non-compliance to increase. But the contrary is true. Even judgements in controversial land claims cases- such as those between Libya and Chad and Cameroon and Nigeria- have largely been followed. The explanation for the high level of compliance can be explained by the consensual nature of the Court's jurisdiction. States generally only consent to the Court's jurisdiction in cases in which they are prepared to accept the Court's decision. A good example of this is the recent boundary dispute between Namibia and Botswana over Kasikili/Sedudu Island. The dispute was referred to the Court by special agreement and, although Namibia did not hide its disappointment over the adverse decision, it did not hesitate to comply with the Court's decision.

The isolated cases of non-compliance have not affected the popularity of the ICJ as an institution for the settlement of disputes. Whereas in the early years of the Court, it was predominantly used for the settlement of disputes between European states, it is today more frequently used by non-European states, particularly African states.

VI) The limits of international adjudication

International adjudication is of relatively recent origin. Many states still refuse to accept adjudication as a method for resolving disputes between states, while those that do, are mostly opposed to the extension of the Court's compulsory jurisdiction. In some quarters, the view prevails that legal disputes with serious political implications affecting the 'vital interests' of states are not appropriate for judicial resolution- that they are not justiciable. Thus, in 1984, in the *Nicaragua Case*, the United States argued that issues relating to the use of force should be dealt with by the political organs of the United Nations and not by the Court. This view is contradicted by the increased use of the ICJ to pronounce on highly political disputes- such as the NATO bombing of Yugoslavia, and the alleged military intervention of Uganda and Rwanda in the Democratic Republic of Congo.

No court, municipal or international, can avoid pronouncing on a legal dispute simply because it has political implications. The International Court, was correct, therefore, when it dismissed the United States' arguments of non-justiciability in the *Nicaragua Case*. On the other hand, courts are inevitably sensitive to the political realities surrounding a dispute and this may prompt them to avoid pronouncing on the merits of a politically contentious dispute by upholding the respondent state's preliminary objections. The International Court chose this escape route in 1966 in the *South West Africa Case*, in 1974 in the *Nuclear Tests Cases*, in which Australia and New Zealand sought to restrain France from conducting nuclear tests in the South Pacific and again in 1995 in the *East Timor Case*, in which Portugal challenged the lawfulness of Indonesia's occupation of East Timor. However, it refused to adopt this course in the *Nicaragua Case* in 1986 and found that the United States had violated international law by attacking Nicaraguan territory and by giving military support to rebels operating against the government of Nicaragua. Not surprisingly, the judgments in the *South West African Case*, the *Nuclear Test Cases*, and *East Timor* were criticised for showing too much caution, while the judgment in the *Nicaragua Case* was condemned for displaying too little caution. The International Court faces the same challenge as any other court. If it is to survive as judicial institution, it must temper courage with caution. On the other hand, if it is to maintain credibility, it must on occasion be bold, even at the expense of the major powers.

3.6.6.3.2 Advisory opinions

The Charter and the Statute authorise the Court to give advisory opinions at the request of the General Assembly, the Security Council, and other organs of the UN and specialised agencies that have been so authorised by the General Assembly. The Secretary-General has not been empowered to request an advisory opinion. Neither states nor individuals may request an opinion.

The Court will refuse to give an opinion if answering the question put to it would amount to deciding a dispute between states, as this would undermine the requirement of consent to adjudication. Thus in the *Status of Eastern Carelia Case*, the PCIJ refused to give an opinion in a dispute between Finland and Russia over the status of Eastern Carelia at the time when Russia was not a member of the League of Nations. The ICJ has distinguished this case in several opinions, including the 1971 *Namibia Opinion*, in which the Security Council asked the Court for an opinion on the legal consequences for states of the continued presence of South Africa in Namibia. In deciding to give an opinion, the Court held, firstly, that, unlike Russia, South Africa was a member of the body requesting the opinion (the United Nations) and had participated in the Court's proceedings; and secondly, that the purpose of the request was not to settle a dispute between states, but to assist the UN in respect of its own decisions on Namibia.

The Court will not give an opinion at the request of a specialised agency unless it relates to the activities of the agency. Thus, the Court refused to give an advisory opinion to the World Health Organisation on the legality of nuclear weapons. The Court did, however, give an opinion to the General Assembly on this subject, dismissing suggestions that it would go beyond its judicial role in giving its opinion on so controversial a topic.

Although an advisory opinion is given by the same Court that gives judgment in contentious proceedings, and it therefore commands the same judicial authority, it is not binding, and consequently is not enforceable under article 94 of the Charter. This does not mean that it is without legal consequences, for, in practice, advisory opinions

requested by the General Assembly and Security Council are approved by the political organ requesting the opinion, and thus, become the law that guides the UN. This is illustrated by the history of the South West Africa (Namibia) dispute before the UN.

In 1950, the International Court gave an advisory opinion on the International Status of South-West Africa at the request of the General Assembly, in which it rejected South Africa's claim that the Mandate for South West Africa had lapsed on the demise of the League of Nations, and held that the Mandate continued in force and that South Africa was obliged to account to the UN for its administration of the territory. This opinion was endorsed by two further opinions, dealing with the manner in which the United States might exercise its supervisory role. In 1955, the Court held that the General Assembly, in exercising its supervisory role over South West Africa, was not required to follow the unanimity voting rule of the League of Nations when it adopted resolutions, but might instead apply the two-thirds majority voting rule laid down in the Charter of the UN. In 1956, it held that in order to obtain information on South Africa's administration of South West Africa, the General Assembly's Committee on South West Africa might grant oral hearings to petitioners- a practice not followed by the supervisory body of the League of Nations.

These opinions were approved by the General Assembly, but rejected by South Africa- not because they were merely advisory, but on the ground that, in 1950, the Court had failed to consider certain information concerning debates in the League of Nations in 1946 over the future of the mandated territories. This deceptive argument, which was simply a pretext for refusing to comply with the advisory opinions, led to a confrontation with the UN which finally turned to contentious proceedings through two nominee states- Ethiopia and Liberia- in order to secure a binding judgment enforceable under article 94 of the Charter.

When the Court put an end to this strategy in 1966, by finding that the applicant states lacked the necessary interest in their claims, the UN returned to the advisory opinion route. In 1971, the Court gave an opinion at the request of the Security Council in which it held that the Mandate for South West Africa had been lawfully terminated by the UN, that South Africa's presence in Namibia (as South West Africa became known in 1968) was illegal, and South Africa was obliged to withdraw its administration from Namibia immediately. This opinion was repudiated by South

Africa, but approved by the Security Council. As such, it became the basic law of the UN on Namibia, culminating in Security Council Resolution 435 (1978) which provided for the establishment of the UN Transition Assistance Group (UNTAG) to implement the independence of Namibia through free and fair elections under the supervision and control of the UN. In 1990, full effect was given to the 1971 Namibia Opinion when South Africa withdrew its administration and Namibia became independent.

The 1971 *Namibia Opinion*, and the earlier opinions upon which it was based, were not enforced by the Security Council as binding judgments under article 94 of the Charter. Instead, they were enforced by the Security Council under its general powers in the Charter for the maintenance of international peace and the settlement of disputes. The effect, however, was the same- the implementation of a decision of the International Court by the Security Council. It is true that the enforcement of the 1971 *Opinion* took nearly 20 years, but it is unlikely that this process would have been quicker if the Court had rendered a binding judgment against South Africa in 1966. This is historical speculation, but it does serve to emphasize that there is little practical difference between the legal effect of an enforceable judgment and that of advisory opinion.

The importance of an advisory opinion is further illustrated by the 1996 advisory opinion of the Court on the *Legality of the Threat or Use of Nuclear Weapons*. Although the Court avoided pronouncing on the legality or illegality of the use of nuclear weapons by a state in an extreme circumstance of self-defence, in which its very survival would be at stake, its *Opinion* undoubtedly ‘delegitimizes’ recourse to nuclear weapons by holding that the threat or use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict, and, in particular, the principles and rules of humanitarian law.

In 2004, the ICJ gave an advisory opinion on Legal Consequences of the *Construction of a Wall in the Occupied Palestinian Territory*, in which it held that the wall or barrier being built by Israel, the occupying power, in the Occupied Palestinian Territory, is contrary to international law; that Israel is under obligation to cease

forthwith the construction of the wall and to dismantle sections of the wall that had already been built; that Israel is under obligation to make reparation for all damage caused by the construction of the wall; that all states are obliged to withhold recognition of the illegal situation resulting from the construction of the wall; and that the UN should consider what further action is required to bring to an end the illegal situation resulting from the construction of the wall.

In the *Opinion*, the ICJ also pronounced on a number of other legal issues. It found that the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 1949, is applicable to the occupation of Palestine; that, as a consequence, Israeli settlements in the Palestinian territory are unlawful; and that Israel is obliged to comply with international human rights conventions to which it is a party, in its treatment of the people of Palestine. Not unexpectedly, the *Opinion* has been subject to criticism. It has, however, been accepted by the General Assembly. The *Opinion on The Wall* should, like that of the ICJ on *Namibia*, guide the political organs of the UN in their handling of the Palestine issue, as it is an authoritative statement by the juridical organ of the UN on the law governing the dispute between Israel and Palestine.

Unit summary

Both in terms of membership and its role, the UN is the biggest and the most important international organisation. Learning from the drawback of the League of Nations and replacing the same, the UN was set up with the purpose of maintaining international peace and security; developing friendly relations among; achieving international co-operation in solving international problems of an economic, social, cultural, or humanitarian character; and promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and to be a centre for harmonizing the actions of nations in the attainment of these common ends.

In carrying out its rules, there are principles that it follows. The principles, *inter alia*, include: sovereign equality of states; non-intervention in the domestic affairs of states; assistance in preventive or enforcement action; non-use of force; fulfilment of obligations; and pacific settlement of disputes. As per article 4 of the United Nations

Charter, membership in the United Nations is open to all other peace-loving States which accept the obligations contained in the present Charter and, in the judgement of Organization, are able and willing to carry out these obligations. The admission of any such State to membership in the United Nations will be effected by a decision of the General assembly upon the recommendation of the Security Council. A 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 recommendation of the Security Council. The exercise of these rights and privileges may be restored by the Security Council. A Member of the United Nations which has persistently violated the principles contained in the present Charter may be expelled from the Organization by the General Assembly upon the recommendation of the Security Council.

The organisational structure of the UN is provided in Article 7 of the Charter. As per this article, the General Assembly; the Security Council; the Economic and Social Council; the Trusteeship Council; the International Court of Justice; and the Secretariat are the principal organs of the UN.

The General Assembly is an organ that is composed of member states of the UN. The Security Council is the executive body of the United Nations and is given primary responsibility for the maintenance of international peace. It is composed of 15 members: five permanent members and ten non-permanent members, elected by the General Assembly for a term of two years. The five permanent members are China, France, Russia, the United Kingdom, and the United States. The Economic and Social Council consists of fifty-four members elected by the Assembly for 3 year terms. Much of the work of the United Nations in the economic and social sphere of activity is performed by the Economic and Social Council. The Secretariat of the UN consists of the Secretary-General and his staff, and constitutes virtually an international civil service. The ICJ is the judicial organ of the UN.

Review questions

1. What were the shortcomings of the League of Nations? What were the provisions incorporated or excluded to get rid of the problems?

2. Use of force is, in principle, prohibited in the UN Charter. There are cases, however, where use of force may be legitimised. Explain those situations under which the use of force under international law is allowed?
3. As reported by different media and human rights activists, the current Sudanese government is alleged to have systematically and grossly violated the human rights and freedoms of the Darfur people. Does this scenario invite the Security Council to take forcible action under the chapter of the UN Charter? Why/why not?
4. Of the purposes for which the UN is established, maintenance of international peace and security and promotion, protection, respect and fulfilment of human rights and freedoms are the important ones. Do you think that the UN is successful in achieving these purposes? Why/why not?
5. List down and explain the grounds on which the ICJ may assume contentious jurisdiction?

CHAPTER FOUR

SPECIALIZED AGENCIES OF THE UNITED NATIONS

In the preceding chapter, we have discussed the principal organs of the UN. This chapter is devoted to discussing some of the major specialized agencies of the UN. The specialized agencies are based on inter-governmental agreements and perform vast international functions in the economic, social, cultural, educational and health fields. Article 57 of the United Nations Charter provides that the various specialized agencies established by inter- governmental agreement and having wide international responsibility, as defined in their basic instruments, in economic, social, cultural, educational, health and related fields, shall be brought into relationship with the united nations in accordance with article 63. Such agencies thus brought into relationship with the united nations are called specialized agencies of the united nations. Article 63 provides that economic and social council may enter in to agreements with any of the agencies referred to in article 57, defining the terms on which the agency concerned shall be brought into relationship with the United Nations; such agreements shall be subject to the approval by the general assembly. The economic and social council may co-ordinate the activities of the specialized agencies through consultation with and recommendation to such agencies and through recommendations to the general assembly and to the members of the United Nations. Article 59 further provides that the organization shall, where appropriate, initiate negotiations among the states concerned for the creation of any new specialized agencies required for the accomplishment of the purposes set forth in article 55.

The United Nations thought it proper not to take full responsibility in the various fields and to allow the specialized agencies to perform functions in the Economic social, cultural, Health and related fields. Following were the three reasons for this decision: (i) the framers of the charter of the United Nations were of the view that it was neither possible nor proper for the United Nations to take full responsibility in these fields. If the United Nations had taken the full responsibility in these fields, the organization would have become a very complex, complicated and unwieldy; (II) since most of the functions in the Economic and Social fields are technical, it was thought to be a wise decision that small (smaller than the U.N.) specialized agencies

comprising of the skilled and trained technical experts, should be allowed to perform these functions; (iii) much of the work of the specialized agencies is administrative which some such agencies had very successfully performed in the past for several years. The examples of international Labor Organization and universal postal Union deserve a special mention in this connection.

It was also thought proper that these inter-governmental agencies should remain independent of the United Nations, but may be brought into relationship with the United Nations through special agreements. The experience has shown that the above decision was correct, for the specialized agencies are now successfully performing manifold functions in the various social, cultural, educational, health and related fields.

After in depth analysis of this chapter the students will able to:-

- Describe the general nature of specialized agencies
- Make a Comparative survey of institutional provisions on the subject of Membership and Organs;
- Analyze the “legislative” processes of the specialized agencies;
- Explain how specialized agencies Interpret their constitutional texts;
- Discuss the Sanction and enforcement procedures of specialized agencies;
- Show how specialized agencies develop international laws; and
- Describe Some UN-Specialized Agencies; particularly , the World Bank Group, World Health Organization and the Food and Agriculture Organization

4.1 The General Nature of the specialized agencies

All the specialized agencies have the following common features:

- I. Their legal existence is the result of inter-governmental agreements and most of the states are the members of these specialized agencies.

- II. All the specialized agencies have been brought in to relationship with the United Nations through special agreements.

- III. Each specialized agency has a constitution or charter of its own which describes the duties, functions, constitution, etc., of the organization.
- IV. Each specialized agency has almost the same general constitution. For example, each specialized agency has an assembly or conference which has the representation of all the members; each has an Executive Council or committee which performs executive or supervisory functions, and each has a Director or Secretary General whose functions are same to that of the secretary General of the United Nations.
- V. Each specialized agency has a secretariat of its own.

While there are the above mentioned common features in all the specialized agencies, there are also some dissimilarities on the basis of their nature and the functions which they perform.

4.2 Comparative Survey of institutional provisions

4.2.1 Membership

A broad distinction is discernible between “admitted” and “original” members. The admitted members may well be of different categories. “Admitted” members may become members by virtue of an admission process within the Organization itself. This varies from a vote of approval by two –thirds of the existing members, or four-fifths or even a simple majority and in some cases there is a further prerequisite to admission by the plenary organ in the necessity for a recommendation by an executive organ. In the case of the ILO, the “governmental” interest in admissions is safeguarded by the requirement that the two-thirds vote of the General Conference must include two- thirds of the governmental delegates present and voting.

Other “admitted” members become members, not by virtue of admission processes, but as of right. In these cases States which are members of the United Nations are admitted as of right, simply by communicating a formal acceptance of the convention to the secretary-General or Director-General of the organization concerned or to a government which exercises depositor functions

The “original” members will normally include either those States which were members of the organization to which the new organization is the successor or those states which were invited to participate in the conference which drafted the constitution of a new organization. Otherwise the signatory States are given a period of time within which they may ratify or otherwise accept the convention and thus qualify as original members.

There is also a device for “associate” rather than full membership, enabling participation by entities less than fully sovereign states. In the WHO “territories or groups of territories which are not responsible for the conduct of their international relations” may be admitted upon application by the state or other authority having responsibility for those for reactions. WHO has regulated the rights and obligations of associate members by a resolution of the first Health assembly which deprives them of a vote in the assembly or main committees and of membership of the Executive Board? These are all useful devices, possible in a “non-political” organization, for associating with the work of the organization entities other than sovereign States. Similar provisions exist in IMCO and ITU, both of which specifically anticipate a trusteeship territory administered by the UN As a possible candidate for associate membership. Not unnaturally, such associate membership does not confer quite the same rights as full membership, and in the constitutions of IMCO and ITU such members don’t have the right to vote in the assembly, or, in the case of ITU, in any organ of the Union; nor are they eligible for election to certain bodies (conical or maritime Safety committee in IMCO; any organ elected by a plenipotentiary or administrative conference in ITU. Whether “associate membership” will ever be accepted within the UN, as a means of dealing with the “mini-States,” is doubtful, although there would be advantage in a form of association entitling them to participation in economic and social activities but excluding them from the political activities. Associate membership is, of course, a quite different solution from the kind of tripartite representation in the ILO, of which the members are states, but from which delegations are not exclusively governmental so as to give representation to non- state interests.

In general, not all the specialized agencies limit membership to state. WMO embraces” any territory or group of territories maintaining its own meteorological Service”.

Membership can generally be suspended or terminated. Suspension is action by the organization in the nature of a sanction, and so is compulsory termination. Voluntary termination of membership is frequently expressly provided for, unlike in the UN charter or in the constitution of WHO. by giving a right of withdrawal upon notice which may vary from one to two years, and often only after the organization has been established for a certain number of years, for example four, years in the case of FAO .Whereas IMCO, ICAO, ITU, WMO and UPU contain no further condition to the right to withdrawal, organizations like the ILO enable a withdrawal to take effect only upon fulfillment of all financial obligations arising from membership and without prejudice to the validity of any conventions ratified. The withdrawal provisions of the “financial” organization are understandably, more complex. whilst withdrawal can be effective immediately upon notification, Withdrawal from any of the Bank, the fund or the IFC brings about an automatic withdrawal from the other two, and there are detailed provisions on the settlement of accounts, providing for purchase of the retiring member’s shares.

4.2.2 Organs

(a) Plenary organs

All the agencies have one or more organs on which all members are represented, although ”associate” members may not have a vote. The frequency of their meetings varies very much with the kind of functions which the organization possesses, and so does the division of powers between the plenary organ and other organs of limited composition.

The plenary organs of FAO, UNESCO and WHO are equally the dominant organs of their respective organization. The dominance of the plenary organ is variously expressed. In WHO the function of the Assembly is “to instruct the Board in regard to matters upon which action, study, investigation or report may be considered desirable”; it is the Assembly which is entrusted with the “legislative” process. In

ICAO the Assembly may “delegate to the Council the powers and authority necessary or desirable for the discharge of the duties of the organization and revoke or modify the delegations of authority at any time” (Art.49(h); the Council is to “carry out the directions of the assembly” and has to report infractions of the convention to the Assembly. This repository of power with the plenary organ, and the comparative subjection of the organ of limited composition, is an important feature of these agencies and is well worth the attention of those who, familiar with UN, tend to think of the organ of limited composition as the executive, effective organ where real power alone lies.

In UNESCO it is for the General Conference to “determine the policies and the main lines of work of the Organization” and the executive Board is to act “under the authority of the General conference...” being responsible for the “execution of the programme adopted by the Conference . . .” In FAO it is conference which “shall determine the policy and approve the budget of the organization” and which may make recommendations to members; the council shall only have “such powers as the conference may delegate to it,” and there is a list of powers which cannot be so delegated.

The plenary organ meet usually annually, although in FAO and UNESCO it is biennially, but all have a procedure for extraordinary session on the call of the executive Board (UNESCO), or on the request of the Board or a majority of the members (WHO).Representation is more orthodox in that only States, or associate members other than States, are represented. Each state has one vote and the basic voting rule is generally a simple majority except where a two-thirds majority is required for matters such as recommendations to members, submission of conventions, admissions, approval of the budget, etc. Article 60 of the WHO constitution lists a number of “important questions,” requiring a two thirds majority, requires two thirds for the determination of additional categories of “important questions, and otherwise requiring a simple majority. In the other organizations the requirement of two thirds is stated in specific articles throughout the constitution, rather than having the voting procedure grouped into one article.

The assembly of IMCO must be treated separately, for it contains features which make it sui-generis. It meets every two years, although extraordinary sessions can be summoned by the council or one-third of the members. Its functions consist of the election of its own officers, formulation of its rules of procedure. The voting of the budget, and consideration of the reports of the council are in fact the normal functions of a plenary organ. But it is apparent that it does not enjoy vis-à-vis the Council, the same dominant role which the plenary organs of the organization reviewed above enjoy. Whilst it may establish permanent subsidiary bodies, it may only establish permanent subsidiary bodies “upon recommendation of the council” (Art.16 c).Its powers of election of members to the Council and the Maritime Safety committee are carefully circumscribed by the provisions of articles 17 and 28 dealing with the composition of those organs. Whilst the Assembly is to perform the functions of the organization “it is expressly provided that:

“ . . . in matters relating to article 3 (a) and (b), the assembly shall refer such matters to the council for formulation by it of any recommendations or instruments thereon, provided further that any recommendations or instruments submitted to the Assembly by the council and not accepted by the Assembly shall be referred back to the Council for further consideration with such observations as the Assembly may make” (Art.16 (h)).

Hence in matters connected with the Essential purposes of the organization, purposes of the Organization, as set out in Article 1, or in the drafting of conventions, agreements or other instruments to be recommended to governments and inter-governmental organizations, or in the convening of conferences, it is for the Council to take the effective action .Formally, it will be the Assembly which recommends to governments, but in practice these recommendations will be those of the council, for the Assembly has no power to alter the Council’s recommendations, only to refer them back to the Council with its comments. Similarly, whilst the Assembly is “to recommend to members for adoption regulations concerning maritime safety, or amendments to such regulations,” these regulations are not the Assembly’s own work, but rather the regulations which have been referred to it by the maritime safety committee through the Council (Art.16(i)).

The evidence so far suggests that this relationship does work out in practice. Certainly reading of the constitution conveys the impression that the major maritime powers which are certain of representation on the Council and the Maritime Safety Committee have so drafted the constitution as to ensure that effective power remains in their hands in the organs of limited composition and does not stray into the unpredictable forum of the Assembly, in which each member has one vote.

In fact, one is reminded very much of the General Assembly –Security Council division of power; yet, as has been seen, the years can bring a shift of power which the reading of the constitution can never anticipate. Whether this could happen in this organization, with a plenary assembly meeting only every two years, and with no power to establish permanent subsidiary organs *proprio motu*, is open to doubt.

The IMF, Bank, IDA and IFC form a group with distinct, and similar, characteristics. Their plenary organ is the Board of Governors, consisting of one governor and one alternate, meeting annually or at such times as the Board or the Executive Directors determine; extraordinary meetings can be called by five members or by members having one-quarter of the total voting power. Each governor serves for five years and can be reappointed. The operational link between the Bank and the IFC is so close that Article IV (2) of the latter's constitution provides that the governors or alternates of the Bank shall be *ex officio* governors or alternative of corporation; moreover, the annual meeting of the IFC Board is held "in conjunction with the annual meeting of the Board of Governors of the Bank" (Art.2(e)). Again, it is these plenary organs which really control the policy of these organizations. In the IFC "all the power of the corporation shall be vested in the Board of Governors" (Art.) IV (2)); in the fund "all powers of the fund shall be vested in the Board of Governors" (Art. 12 (2)); and in the Bank similarly (Ar.5 (2)). The unusual feature of the organs is their system of weighted voting. As mentioned above, the variation in the degree of participation and real interest is easily measured here in terms of the actual subscriptions. Hence in the fund each governor casts the number of votes allotted to the member appointing him, and in the Bank and the IFC each member has 250 votes plus an additional vote for each share held; except where the constitutions provide otherwise e.g. when the authorized capital of the IFC is increased), the voting rule is simple majority.

The General Conference of the ILO is the principal organ in that the work of formulating recommendations and conventions takes place there. The governing body, the organ of limited composition, has a much more subsidiary role. It comprises all the member States. Yet each member sends four representative,” of whom two shall be Government delegates and the two others shall be delegates representing respectively the employers and the work-people of each of the members.” (Art.3) All are designated by the government, but the two non-governmental delegates must be ”chosen in agreement with the industrial organizations, if such organizations exist, which are most representatives of employers or work people, as the case may be in their respective countries. Herein lies the famous “Tripartite” character of the ILO, which is duplicated in the governing body also; the predominance of the “state-interests” is numerically assumed, but the introduction of these new interests represented revolutionary step. The expenses of the non-governmental delegates are borne by the budget of the ILO. Each delegate is entitled to vote individually on all matters, so that alignments develop which cut right across national alignments. The autonomy of the three distinct groups presupposes a relationship within the national state in which state, employers and employees are independent of each other.

The basic voting rule in the ILO General Conference is simple majority, although, again, in matters which involve responsibility which is essentially governmental, the voting procedure is altered so as to enhance the control of the numerical superior governmental delegates. Budgetary and financial matters require a two-thirds majority, so does the adoption of a Convention or Recommendation, the scrutiny of credentials, amendments of the constitution, change of seat, and of course, admission of new members. This last requires a two thirds majority of governmental delegates within the overall two-thirds majority.

ITU, UPU and WMO may be dealt with together since they have certain common features which stem from the fact thus they are very much technical organizations anticipating the minimum of political problems and concerned with the supervision of and occasional improvement of a working regime established by the constitution and annexes. For this reason the plenipotentiary conference of ITU and the Congress of

UPU meet not at regular intervals but at dates determined by each conference or congress, and the congress of WMO at “intervals not exceeding four years.”

The congress of UPU meets every five years in order to revise or complete the Acts of the previous Congress. The functions of the ITU plenipotentiary Conference include the revision of the convention, determining general policies, establishing the budget, considering the report of the Administrative Council on the activities of the Union, and entering into agreements with other international bodies. Both organizations also provide, in their constitutions, for “Administrative conferences” which, in the case of ITU, meet concurrently with the plenipotentiary Conference and, in the case of UPU, as and when requested by two –thirds of the members. The task of these administrative conferences, all plenary conferences, is to deal with “questions of an administrative nature”(UPU) and revision of the regulations or other matters referred to it by the plenipotentiary conference (ITU). To these two levels of plenary conferences, the one general, the other specialized, is added in the case of ITU, because of the variety of forms of telecommunications, yet a third in the form of the “Consultative Committees.” These, named as permanent organs of the Union, are the International Telegraph and telephone Consultative committee (C.C.I.T.T), and the international Radio consultative Committee (C.C.I.R).These committees carry the specialization of the work of the union one stage further. The members of the various committees include not only the administration of members and associate members, but also “any recognized private operating agency which, with the approval of the member or associate Member which has recognized it, express a desire to participate in the work of these committees. Each consultative committee also has its own organizational complex in the form of a plenary assembly, meeting every three years, study groups, a Director and a specialized secretariat distinct from the General Secretariat of the Union.

The UPU in 1957 created a new Consultative committee of postal States (CCPS), with a Management Council of 26 states elected by the congress: the CCPS has plenary membership and, as a committee of congress, meets in between sessions of congress so as to offset the disadvantage of the long intervals between congresses. Both the ITU and UPP, under their new constitutions, have established rules of procedure (or Regulations) which apply to each successive plenary conference.

In WMO the plenary organs are but one, the congress. Its members are to be representatives of members amongst which one “should be the director of its meteorological service, as its principal delegate”.

There is also power to establish technical commissions of experts so that, given the relative homogeneity of meteorological problems, as compared with the rather diffuse character of the telecommunication services, this is considered adequate without resorting to the different levels of specialized plenary conferences and committees found in ITU. The function of Congress are, in addition to the normal plenary functions of elections, considering reports from the organs, etc., to adopt technical regulations covering metrological practices and procedure, to determine general regulations prescribing the constitution and functions of the various other bodies of the organization, subject only to the convention, and to determine general policies; this is clearly “the supreme body of the Organization”(Art.6 (a) .Each member has one vote and the predominance of state interests is secured by allowing a vote only to State members(not therefore to ”territories or groups of territories”) on matters like amendment of the convention, membership, and relations with other inter-governmental organizations (Art.10 (a)).Voting is normally by a two-thirds majority, except for election of individuals to serve in one capacity or another (i.e expert commissions) which is by simple majority.

(b) Organs of limited composition

Recent years have seen an expansion in size of these organs, largely in recognition of the increase in total membership. The IMCO structure is very much a pattern followed in ICAO; obviously co- operation in civil aviation and in shipping will pose some what similar problems and call for some what similar constitutional techniques. IMCO has a council of 24 members elected by the Assembly and composed as follows;

Article18 ”(a) six shall be Governments of states with the largest interest in providing shipping services;

(b) Six shall be Governments of other states with the largest interest in international seaborne trade;

(c) Twelve shall be governments of states not elected under (a) or (b) above, which shall have special interests in maritime transport or navigation and whose election to the council will ensure the representation of all major geographic areas of the world.

This formula differs from the previous formula under the original 1948 constitution. Another significant difference is that, whereas under the original formula it was for the council to determine which States fell into certain categories (thereby limiting the area of discretion left to the Assembly) the present formula merely prescribes the principles to be applied by the Assembly but otherwise leaves it to the Assembly to conduct the elective process. This is symptomatic of the move away from the dominance of the council over the Assembly which was a characteristic of the original constitution. It is also symptomatic of the tendency to place more emphasis on equitable geographical distribution of seats and less on “technical” criteria: this, as we shall see, is even more obvious in relation to the changes in the Maritime Safety Committee.

The council meets at a month’s notice “as often as may be necessary” upon the summons of the chairman or upon the request of four or more members. Its functions are to receive the reports of the Maritime Safety committee for transmission to the Assembly with its own recommendations, appointment of the Secretary-General, submission to the assembly of a report on the organization’s activities and of the budget estimates, conclusion of agreements with other organizations subject to the approval of the assembly, and, between sessions of the Assembly, to “perform all the functions of the organization . . .” (Ars.22-27). The voting procedure is the same as for the Assembly.

The other limited membership organ in IMCO is the maritime Safety Committee. This, now consisting of 16 members is elected by the Assembly but by a formula which similarly weights the composition to ensure membership for certain states. Of

the 16 all must be “Governments of those states having an important interest in maritime safety, of which;

- (a) Eight members shall be elected from among the ten largest ship owning states.

- (b) Four members shall be elected in such manner as to ensure that, under this subparagraph, a state in each of the following areas is represented;
 - I. Africa.
 - II. The Americas.
 - III. Asia and Oceania
 - IV. Europe.

- (C) The remaining four members shall be elected from among States not otherwise represented on the committee.

It might be thought that such a clause provided sufficiently Specific criteria. However, in organizations like ICAO and IMCO, whilst the composition of these limited organs is taken out of the realm of pure discretion, there remains the possibility of dispute on the interpretation of these criteria. In IMCO the potentialities for dispute were fully realized when at the very first Assembly the eight” largest ship-owning nations” elected to the Maritime Safety Committee did not include either Liberia or Panama, despite the fact that in a working paper before it, the list of member States in descending order of total gross registered tonnage contained Liberia as third State and Panama as eighth. The debate revealed a wide divergence of views on the interpretation of the relevant phrase, and, at least in part, the opposition to the candidature of these two states was part of a wider opposition to “flags of convenience,” i.e. the practice of certain States in registering vessels which, apart from the fact of registration, had little connection with the States concerned or their nationals. The question was then referred to the I.C.J. for an Advisory Opinion, in this form: “Is the Maritime Safety Committee of the inter-Governmental Maritime Consultative committee, which was elected on January 15, 1959, constituted in accordance with the convention for the establishment of the Organization?”

In its Opinion of June 8, 1960 the Court rejected the view that the use of the word "elected" gave a discretion to the Assembly, and took the view that these eight were necessarily entitled to be elected. The proper test to be applied in determining those eight was the strength of their registered tonnage, and not only of such tonnage as belonged to nationals of the state; such a test was easily applied, and the facts on which it rested easily ascertained, and it was moreover, consonant with international practice, Maritime usage and other international maritime conventions. The failure to elect Liberia and Panama was consequently a breach of the convention.

The actual functions of the Maritime Safety committee are to consider matters concerned with aids to navigation, construction and equipment of vessels, manning from a Safety standpoint, rules for the prevention of collisions, etc. , and generally matters directly affecting maritime safety. Its proposal is submitted to the assembly through to council. It meets annually and votes according to the same procedure as the assembly and council, and its members are elected for a four –year term and are eligible for re-election.

The Council of ICAO is a "permanent body responsible to the Assembly" (Art.50); it therefore has no constitutional provisions about the frequency of its meetings and is left, in practices, to do just what the Governing Body of ILO is constitutionally enjoined to do, namely, "fix its own times of meeting." It consists of 33 states elected by the Assembly in elections every three years; there is no system of "Staggered" elections. The assembly's discretion in making these elections is limited by a constitutional formula designed to afford representation to the States most vitally affected, no precise criteria are provided to determine "Chief importance" and "largest contribution," so, to that extent, the formula is an elastic one. Article 50(b) provides:

"in electing the members of the council, the Assembly shall give adequate representation to (1) the states of chief importance in air transport; (2) the states not otherwise included which make the largest contribution to the provision of facilities for international civil air navigation; and (3) the states not otherwise included whose designations will insure that all the major geographical areas of the world are represented on the Council."

The council is clearly subordinate to the Assembly. It “carries out the directions of the Assembly,” reports to the Assembly, administers finances, appoints the Secretary – General, collects and publishes information, makes studies and may conduct research. Its more unusual functions are the mandatory functions of appointing and controlling the Air transport Committee and the Air Navigation Commission, of reporting to States any infractions of the Convention and to the Assembly when a state has failed to remedy such an infraction, and of adopting international standards and practices. Clearly it is from the latter more technical body that the council will look for advice in pursuing this last function. The council votes by a majority of its members, but no member may vote in the consideration of a dispute to which it is a party and participation without vote is envisaged for specially affected States not members of the Council.

In the ILO the governing body is, because of its tripartite character, unique amongst the organs of limited composition in the specialized agencies. Of the 56 representatives, 28 are representatives of governments, 4 of employers and 14 of workers. Of the 28 government representatives, 10 are to be appointed by the members” of chief industrial importance” (Art.7 (2)) and the other 18 are elected by the conference. The task of determining which members are”of chief industrial importance” is now entrusted to the governing body, which is enjoined to make rules and to ensure that the question is considered by an impartial committee before being decided by the governing body. There is, further, a right of appeal by a member against the decision of the governing body to the conference. The device is an interesting comparison with that used in the Security Council for determining which States, because of their predominate interest in the matters with which the organization is concerned, shall have security of tenure on the executive organ. The charter’s solution was to actually name the” Big Five,” thus rendering the choice a final one, bearing in mind the fact that the veto applies to amendments of the Charter. Here, in the ILO, the solution allows for a change of importance in the members; admittedly it may be far easier to adopt statistical criteria of industrial importance than of political power. The governing bodies as a whole enjoy a period of office of three years; there are no “staggered” elections.

The functions of the governing body are general supervision of the international Labour office (the secretariat), formulation of policies and programmes, the settling of the agenda for meetings of the conference, drafting proposals for the budget, appointment of the Director-General and an important role in situations where a complaint of non-observance of a convention by a member is made. The “legislative” work of the ILO is a matter for the conference, not the governing body, except when the constitution requires, a two-thirds majority. Voting is by simple majority of the representatives of governing body. Apart from their numerical superiority, there is no voting privilege for the governmental representatives or for those from the States” of chief industrial importance.”

FAO, UNESCO and WHO may be taken as a group for their limited membership organs contain no such specific criteria for membership either in whole or in part.

UNESCO has an Executive Board of 45 (formerly 24) members elected by the General Conference which meets twice a year or in special session, if convoked by the Chairman or the members. The members are State representatives, but there is a clear attempt to secure a Board of technical competence and to ensure that, in their capacity as members of the Board, they act as representatives of the conference rather than of their states. This is seen in the provision that, in electing them, the conference” shall Endeavour to include persons competent in the arts, the humanities, the sciences, education and the diffusion of ideas, and qualified by their experience and capacity to fulfill the administrative and executive duties of the board”(Art.5(2)).It is also provided that regard shall be had “to the diversity of cultures and a balanced geographical distribution,” and, though eligible to serve two consecutive three-year terms, no member is eligible for a third. Moreover, elections are” staggered,” 10 members being elected each year. There is the further provision only capable of insertion in a “non-political” organization of global character, that the members “Shall exercise the powers delegated to them by the General conference on behalf of the Conference as a whole and not as representatives of their respective Governments”(At.5(11)).This is something of a compromise between the traditional State representative and the independent expert. The essential function of the Board is to undertake the execution of the programme adopted by the conference to which the

Board is responsible. Again, the voting procedures are not provided for in the constitution, but in the rules of procedure, and simple majority is the basic rule.

FAO has a Council of 49 members elected by the conference which also formulates the rules governing their tenure and other conditions of office. This is not the policy-making organ, but rather the conference is, and the power of the council are such as the Conference may delegate to it. The voting procedure is not contained in the constitution but is left to the rules of procedure and is basically a simple majority rule. The technical side of the work is dealt with by a number of technical committees (Program, Finance, Commodity problems, Constitutional and Legal Matters) and by the regional offices specifically provided for in the constitution (Art.10) and regional conferences.

The executive Board of WHO is very similar; its 30 (formerly 18) member states, elected by the Assembly, and taking into account equitable geographical distribution, are directed to designate "technically qualified" persons. They exercise their powers "on behalf of the world Health Assembly," so the intention of avoiding a pure representation of state interests is the same as in UNESCO. Elections are for three years and are staggered, ten being elected each year. Voting is governed by the same procedure as in the Assembly (Art.60(c)). Its task, as executive organ, is essentially to carry out the decisions and policies of the Assembly although it has a certain independent power of action to deal with epidemics and sudden calamities. As in FAO, there is considerable stress on regional co-operation, so that a quite separate strata of organs is to be discerned, necessarily of limited composition. There are in fact six regions, geographically defined by the Assembly under its powers in Chapter XI, each consisting of a separate regional, "organization" with a regional committee and a regional office (Secretariat); naturally membership of regional committees is confined to members and associate members of that region.

WMO also has an executive committee, meeting yearly and taking decisions by two-thirds majority of the votes cast, rather than a simple majority; each member has one vote. The actual number of members is not specified as such but a "balance" formula, rather like that used in the Trusteeship Council, is used in that membership consists of the President and Vice-presidents, the Presidents of regional Associations, Directors

of meteorological services of members” equal in number to the number of regions, provided that not more than one-third of the members of the executive Committee . . . shall come from one region”(Art.13(C)).Such Directors as are necessary to complete the balance with the regions are elected by congress. The functions are the customary ones of supervising the execution of the resolutions of the congress, providing technical information, making studies, preparing the agenda of congress, administering finances, etc. but there is a somewhat unusual one in its power to ‘adopt resolutions arising out of recommendations of the technical commissions on matters of urgency affecting the technical regulations.. . (Art.14 (b)). This “legislative” role is necessary in cases of urgency precisely because Congress meets once in four years. It will be noted that the representatives are presumably technically competent, and are elected in their personal capacities and not as representatives of governments.

WMO also has a strong emphasis on regionalism, and Regional meteorological Associations, which therefore qualify as organs of limited membership, are provided for in Article 18.These meet “as often as necessary,” and so far six regional associations have been formed.

The ITU has an Administrative Council, introduced in 1947 specifically to provide for continuity of administration in the long interval of five years between plenipotentiary conferences. It meets yearly, or upon the request of six members, and has a total membership of 36(formerly 25) members of the Union, elected by the Plenipotentiary conference. Though representatives of members, the individuals must be “qualified in the field of telecommunication services,“ and the Council ensures the efficient coordination of the work of the Union, approves the annual budget, arranges for the convening of the plenipotentiary and administrative conferences and generally acts in the interval between conferences ”on behalf of the plenipotentiary conference within the limits of the powers delegated to it by the latter”(Art.9(9).The character of the organ is thus similar to the executive Boards of UNESCO and WHO.

The second organ of limited membership in ITU is, however, much more striking in the degree to which its composition is “expert” rather than “governmental“. This is the international Frequency Registration Board, and organ of five members elected from candidates sponsored by countries. As a new organ in 1947, its task is to “effect

an orderly recording of frequency assignments made by the different countries . . . with a view to ensuring formal international recognition thereof,“ and to advise members with a view to “the operation of the maximum practicable number of radio channels in those portions of the spectrum where harmful interference may occur.” For this technical task it is composed of “independent members,” elected by each world administrative radio conference, who are not to receive instructions from any government or person, and members must”respect the international character of the board”. Members of the Board cannot participate in any manner in any branch of telecommunications apart from the work of the Board. They thus come very near to assimilation to international civil servants.

The three “financial” organizations namely the Fund, the Bank and IFC. The Executive Directors of the Fund establish the pattern, and it is a pattern quite different from those considered above, for, as the name implies, this is truly an “executive” organ. The Directors are “responsible for the conduct of the general operations of the Fund and for this purpose shall exercise all the powers delegated to them by the Board of Governor”(Art.12 (3)). In short, the Directors execute the policies and decisions of the plenary Board of governors. They function in continuous sessions necessary in view of the functions of the fund, and the chairman is the managing director, the chief executive officer equivalent to the Secretary-General in the UN. The Directors are usually 20 in number, of whom:

- i. Five shall be appointed by the five members having the largest quotas;
- ii. Not more than two shall be appointed when the provisions of (C) below apply;
- iii. Five shall be elected by the members not entitled to appoint directors other than the American Republics; and
- iv. Two shall be elected by the American Republics not entitled to appoint directors (Art. 12 (3) (b)).

The distinction made between “appointed” and “elected’ directors is a proper one, and the elections of the latter are governed by a complicated system set out in Schedule D to the Agreement, and are held every two years. Each appointed director is entitled to cast the number of vote allotted to the member appointing him (250 +1 for each \$ 100,000 of its quota) and each elected director is entitled to cast the number of votes which is counted towards his election, and the general voting rule is a simple majority. This system of “weighted” voting, plus the fact that, in the event of a vacancy during a term the same members who elected the director elect his successor, suggests that the directors are representatives of the countries either appointing them or electing them, and not independent experts. The fact that they are paid a salary from the Fund and hold a contract of service, a quite unusual feature for an executive organ, does not really detract from this and its is of interest to note that there is no provision comparable to that applying to the Administrative council of ITU, or the Executive Board of UNESCO and of WHO, whereby functions are exercised on behalf of the entire body of members.

The Bank has virtually identical provisions for its Executive Directors; there are 20 of these, five being appointed by the nations with the largest capital subscription and the remainder elected by the Governors but without any specific seats for American republics. The Bank, however, has an additional “advisory Council” of not less than seven persons selected by the Board of Governors ”including representatives of banking, commercial, industrial, labor and agricultural interests, and with as wide a national representation as possible.” This body of independent experts, meeting annually, is purely advisory.

The Board of Directors of the IFC is, in its membership, linked with the bank in exactly the same way as the Board of Governors of the Fund, for the members are ex officio the executive Directors of the Bank provided they represent at least one country which is a member of IFC, and the Chairman is the chairman of the Executive Directors of the Bank (who is the President of the Bank, the administrative head). Its powers are comparable to those of the executive Directors of the Fund and Bank and its voting procedure “weighted” just as in the Bank. This identity of membership should not be assumed to mean that the organs are legally identical; Article IV (b) states that the Corporation “shall be an entity separate and distinct from the Bank. . .”

The Board of IFAD Consists of 18members elected by the Governing Council, the plenary body a voting arrangement unique in the United Nations, the members are placed in three Groups: Group I(OECD countries),Group II (OPEC countries) and Group III (developing countries). Each group has 600 votes, and within each group there is a formula to allocate these votes between the members of the group. In Group III, the votes are distributed equally amongst all the members. In groups I and II, a certain percentage of the 600 votes is allocated equally (17.5 percent. In Group I, 25per cent .In Group II), with the rest being allocated on the basis of the financial contribution. Hence, in I Group for example, in the result the U.S.A. has 179votes, west Germany and Japan 53 each, the Netherlands 45, the united Kingdom 34 and so on .In Group II, Iran was allocated 154 votes, Saudi Arabia 133 , Venezuela 89 and so.

UPU has a simpler form with just one organ of limited membership, namely the Executive Council. Its essential task is, like the ITU's Administrative Council's, to "ensure the continuity of the work"(Art.17(1)) in between the Congresses; such an organ is well-nigh essential when the plenary conferences meet but once in five years. The 39 member-countries of the executive Council are appointed by congress on the basis of equitable geographical distribution. The actual representatives of the members elected by the Congress "carry out their functions in the name and in the interests of the Union" (art.17 (2))

(C) The Secretariats

Provision for a secretariat or "Bureau" is found in the constitution of every specialized agency. Basically they do not differ in conception from that of the UN (although not all are graced with the tile "principal organ") and for this reason a detailed account of individual secretariats of the agencies will not be attempted. Reference to the privileges and immunities attaching to the members of the various secretariats will be made at a later stage, ³⁹ and so will reference to the ILO Administrative tribunal which acts as the body with Jurisdiction over disputes between staff and organization not only for the ILO but for various of the specialized agencies.

The idea has been mooted of having one single international civil service, of which the secretariat of each organization forms a part. This has not even begun to be implemented, and probably gives rise to more problems than it solves. In practice the executive heads of each organization meet in the ACC (Administrative Committee on Co-ordination) and a good deal has been done, via this body and otherwise, to standardize conditions of employment for the staff of the various organizations.

A point worth noting at this juncture is the variations in the functions of the administrative head of the various organizations. Called "Secretary-General," "director general," "Managing director"(Fund) and even "President" (Bank and IFC), he is not always appointed jointly by two organs as in the UN. In all three of the "financial" organizations he is selected by the executive Directors, and within these organizations he has a considerable executive role in conducting the ordinary operations of the organization; hence he is automatically the chairman of the executive Directors and as such he has a deciding vote in case of an equal division of the directors. There is, of course, no comparable role for the secretary General of the UN.

4.3 The legislative process of specialized agencies

The specialized agencies have powers more akin to the United Nations for, like the UN, they lack the "supranational" character of the European Communities. Nevertheless, they have developed techniques which allow their acts to become binding obligations for Members rather more effectively than is the case within the UN. All the specialized agencies are, clearly, organizations through which the members co-operate; there is no real supra-national element in them and no decisions become, ipso facto, and law for the members. What must be considered, therefore, is the process whereby the decisions or other acts of the organizations can become law, can create legal obligations, for the members.

UNESCO adopts conventions and recommendations, the former by a two-thirds majority and the latter by a simple majority, and the latter by a simple majority, and each member state is bound to submit these to its competent authorities within one

year (art.4). The member states are then bound to report periodically to the organization on their laws, regulation and statistics and on the action taken with regard to conventions and recommendations. (art. 8)

In ICAO, although it does not contemplate specifically the adoption of conventions or recommendations which impose obligations on members, the Council may adopt international standards and recommended practices to supplement the Convention itself in the form of Annexes. These Annexes become effective within three months unless a majority of the members register their disapproval with the council. The Annexes distinguish between "standards," which in general consist of specifications the uniform application of which is necessary for the safety or regularity of international air navigation, and "recommended practices" of which the uniform applicability is considered desirable. Members are bound to conform to the former and must notify the council if they find it impossible to comply with them. With the "recommended practices" the obligation is a lesser one, namely to "Endeavour" to conform to them. WMO has a weaker kind of obligation, for their members agree to "do their utmost to implement the decisions of the Congress, "which may under Article 7 adopt technical regulations or makes recommendations to members, and the members are bound to state the reasons why they find implementation impracticable

In the UPU the various agreements bind only members acceding to them, and the detailed regulations to implement both the convention and these supplementary agreements are drawn up "by common consent"(Article22). There is thus no question of legislating so as to bind the minority. The unusual feature is the procedure for dealing with proposals to amend any "Act of union" in the long intervals between congresses. This, set forth in chapter III, involves the circulation of such proposals by the international bureau (secretariat) and the recording of replies. Whether, on the basis of these replies, the amendment becomes effective, depends on whether a sufficient number of affirmative replies is received, and this number varies according to the nature of the proposal (Art.30): amendment of a constitution requires a two-third majority in order to preserve the uniform application of the Acts of the Union, reservations are only allowed at the time of signature and with the consent of congress.

FAO also contemplates the submission to members of recommendations and conventions adopted by the conference; although there is no constitutional obligation to submit these to the appropriate authorities, there is an obligation to report to the organization periodically on the action taken on the basis of these, and these reports are then analysed by the director general and submitted to the Conference. Members are also bound, on request, to communicate all laws and regulations and concerning nutrition, food and agriculture (Art.XI). Neither this convention nor the supplementary agreements approved by the council come into force for any member unless they are expressly accepted by the member in accordance with its own constitutional procedure (Art. XIV).

WHO has a similar procedure, except that the period for taking “action related with the acceptance of such convention or agreement” as the health assembly adopts is 18 months and, if not accepted, the member is bound to furnish a statement of reason for non-acceptance (Art.20). Moreover, each member is bound to report annually on action taken with regard to convention, recommendation and regulation (Art.62). These regulations, a lesser order of “legislation” are adopted by the assembly on matters like sanitary and quarantine procedures, nomenclatures for diseases and pharmaceuticals standards, and on adoption become binding on all members unless they “opt out” by communicating to the organization their rejection or reservation.

The IMF has, in recent years, demonstrated what can be achieved via an organ’s regulatory powers. Exchange rate stability was fundamental to the articles of agreement and the fund’s code of conduct. By 1974, however, the system of exchange rate stability had been virtually destroyed and the fund was forced to adapt to the new system of floating currencies. The fund does not adopt conventions like the ILO, and revision of the articles was at that stage premature. So, in 1974, the executive directors adopted “Guidelines” of an experimental character, to keep the floating of currencies within manageable limits. Although strictly not binding, these guidelines served as in effect, regulations until in 1976, the formal amendment of article IV of the agreement was achieved and even under the amended article IV, the need for flexibility dictated that the executive directors could adopt “principles” for its implementation, these principles being in effect binding on the members. It provides an example of delegated legislative power.

The process adopted by the ILO is unique because of the peculiar “tripartite” character of the representation of members of its organs, but at the same time it formed a model upon which the newer organizations based their own procedures. It therefore merits attention in some detail.

The Conference as a whole, not merely the government delegates, adopts proposals in the form of either an international convention or a Recommendation; the vote in either case being a two-thirds majority. Upon adoption these are signed by the president of the conference and the Director-General for purposes of authentication; they are not signed by delegates.

With a recommendation it is otherwise. It is communicated to members with a view to effect being given to it by legislation or otherwise. Here again the member has the obligation within the same period of time to bring it before the competent authorities within the state and to inform the organization of the steps and action taken by the competent authorities. Beyond this no further obligation rests on the members other than that of reporting the position in the law and practice of their countries and of any progress made in implementing the recommendation or any modifications found necessary.

In the case of a convention, this is then communicated to all members for ratification, not merely to those whose government delegates voted for the proposal. Thereupon, all members are bound to submit the Convention to the appropriate authorities within the state for the enactment of legislation or other action necessary to give the convention application within the State, and this submission must be within one year or, when this is impossible owing to exceptional circumstances, within 18 months. This is not an obligation to ratify, but an obligation to submit to the appropriate authorities who can give consent to ratification. Moreover each member must inform the Director-General of the measures taken in pursuance of this obligation, and of which authorities are competent and of the action taken by them. When the competent or appropriate authorities give their consent to the convention, the member state then communicates a formal “ratification” of the convention to the Director-General and is then bound to take such acting as is necessary to make the convention effective.

Even thus far; this process has features which distinguish it from the normal process with a multilateral treaty. First, a state actually ratifying cannot in so doing make a reservation; since 1921 the doctrine has been firmly established that, because the adoption of the text of the Convention is the act of the entire General Conference consisting of delegates other than state delegates, it is not competent for a member state to ratify subject to a reservation which constitutes an alteration of the obligations as set out in the agreed text. Further consequences of the adoption of the Convention by a “tripartite” conference are that the states parties to a Convention cannot agree inter se on an interpretation of the Convention; this is governed by a fixed procedure. Nor can the States parties to a Convention revise it by their own action inter se; the ILO conventions contain clauses enabling this to be done by a revising Convention in which the Conference as a “tripartite” body expresses its will. Thirdly, the “parties” which draft the text are not entirely state representatives, and it is not signed by them; to this extent “ratification” is an unfortunate term to use to describe the final act of acceptance, for it is not an act whereby the state ratifies the previous signature of its representatives. Secondly, whereas with the normal multilateral treaty a State which does not vote for or accept the text cannot be regarded as having any further obligations in respect of it, in the ILO all members are bound notwithstanding any negative vote to submit the convention to their legislature or other competent authority for approval and consent.

For the member not ratifying there is also a continuing process of inquiry in that, upon the request of the governing body, such a member must at intervals report the position of its law and practice in regard to the matters dealt with in the conventions, showing the extent to which compliance in fact exists, and stating the difficulties which prevent or delay ratification. This is indeed an advance on normal treaty practice; its whole purpose is to maximize the ratifications secured by the ILO Conventions. For the member to ratify convention there is a continuing process of supervision, through reports submitted annually to the organization and a “complaints procedure” which will be discussed later.

In federal states, where sovereign power is divided between the federal and the state authorities, the actual implementation of conventions or recommendations may well require action by the component states jointly with the federal authorities, or even

exclusively by them. The ILO constitution, Article 19 (7), therefore provides that in such cases the federal government is required to make arrangements for the reference of the conventions and recommendations to the appropriate state, provincial or cantonal authorities within eighteen months, to arrange for periodical consultations between the federal and state, provincial or cantonal authorities with a view to co-ordinate the action necessary to give the conventions or recommendations effect; and then the further obligations apply of reporting to the organization on steps taken, on which are the appropriate state, provincial or cantonal authorities, on the position in law and practice and on the extent of implementation and modification in the case of Recommendations, just as in the case of a unitary state. All this procedure relates to the pre-ratification position of the federal states; once it ratifies, it is bound exactly in the same way as a unitary state that has ratified it. The procedure was introduced in 1946 as a replacement for the previous procedure under which federal states were, in certain circumstances, entitled to treat conventions as if they were recommendations.

What emerges from this brief survey of “legislative” techniques is not that there has occurred any dramatic change in the basic rule of international law that states assume new legal obligations only with their consent, but rather a pattern of procedure for improving the chances of a decision of the majority (be it simple or two third) of a “legislative” character securing general consent. Quite apart from the special features of the ILO procedure which stem from the tripartite character of the organs, other features have proved adaptable generally. Thus, the obligation on all members to submit conventions or recommendations to the appropriate authorities is adopted by UNESCO and WHO; the further stage of reporting back to the organization what has been done is seen to be adopted in these organizations and in FAO. Thereafter, the members which do not proceed to ratify or implement the majority proposals are exposed to the political pressure of the ratifying members within the organs of the organization and the reasons for hesitancy possibly exposed as spurious or even shown by other states, on the basis of their own experience, to be groundless. This pressure is designed to promote acceptance on as wide basis as possible. It is quite distinct from the procedure to ensure compliance by a member that has accepted the obligations but which does not appear to be observing them.

It is also clear that, at a lower level in the form of “regulations,” in some organizations it is possible to accept the principle that a majority in a particular organ can actually create obligations for all members unless they take positive action by “opting out” ;this is the remarkable feature of the WHO technique. ICAO the “standard” adopted by the Council do not even give members the option, although a member would be entitled to withdraw entirely from the organization

4.4 Interpretation of the constituent instrument

The constitutional texts of the agencies are clearly capable of giving rise to disputes concerning their interpretation. Such a Clause is common in the constitutions of the specialized agencies. Such disputes can be either between the members or between members and the organization, the latter situation will commonly arise when a member disputes an interpretation adopted by an organ of the organization. The difference between these two types of disputes becomes extremely relevant when one considers the feasibility of recourse to the I.C.J; for, whereas in disputes between members (assuming they are states), this can be referred to the court as a contentious dispute on which the decision of the court will be binding, when the organization as such is a party the possibility of a binding decision is ruled out by Article 34 of the statute of the court (Which provides that “only states” can be parties to a decision) and the only recourse is to the advisory jurisdiction of the court.

The three “financial” organizations, the Bank, fund and IFC, all give their organs a right of final decision. The procedure is for a dispute, whether between members or between members and the organization, to be submitted to the Executive Directors (board of Directors in IFC) with a right of appeal to the board of governors whose decision shall be the final. The only disputes to which this does not apply are those with members who have withdrawn or are permanently suspended, and these go outside the organization to an independent arbitral tribunal of three members, one appointed by the member, one by the organization and, an umpire appointed by the president of the I.C.J. unless the parties can agree on one themselves.

Both the ITU and the UPU contemplate, in their constitutions, only this second class of disputes; ITU, in article 28, contemplates the solution of such disputes through ordinary diplomatic channels or by virtue of existing treaties between the members concerned for pacific settlement of disputes. Failing that, recourse may (not must) be had to arbitration in accordance with a procedure set forth in Annex UPU provides directly for arbitration in Article 32 (although this clearly does not exclude diplomatic settlement)and , in stating that a disagreement “shall be settled by arbitration would seem to envisage compulsory arbitration, the arbitral body is to be composed of disinterested members, one being appointed by each member in dispute (with a third selected by the arbitrators if the vote is equal), or a single arbitrator if the parties can agree on one.

However, since the ITU (but not the UPU) is authorized by the General Assembly of the UN to request advisory opinions from the I.C.J., it also possesses this means of settling any dispute to which the organization itself is a “party,” although not in binding form.

These apart, most of the specialized agencies contemplate the settlement of disputes on interpretation by organs of the organization. This is a sensible and entirely expected procedure. The differences appear when one asks whether the decisions of these organs are regarded as final or are subject to some form of appeal.

IMCO is slightly different. In the first case, whilst the Assembly’s named as the organ to settle disputes arising from the interpretation or application of the Convention , there is a special clause providing that “Nothing in this article shall preclude the council or the Maritime Safety committee from settling such question or dispute that may arise during the exercise of their functions.” It has been pointed out before that, in this organization , the plenary organ is not given give as much power vis-à-vis the organs of limited composition as in other organizations. The second feature to be noted about IMCO is that legal questions not so settled may be ferreted for an advisory opinion to the I.C.J.; there is no express provision by way of compromissory clause to give the court contentious jurisdiction between the member states as there is in other organizations. Reference has already been made to IMCO’s use of the power

to request an advisory opinion in order to determine the proper composition of the maritime safety committee

Other agencies entrust disputes to their own organs but subject to a right of appeal to an outside body. The organ is the plenary organ in FAO, WHO and WMO, and the council, the organ of 27 states, in the case of ICAO. From these two organs an appeal lies either to the I.C.J. or to some other arbitral body agreed upon by the parties, although WMO makes no mention of the I.C.J. and refers simply to “an independent arbitrator appointed by the president of the international court of justice, unless the parties concerned agree on another mode of settlement”(art. 29). The ICAO council has now become an important disputes-settlement organ, with its own rules for the settlement of difference.

The disputes procedure of GATT is of special interest. Complaints of non-observance of the Treaty or that the benefits of the Treaty are “nullified or impaired” are circulated to all members and a “consultation” occurs in which not only the “plaintiff” ‘defendant” parties participate but any other party having an interest in the issue. Failing a satisfactory solution by these means a panel of conciliation is appointed by the contracting parties which make recommendations. If these are not accepted by the “defendant,” the contracting parties can authorize the “plaintiff” to retaliate by way of withdrawing concessions from the “defendant”. This has rarely proved necessary and these points to the efficacy of this form of consultation under the pressure of the opinion of the membership as a whole. There is no further appeal from this adjudication by the contracting parties; a dissatisfied party is left with the possibility of withdrawing from GATT.

Other organizations do not specifically mention the powers of their own organs to interpret the convention in the event of a dispute, but provide that such disputes shall be referred directly to arbitration, as in the UPU, or to the I.C.J. or a tribunal specially appointed, as in the ILO or UNESCO. It cannot seriously be contended that this excludes the organs of the organization from attempting to settle such disputes; indeed, if, through an organ, the question can be settled there will be no dispute remaining to be submitted to the outside body. Moreover, in general it will be better

for such disputes to be settled internally. However, the ultimate recourse is there, if need be.

It must finally be observed that all the specialised agencies bar the UPU have now been authorized by the General Assembly to request advisory opinions from the I.C.J. This, as we have mentioned, is the only way in which the organization as such can appeal to the Court for an interpretation of its constitution. The disadvantage is that the advisory opinion is not, per se, binding; to get a binding decision the organization would have to have power to submit the dispute to some other arbitral body. The desirability of constant reference to the Court is questionable, and it may be noted that the Assembly always excludes from its grant power to request an advisory opinion on questions affecting the relationships of the specialised agencies inter se, or with the UN itself. This is clear indication that certain constitutional issues are not thought suitable for independent judicial settlement.

4.4.1 INHERENT AND IMPLIED POWERS

The constitutional structure of an international organization involves a nice distribution of powers between the organization and the reserved domain of domestic jurisdiction of member states, and also between the various organs of the organization itself. Considerable problems of interpretation may arise in two contexts. First, the issue may be faced before any action is taken. If a competent organ holds that action contemplated would be ultra virus, then procedures for amendment may be followed: in article 235 of the European Economic Community Treaty the council of the community is given power to make appropriate provision. Secondly, the challenge to constitutionality may occur during the process of decision-making, or even after action has been taken, as was the case in the disputes within the United Nations over expenditure on the peace-keeping force placed in Egypt in 1956 and the United Nations operation in the Congo. Basically the problems are those of treaty interpretation, complicated by the fact that political organs may determine the conditions in which an issue is adjudicated upon and the consequence of any judicial opinion on interpretation.

The international court has applied the doctrine of implied powers in interpreting the United Nations charter. In the reparation case the court observed in its advisory opinion that 'the rights and duties of an entity such as the organization must depend upon its purpose and functions as specified or implied in its constituent documents and developed in practice'. In practice the reference to implied powers may be linked to a principle of institutional effectiveness. Thus in the same opinion the court stated: 'under international law, the organization must be deemed to have those powers which, though not expressly provided in the charter, are conferred upon it by necessary implication as being essential to the performance of its duties'. The court has also held that a capacity to establish a tribunal to do justice between the organization and staff members 'arises by necessary intendment out of the charter', there being no express provision in this regard. Judicial interpretation may lead to expansion of the competence of an organization if resort be had to the teleological principle according to which action in accordance with the stated purposes of an organization is *intra vires* or at least is presumed to be. The view has also been expressed that, when the issue of interpretation relates to the constitution of an organization, a flexible and effective approach is justifiable. Obviously the judicial power of appreciation is wide, and the principles enunciated in this fashion may be used as a cloak for extensive legislation. The process of interpretation cannot be subordinated to arbitrary devices. Thus in his dissenting opinion in the reparation case judge Hackworth observed: 'powers not expressed cannot freely be implied. Implied powers flow from a grant of expressed powers, and are limited to those that are "necessary" to the exercise of powers expressly granted'. Moreover, where a particular issue calls for a measure of appreciation, a great deal must depend on the context and the inter play of various relevant principles. In the context of the United Nations charter, the principles of implied powers and effectiveness may beg the very question at issue, and, in any case, such principles must be related to article 2(1) of the charter, which states that 'the organization is based on the principle of the sovereign equality of all its members', and also to article 2(7), which refers to the domestic jurisdiction of states. Particular care should be taken to avoid an automatic implication, from the very fact of legal personality, of particular powers, such as the power to make treaties with third states or the power to delegate powers.

4.5 Sanctions and Enforcement Procedures

The notion that an international organization may undertake sanctions or enforcement measures against a member is not confined to the United Nations. However, the decision to embark on sanctions presupposes two prior stages:

- i. The acquisition of evidence to prove a breach of obligation, whether under the constitution or some other convention. Such evidence can be provided by reports, by inspection, or by complaints or petitions.
- ii. The determination by a competent organ that a breach has occurred.

The potential range of sanctions then available is very wide: military or economic sanctions (as under Chapter VII of the Charter), suspension of voting rights, suspension of representation, suspension of the services of the organization, suspension of the rights and privileges of membership, expulsion from particular organs or the organization as a whole, fines or other financial penalties. And the sanction can be imposed either by a political or a judicial organ. Although the specialised agencies do not possess this whole range of sanctions it will be useful to deal with the enforcement procedures adopted by the specialised agencies at this stage since they demonstrate a remarkable venture by the ILO, and its adoption by other specialised agencies.

UNESCO, FAO, WHO, WMO and ICAO all have a form of “reports procedure” UPU and ITU alone of the agencies with what we have described above as a “legislative function” do not. But, on the basis of these reports, the supervision and enforcement procedures are almost entirely political, in the sense that it is then for the members to bring criticism to bear on the non-compliant member within the Conference, Assembly or other plenary organ. Failing satisfaction, ICAO has no power of suspension or expulsion, nor has UNESCO or FAO; WHO has the possible sanction of suspension, since this can be done “in exceptional circumstances” (Art.7), which are not confined to non-fulfillment of budgetary commitments. WMO has power of suspension of breach of obligations “under the present Convention”, so this sanction would not apply to the technical regulations, adopted by the congress, which constitute that agency’s “legislative role.” The IMF can declare a member failing to

fulfill its obligations ineligible to use the fund's resources under Art. XV, though this extreme sanction has never been used.

Moreover, when one looks at the provisions for settlement of disputes, it will be seen that there is rarely anything comparable to the very comprehensive system of settlement which plays so large a part in the ILO enforcement system. In ICAO a dispute between two or more members concerning either the interpretation or application of the convention or its annexes shall be referred to the council, with an appeal either to an ad hoc arbitral tribunal or the ICJ (Art. 18); there is, therefore, a means for the judicial settlement of the question whether these legislative tests are being applied by a state bound by them or not. Similarly in UPU the issue of "responsibility imposed upon a postal Administration" by the application of the Acts of the union appears to be subject to compulsory arbitration but not so in ITU, where arbitration is optional. In WMO there can be arbitration of disputes relating to either the interpretation or application "of the present Convention" (Art. 29), so that the application of the technical regulations adopted by decision of Congress is not subject to judicial review; WHO is similarly limited in its reference to the I.C.J. on the questions of interpretations or application of the Convention only (Art.75). In UNESCO and FAO the reference of disputes to arbitration or to the I.C.J. is confined to questions of interpretation of the conventions.

One is left with some doubt on the exclusion of the question of the application of legislative texts from a disputes provision which refers only to interpretations international. Whilst there appears to be no direct decision on this, it may be contended that to refer the interpretation of a provision to a court is to ask for a decision as to its meaning; whereas the question of its application raises before the court the question of whether a member is applying the provision, as a question of fact as well as of law, in a manner consistent with its obligations. Hence the advantage of clauses which provide for the "application" issue to be put to a court, in this particular context of the machinery for enforcement of the obligations assumed under this kind of "legislation".

The Board of Governors has, under Article 20, the management of the affairs of the organization, including such matters as drawing up the budget for adoption by the conference, preparing for the conference and implementing its decisions. For this purpose the Board meetings are held not less than twice a year, and the governors are individuals nominated by the members, and confirmed by the conference, to serve a two-year term.

The supervision and enforcement procedures designed to ensure compliance with the obligations thus assumed are seen, in the most “sophisticated” form, in the ILO. It will be recalled that all members are bound to report to the organization on the position in their law and practice with regard to matters dealt with in conventions or recommendations, and that members who are parties to particular conventions are bound to report on the measures taken to give effect to such conventions. (Whit the influence brought to bear within, the organization on members not legally bound (either because not parties to the convention, or because a recommendation only is in question) we are not here concerned) it is the means of enforcing the legal obligations assumed by parties to conventions that we must now deal with.

Complaints of non-observance may be made against a member by any other ratifying member or by a delegate to the Conference or by the governing body itself, and these may be referred by the governing body under Article 26 of the Constitution to a Commission of Enquiry either directly or after prior communication to the government concerned. This commission, an independent body, is empowered to ascertain the facts and to make recommendations in report which is published. Each government must, within three months, inform the Director-general whether it accepts these recommendations or wishes to refer the complaint to the I.C.J. The Court may affirm, vary or reverse any of the findings or recommendations of the Commission of Enquiry and its decision on the matter or complaint is final. In the event that a member fails to carry out the recommendation of the Commission, or the decision of the Court, the governing body “may recommend to the Conference such action as it may deem wise and expedient to secure compliance therewith” (Art.33). The ultimate sanction therefore rests with the Conference, and in view of the fact that originally neither suspension nor expulsion were provided for in the constitution, this seemed a rather tame ending to what appears a very impressive machinery of enforcement.

Legally that may be true; in practice it has never proved necessary to resort to such lengths, and indeed, in practice this entire “complaints procedure” has proved to be something kept in reserve rather than something for habitual use. The “reports procedure” mentioned earlier, by which the annual reports of members are examined first by an independent committee of experts and then by a tripartite committee on the application of conventions and recommendations, has rendered use of the “enforcement procedure” a course of last resort.

It should also be noted that there is a special procedure under Article 24 for dealing with complaints by industrial associations of employers or workers. These are transmitted to the government concerned by the governing body for its observations, and, if no reply is received or the reply is unsatisfactory, the governing body may publish both the complaint and the reply, if any. The sanction is then a political one within and without the organization. There is also, since 1950, a special procedure for complaints of the infringement of trade union rights, referred to the ILO either directly or through the Economic and Social Council of the UN. These are submitted to an independent fact-finding Commission of nine persons, working in panels of three to five members, and reference to the Commission is only by consent of the government concerned. This procedure is supplementary to those envisaged in the actual constitution and is, in contrast to them, more frequently used. When, because consent is not forthcoming, the commission cannot act, the inquiry nevertheless proceeds within the Committee on Freedom of Association.

4.6 UN-Specialized Agencies

4.6.1 World Meteorological Organization

The **World Meteorological Organization**, established in 1950, is an intergovernmental organization with a membership of 188 Member States and territories. It originated from the International Meteorological Organization (IMO), which was founded in 1873. This international institution became the specialized agency of the United Nations for meteorology (weather and climate), operational hydrology and related geophysical sciences. It has its headquarters in Geneva, Switzerland. The World Meteorological Day is held annually on March 23

The organization's aims are:

- To facilitate worldwide cooperation in the establishment of networks of stations for making meteorological observations as well as hydrological and other geophysical observations related to meteorology, and to promote the establishment and maintenance of centers charged with the provision of meteorological and related services;
- To promote the establishment and maintenance of systems for the rapid exchange of meteorological and related information;
- To promote standardization of meteorological and related observations and to ensure the uniform publication of observations and statistics;
- To further the application of meteorology to aviation, shipping, water problems, agriculture and other human activities;
- To promote activities in operational hydrology and to further close co-operation between Meteorological and hydrological services;
- To encourage research and training in meteorology and, as appropriate, in related fields, and to assist in coordinating the international aspects of such research and training.

The WMO Member countries have a Commission for Basic Systems (CBS) meeting every two years, in which new recommended code changes, telecommunication protocol recommendations, and Abbreviated Heading Table updates are approved. After approval these changes are entered into the WMO codes manual 306 and 386. One of the more visible functions of the WMO is the naming of tropical cyclones.

The WMO helped create the Intergovernmental Panel on Climate Change (IPCC). It is also directly responsible for the creation of the Global Atmosphere Watch (GAW)

4.6.2 World Health Organization

The World Health Organization constitution formally came into force on the first World Health Day, (7 April 1948), when it was ratified by the 26th member state.

This international organization (WHO) is a specialized agency of the United Nations (UN) that acts as a coordinating authority on international public health. Prior to this, its operations as well as the remaining activities of the League of Nations Health Organization were under the control of an Interim Commission following an International Health Conference in the summer of 1946. The transfer was authorized by a Resolution of the General Assembly. The Agency was headquartered in Geneva, Switzerland, and inherited the mandate and resources of its predecessor, the Health Organization, which had been an agency of the League of Nations.

The WHO has 193 Member States, including all UN Member States except Liechtenstein , and 2 non-UN-members, Niue and the Cook Islands. All UN member states are eligible for WHO membership, and "Other countries may be admitted as members when their application has been approved by a simple majority vote of the World Health Assembly, WHO's supreme decision-making body." The Member States appoint delegations to the World Health Assembly.

Territories that are not UN Member States may join as Associate Members (with full information but limited participation and voting rights) if approved by an Assembly vote. Puerto Rico and Tokelau are such Associate Members. Entities may also be granted observer status: examples include the Palestine Liberation Organization and the Holy See (Vatican City).

About the mission of the organization, the WHO's constitution states that its objective "is the attainment by all peoples of the highest possible level of health." Its major task is to combat disease, especially key infectious diseases, and to promote the general health of the people of the world.

As well as coordinating international efforts to monitor outbreaks of infectious diseases, the WHO also sponsors programs to prevent and treat such diseases. It supports the development and distribution of safe and effective vaccines, pharmaceutical diagnostics, and drugs.

In addition to its work in eradicating disease, the WHO also conducts research, even if some of this work can be controversial, and carries out various health-related campaigns — for example, boosting the consumption of fruits and vegetables worldwide and discouraging tobacco use.

1. In addition to the WHO's stated mission, international treaties assign the Organization a variety of responsibilities. For instance, the Single Convention on Narcotic Drugs and the Convention on Psychotropic Substances call on the WHO to issue binding scientific and medical assessments of psychoactive drugs and to recommend how they should be regulated. In this way, the WHO acts as a check on the national drug policymaking Commission on Narcotic Drugs.

4.6.3 Universal Postal Union

The **Universal Postal Union (UPU)** is an international organization that coordinates postal policies between member nations, and hence the world-wide postal system. Each member country agrees to the same set of terms for conducting international postal duties. Prior to the establishment of the UPU, a country had to conclude a separate postal treaty with each other country that it wished to carry international mail to or from. The United States called for an international postal congress, which was held in 1863. This led Heinrich von Stephan, German Minister for Posts, to found the Universal Postal Union, the second oldest international organization (after the ITU). It was created in 1874, under the name "**General Postal Union**", as a result of the Treaty of Berne signed on 9 October 1874. In 1878, the name was changed to "Universal Postal Union". Its headquarters are located in Berne, Switzerland. After the foundation of the United Nations, the UPU became its specialized agency.

The UPU has 191 member countries since Timor-Leste joined on 28 November 2003 and Montenegro on 26 July 2006, including the Dutch territories of the Netherlands Antilles and Aruba as a single UPU member, and the British overseas territories, which are not independent states. The United Nations member states may all become member countries of the UPU. The 192 United Nations member states are all UPU member countries except Andorra, Marshall Islands, the Federated States of Micronesia and Palau whose situation with regard to the UPU has not yet been settled.

A non-member state of the United Nations may also become a UPU member if two-thirds of the UPU member countries approve its request. Vatican City is a UPU member country and a non-member state observer of the United Nations (as the Holy See).

The UPU established that (1) there should be a more or less uniform flat rate to mail a letter anywhere in the world; (2) postal authorities should give equal treatment to foreign and domestic mail; and (3) each country should retain all monies it collected for international postage.

One of the most important results of the UPU treaty was that it ceased to be necessary, as it often had been previously, to affix the stamps of any country through which one's letter or package would pass in transit; the UPU provides that stamps of member nations are accepted for the whole international route.

4.6.5 United Nations Children's Fund

The **United Nations Children's Fund** (or **UNICEF**) was created by the United Nations General Assembly on December 11, 1946, to provide emergency food and healthcare to children in countries that had been devastated by World War II. In 1953, UNICEF became a permanent part of the United Nations System and its name was shortened from the original **United Nations International Children's Emergency Fund** but it has continued to be known by the popular acronym based on this old name. UNICEF provides long-term humanitarian and developmental assistance to children and mothers in developing countries. It is present in 190 countries and territories around the world. The heart of UNICEF's work is in the field, with staff in over 150 countries and territories. More than 120 country offices carry out UNICEF's mission through a unique program of cooperation developed with host governments. Seven regional offices guide their work and provide technical assistance to country offices as needed. Overall management and administration of the organization takes place at its headquarters in New York City.

UNICEF is currently focused on five primary priorities: Child Survival and Development, Basic Education and Gender Equality (including girls' education), Child protection from violence, exploitation, and abuse, HIV/AIDS and children, and Policy advocacy and partnerships for children's rights. Related areas of UNICEF action include early childhood development, adolescence development and participation, life skills based education and child rights all over the world. It works to improve the status of their priorities through different methods ranging from direct and legal interventions to education and beyond to research and census data collection.

4.6.6 Multilateral Investment Guarantee Agency

The **Multilateral Investment Guarantee Agency**, founded in 1988 with a capital base of \$1 billion and headquartered in Washington, D.C., is a member of the World Bank group. MIGA was established to promote foreign direct investment into developing countries. It promotes foreign direct investment into developing countries by sharing information through on-line investment information services, advising governments on attracting investment, insuring investors against political risk, and mediating disputes between investors and governments.

MIGA provides guarantees against noncommercial risks to protect cross-border investment in developing member countries. Guarantees protect investors against the risks of Transfer Restriction, Expropriation, War and Civil Disturbance, and Breach of Contract (for contracts between the investor/project enterprise and the authorities of the host country). These coverages may be purchased individually or in combination.

MIGA also requires the host country government approval for every project. MIGA tries to work with host governments - resolving claims before they are filed.

MIGA can cover only new investments. These include:

- new investment contributions associated with the expansion, modernization, or financial restructuring of existing projects;
- new, greenfield investments; and

- acquisitions involving privatization of state enterprises.

Unlike other insurers, MIGA is backed by the World Bank Group and its member countries.

4.6.7 International Refugee Organization

The **International Refugee Organization** is a United Nations specialized agency which took over many of the functions of the earlier United Nations Relief and Rehabilitation Administration. IRO was established by the Constitution of the International Refugee Organization, adopted by the United Nations General Assembly on December 15, 1946 to deal with the massive refugee problem created by World War II. In 1952 its operations ceased, and it was replaced by the Office of the United Nations High Commissioner for Refugees (UNHCR). It is the only specialized agency to have ever gone out of existence.

4.6.8 International Bank for Reconstruction and Development

The **International Bank for Reconstruction and Development** (IBRD) is one of five institutions that comprise the World Bank Group. It came into existence on December 27, 1945 following the international ratification of the agreements reached at the United Nations Monetary and Financial Conference of July 1 to July 22, 1944 in Bretton Woods, New Hampshire. The IBRD is an international organization whose original mission was to finance the reconstruction of Europe and Japan after World War II, with an additional mandate to foster economic growth in developing countries in Africa, Asia and Latin America. Now, its mission has expanded to fight poverty by means of financing states. Its operation is maintained through payments as regulated by member states.

Originally the bank focused mainly on large-scale infrastructure projects, building highways, airports, and powerplants. As Japan and its European client countries "graduated" (achieved certain levels of income per capita), the IBRD became focused entirely on developing countries. Since the early 1990s the IBRD has also provided financing to the post-Socialist states of Eastern Europe and the former Soviet Union.

The IBRD provides loans to governments, and public enterprises, always with a government (or "sovereign") guarantee of repayment. Commencing operations on June 25, 1946, it approved its first loan on May 9, 1947 (\$250m to France for postwar reconstruction, in real terms the largest loan issued by the Bank to date). The funds for this lending come primarily from the issuing of World Bank bonds on the global capital markets—typically \$12–15 billion per year. These bonds are rated AAA (the highest possible) because they are backed by member states' share capital, as well as by borrowers' sovereign guarantees. (In addition, loans that are repaid are recycled, or relent.) Because of the IBRD's credit rating, it is able to borrow at relatively low interest rates. As most developing countries have considerably lower credit ratings, the IBRD can lend to countries at interest rates that are usually quite attractive to them, even after adding a small margin (about 1%) to cover administrative overheads.

4.6.9 World Bank

The **World Bank**, a part of the World Bank Group (WBG), is an internationally supported bank that provides loans to developing countries for development programs with the stated goal of reducing poverty. The Bank offers two basic types of loans; investment loans and development policy loans. The former are made for the support of economic and social development projects, whereas the latter provide quick disbursing finance to support countries' policies and institutional reforms.

The World Bank is one of the three Bretton Wood Institutions which were created in 1944 to rebuild the destroyed Europe after World War II. It differs from the World Bank Group in that the former comprises only the International Bank for Reconstruction and Development and the International Development Association, while the latter incorporates these entities in addition to three others. The Bank has 185 member countries and its headquarters in Washington DC. It was formally established on December 27, 1945, following the ratification of the Bretton Woods agreement. The concept was originally conceived in July 1944 at the United Nations Monetary and Financial Conference. Two years later, the Bank issued its first, and largest, loan: \$250 million to France for post-war reconstruction; an issue which has remained a primary focus, alongside reconstruction after natural disasters, humanitarian emergencies and post-conflict rehabilitation needs affecting developing and transition economies.

After the economic revival of Europe, the World Bank's activities became focused on developing countries. By financing infrastructure projects, poverty should be reduced. Today the focus is on the achievement of the Millennium Development Goals (MDGs), goals calling for the elimination of poverty and the implementation of sustainable development. The constituent parts of the Bank, the IBRD and the IDA, achieve their aims through the provision of low or no interest loans and grants to countries with little or no access to international credit markets. The Bank is a market based non-profit organization, using its high credit rating to make up for the low interest rate of loans.

The Bank's mission is to aid developing countries and their inhabitants achieve the MDGs, through the alleviation of poverty, by developing an environment for investment, jobs and sustainable growth, thus promoting economic growth and through investment in and empowerment of the poor to enable them to participate in development. The World Bank sees Capacity Building, Infrastructure creation, Development of Financial Systems, Combating corruption and Research, Consultancy and Training as key factors necessary for economic growth and the creation of a business environment.

The Bank not only provides financial support to its member states, but also analytical and advisory services to facilitate the implementation of the lasting economic and social improvements that are needed in many under-developed countries, as well as educating members with the knowledge necessary to resolve their development problems while promoting economic growth.

Many academics and popular movements have argued that the institution was not started in order to reduce poverty but rather to support US business interests, and that the bank has actually increased poverty and been detrimental to the environment, public health, and cultural diversity. The World Bank is in fact a key cause of contemporary poverty. A number of intellectuals in developing countries have argued that the World Bank is deeply implicated in contemporary modes of donor and NGO driven imperialism and that its intellectual output functions to blame the poor for their condition. Others point out that the World Bank has consistently pushed a neo-liberal agenda, imposing policies on developing countries which have been damaging, destructive and anti-developmental. It has also been suggested that the World Bank is

an instrument for the promotion of US and 'Western' interests in certain regions of the world and seven South American nations have established a "Bank of the South" in order to minimise US influence in the region.

Criticisms of the structure of the World Bank refer to the fact that the President of the Bank is always an American, nominated by the President of the United States. There have been accusations that the decision-making structure is undemocratic, as the US effectively has a veto on all decisions with just over 15% of the shares in the bank; moreover, decisions can only be passed with votes from countries whose shares total more than 85% of the bank's shares.

4.6.10 World Intellectual Property Organization

The **World Intellectual Property Organization** is one of the specialized agencies of the United Nations. The predecessor to WIPO was the BIRPI (*Bureaux Internationaux Réunis pour la Protection de la Propriété Intellectuelle*, French acronym for *United International Bureau for the Protection of Intellectual Property*), which had been set up in 1893 to administer the Berne Convention for the Protection of Literary and Artistic Works and the Paris Convention for the Protection of Industrial Property.

WIPO was formally created by the Convention Establishing the World Intellectual Property Organization (Signed at Stockholm on July 14, 1967 and as amended on September 28, 1979). Under Article 3 of this Convention, WIPO seeks to "promote the protection of intellectual property throughout the world." WIPO became a specialized agency of the UN in 1974 and currently has 184 member states, administers 23 international treaties, and is headquartered in Geneva, Switzerland. Vatican City and almost all UN members are members of the WIPO.

WIPO usually attempts to reach decisions by consensus, but in any vote, each Member State is entitled to one vote, regardless of population or contribution to the funding. This is important, because there is a significant North-South divide in the politics of intellectual property. In the 1980s, this led to the United States and other developed countries "forum shifting" intellectual property standard-setting out of WIPO and into the General Agreement on Tariffs and Trade, which later evolved into

the World Trade Organization, where the North had greater control of the agenda. This strategy paid dividends with the enactment of Agreement on Trade-Related Aspects of Intellectual Property Rights.

As with all United Nations multi-government forums, WIPO is not an elected body. Some argue that WIPO does not therefore act in the interests of citizens as the representatives of its member states are either not democratic or are highly abstracted government agencies which are only lobbied effectively by major corporations.

4.6.11 United Nations Industrial Development Organization

The **United Nations Industrial Development Organization** was established as a UN programme in 1966 with headquarters in Vienna and became a specialized agency of the United Nations in 1985. The Organization's primary objective is the promotion and acceleration of industrial development in developing countries and countries with economies in transition.

To achieve its main objective, UNIDO works largely in developing countries, with governments, business associations and individual companies. Priority areas or "service modules" for projects are Industrial Governance and Statistics, Investment and Technology Promotion, Industrial Competitiveness and Trade, Private Sector Development, Agro-Industries, Sustainable Energy and Climate Change, Montreal Protocol, and Environmental Management.

4.6.12 UNESCO

United Nations Educational, Scientific and Cultural Organization, the heir of the League of Nations' International Commission on Intellectual Cooperation, is a specialized agency of the United Nations established on 16 November 1945. Its stated purpose is to contribute to peace and security by promoting international collaboration through education, science, and culture in order to further universal respect for justice, the rule of law, and the human rights and fundamental freedoms proclaimed in the UN Charter. UNESCO pursues its objectives through five major programmes: education, natural sciences, social and human sciences, culture, and communication and information.

UNESCO has 193 Member States and 6 Associate Members. The organization is based in Paris, France with over 50 field offices and many specialized institutes and centres throughout the world. Most of the field offices are "cluster" offices covering three or more countries; there are also national and regional offices.

Three bodies are responsible for policy-making, governance, and day-to-day administration at UNESCO:

- ***The General Conference***:- It is a gathering of the organization's member states and associate members, in which each state has one vote. Meeting every two years, it sets general policies and defines programme lines for the organization.
- ***The Executive Board***:- The Executive Board's 58 members are elected by the General Conference for staggered four-year terms. The Executive Board prepares the sessions of the General Conference and ensures that its instructions are carried out. It also discharges other specific mandates assigned to it by the General Conference
- ***The Secretariat***:-The Secretariat consists of the Director-General and his staff and is responsible for the day-to-day running of the organization. The Director-General, who serves as the public face of UNESCO, is elected for a renewable four-year term by the General Conference. The Secretariat is divided into various administrative offices and five programme sectors that reflect the organization's major areas of focus.

4.6.13 International Telecommunication Union

The **International Telecommunication Union**, one of the specialized agencies of the United Nations, and has its headquarters in Geneva, Switzerland, next to the main United Nations campus, is an international organization established to standardize and regulate international radio and telecommunications. It was founded as the *International Telegraph Union* in Paris on May 17, 1865. Its main tasks include standardization, allocation of the radio spectrum, and organizing interconnection arrangements between different countries to allow international phone calls — in

which regard it performs for telecommunications a similar function to what the UPU performs for postal services.

The work of the ITU is conducted by its *members*. As part of the United Nations structure, a country can be a member, in which case it is referred to as a *Member State*. Companies and other such organizations can hold other classes of membership referred to as *Sector Member* or *Associate* status. As of September 2007 there were 191 Member States and more than 700 Sector Members and Associates.

The ITU is made up of three sectors: The Telecommunication Standardization Sector, The Radiocommunication Sector, and The Telecommunication Development Sector. A permanent General Secretariat, headed by the Secretary General, who is elected to a four-year term by the member states at the plenipotentiary conference, manages the day-to-day work of the Union and its sectors.

4.6.14 International Narcotics Control Board

The **International Narcotics Control Board** is the independent and quasi-judicial control organ for the implementation of the United Nations drug conventions. The Board had predecessors under the former drug conventions since the time of the League of Nations. The International Opium Convention of 1925 established the Permanent Central Board (first known as the Permanent Central Opium Board and then as the Permanent Central Narcotics Board). That Board started its work in 1929. After the dissolution of the League, the 1946 Protocol Amending the Agreements, Conventions and Protocols on Narcotic Drugs concluded at The Hague on 23 January 1912, at Geneva on 11 February 1925 and 19 February 1925, and 13 July 1931, at Bangkok on 27 November 1931 and at Geneva on 26 June 1936, created a Supervisory Body to administer the estimate system. The functions of both bodies were merged into the Board by the 1961 Single Convention on Narcotic Drugs. The composition of the Board under the Single Convention was strongly influenced by the 1946 treaty.

The Board plays an important role in monitoring enforcement of restrictions on narcotics and psychotropics and in deciding which precursors should be regulated. Article 14 of the Single Convention, Article 19 of the Convention on Psychotropic

Drugs, and Article 22 of the Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances give the Board the authority to investigate the failure of any country or region to carry out the Convention's provisions. This includes countries that are not parties to the Conventions. The Board can ask for explanations from the government in question, propose that a study of the matter be carried out in its territory, and call upon the government to adopt remedial measures.

If the Board finds that the government has failed to give satisfactory explanations, or has failed to adopt remedial measures that it has been called upon to take, the Board can call the attention of the parties, the Council, and the Commission to the matter. The Board can also publish a report on the matter for communication to all parties. Under some circumstances, it can penalize a violator by reducing its export quota of opium, under the provisions of Article 21 bis. The Board can even "recommend to the parties that they stop the export, import, or both, of particular psychotropic substances, from or to the country or region concerned, either for a designated period or until the Board shall be satisfied as to the situation in that country or region."

There is widespread criticism over the existence of International Narcotics Control Board and its "requirements" for nations to comply with their drug laws. It is often thought that the UN is overstepping its role as an international organization and trying instead to act more like an international government. Critics often point out that the UN is eroding the sovereignty of states to choose whether or not they will criminalize drugs. Those against the war on drugs and drug prohibition in general often blame the UN's involvement with regulating drugs as a strong reason why there is worldwide prohibition.

4.6.15 International Maritime Organization

The **International Maritime Organization**, formerly known as the Inter-Governmental Maritime Consultative Organization, was established in 1948 through the United Nations to coordinate international maritime safety and related practices. However the IMO did not enter into full force until 1958.

The concept of IMO was born after the RMS Titanic disaster. By modern standards, the design of the *Titanic* made her appallingly vulnerable. Her "watertight" bulkheads, by design, did not extend all the way to the overhead because the engineers calculated that it was impossible for the ship to take on a trim or list sufficient for water to cascade over their tops if the bulkheads were of a certain height.

When *Titanic* struck the iceberg, these calculations were proven dismally incorrect. When people began abandoning ship, it became obvious that not nearly enough lifeboats were available. Many lives were lost in this tragedy.

Up until that time, each nation had made its own rules about ship design, construction, and safety equipment. The **Inter-Governmental Maritime Consultative Organization** (IMCO) was formed in response to the *Titanic* event, but was "put on the back burner" when World War I broke out. After the war ended, IMCO was revived and produced a group of regulations concerning shipbuilding and safety called Safety of Life at Sea (SOLAS). Through the years, SOLAS has been modified and upgraded to adapt to changes in technology and lessons learned.

IMCO eventually became IMO. IMO regularly enacts regulations (such as the International Regulations for Preventing Collisions at Sea) which are enforced by class societies and recognized organizations, which survey ships regularly to ensure compliance with specific laws applicable to each individual ship. Port State Control authority was enacted, allowing domestic maritime authorities, such as coast guards, to inspect foreign-flag ships calling at ports of the many port states. Memoranda of Understanding (protocols) were signed by some countries unifying Port State Control procedures among the signatories.

Headquartered in London, U.K., the IMO promotes cooperation among governments and the shipping industry to improve maritime safety and to prevent marine pollution. IMO is governed by an Assembly of members and is financially administered by a Council of members elected from the Assembly. The work of IMO is conducted through five committees and these are supported by technical sub-committees. Member organizations of the UN organizational family may observe the proceedings of the IMO. Observer status may be granted to qualified non-governmental organizations.

The IMO is supported by a permanent secretariat of employees who are representative of its members. The secretariat is composed of a Secretary-General who is periodically elected by the Assembly, and various divisions including, *inter alia*, marine safety, environmental protection, and a conference section.

4.6.16 International Fund for Agricultural Development

The International Fund for Agricultural Development, a specialized agency of the United Nations, was established as an international financial institution in 1977 as one of the major outcomes of the 1974 World Food Conference. IFAD's goal is to empower poor rural women and men in developing countries to achieve higher incomes and improved food security. IFAD will ensure that poor rural people have better access to, and the skills and organization they need to take advantage of natural resources, especially secure access to land and water, and improved natural resource management and conservation practices; improved agricultural technologies and effective production services; a broad range of financial services; transparent and competitive markets for agricultural inputs and produce; opportunities for rural off-farm employment; enterprise development; and local and national policy and programming processes

Underlying these objectives is IFAD's belief that rural poor people must be empowered to lead their own development if poverty is to be eradicated. Poor people must be able to develop and strengthen their own organizations, so they can advance their own interests and dismantle the obstacles that prevent many of them from creating better lives for themselves. They must be able to have a say in the decisions and policies that affect their lives, and they need to strengthen their bargaining power in the marketplace.

Membership in IFAD is open to any State that is a member of the United Nations or its specialized agencies or the International Atomic Energy Agency. The Governing Council is IFAD's highest decision-making authority, with the 164 Member States each represented by a governor and alternate governor. The Council meets annually. The Executive Board, responsible for overseeing the general operations of IFAD and approving loans and grants, is composed of 18 members and 18 alternate members.

The President, who serves for a four-year term (renewable once), is IFAD's chief executive officer and chair of the Executive Board.

4.6.17 International Development Association

The International Bank for Reconstruction and Development (IBRD), better known as the World Bank, was created on September 24, 1960 to help Europe recover from the devastation of World War II. The success of that enterprise led the Bank, within a few years, to turn its attention to the developing countries. By the 1950s, it became clear that the poorest developing countries needed softer terms than those that could be offered by the Bank, so they could afford to borrow the capital they needed to grow.

With the United States taking the initiative, a group of the Bank's member countries decided to set up an agency that could lend to the poorest countries on the most favourable terms possible. They called the agency the "International Development Association." Its founders saw IDA as a way for the "haves" of the world to help the "have-nots." But they also wanted IDA to be run with the discipline of a bank. For this reason, US President Dwight D. Eisenhower proposed, and other countries agreed, that IDA should be part of the World Bank (IBRD).

The International Development Association is part of the World Bank that helps the world's poorest countries reduce poverty by providing interest-free loans and grants for programs aimed at boosting economic growth and improving living conditions. It provides grants and credits, with repayment periods of 35 to 40 years. IDA funds help these countries deal with the complex challenges they face in striving to meet the Millennium Development Goals. While the IBRD raises most of its funds on the world's financial markets, IDA is funded largely by contributions from the governments of the richer member countries. Additional funds come from IBRD's income and from borrowers' repayments of earlier IDA credits.

IDA complements the World Bank's other lending arm — the International Bank for Reconstruction and Development (IBRD) — which serves middle-income countries with capital investment and advisory services. IBRD and IDA are run on the same lines. They share the same staff and headquarters, report to the same president and evaluate projects with the same rigorous standards. But IDA and IBRD draw on

different resources for their lending, and because IDA's loans are deeply concessional, IDA's resources must be periodically replenished. A country must be a member of IBRD before it can join IDA; 165 countries are IDA members.

Criticisms include the improper use of financial resources as well as its structure of voting power, based on financial contributions. Additionally, the IDA has received criticism for its involvement with free trade, which is claimed to be a means for controlled economic oppression by the World Bank Group.

4.6.18 International Centre for Settlement of Investment Disputes

The International Centre for Settlement of Investment Disputes (ICSID), an institution of the World Bank group based in Washington, D.C., was established under the *Convention on the Settlement of Investment Disputes between States and Nationals of Other States* (the ICSID Convention or Washington Convention) which came into force on October 14, 1966. ICSID is an autonomous international organization. However, it has close links with the World Bank. All of ICSID's members are also members of the Bank. As of May 2005, 155 countries had signed the ICSID Convention.

On a number of occasions in the past, the World Bank as an institution and the President of the Bank in his personal capacity have assisted in mediation or conciliation of investment disputes between governments and private foreign investors. The creation of the International Centre for Settlement of Investment Disputes (ICSID) in 1966 was in part intended to relieve the President and the staff of the burden of becoming involved in such disputes. But the Bank's overriding consideration in creating ICSID was the belief that an institution specially designed to facilitate the settlement of investment disputes between governments and foreign investors could help to promote increased flows of international investment.

ICSID has an Administrative Council, chaired by the World Bank's President and consists of one representative of each State which has ratified the Convention, and a Secretariat. It provides facilities for the conciliation and arbitration of investment disputes between member countries and individual investors who qualify as nationals of other member countries. Recourse to ICSID conciliation and arbitration is entirely

voluntary. However, once the parties have consented to arbitration under the ICSID Convention, neither can unilaterally withdraw its consent. Moreover, all ICSID Contracting States, whether or not parties to the dispute, are required by the Convention to recognize and enforce ICSID arbitral awards.

4.6.19 Food and Agriculture Organization

The Food and Agriculture Organization of the United Nations, founded on 16 October 1945 in Quebec City, Quebec, Canada, is a specialized agency of the United Nations that leads international efforts to defeat hunger. In 1951 its headquarters were moved from Washington, D.C., United States, to Rome, Italy. As of 23 November, 2007, it had 192 members (191 states and the European Community)

FAO is governed by the Conference of Member Nations, which meets every two years to review the work carried out by the organization and approve a Programme of Work and Budget for the next biennium. The conference elects a council of 49 Member Nations to act as an interim governing body. Members serve three-year, rotating terms. The conference also elects the Director-General to head the agency. FAO is composed of eight departments: Administration and Finance, Agriculture, Economic and Social, Fisheries, Forestry, General Affairs and Information, Sustainable Development and Technical Cooperation.

Serving both developed and developing countries, FAO acts as a neutral forum where all nations meet as equals to negotiate agreements and debate policy. FAO is also a source of knowledge and information, and helps developing countries and countries in transition modernize and improve agriculture, forestry and fisheries practices, ensuring good nutrition and food security for all. Its Latin motto, *fiat panis*, translates into English as "let there be bread!".

There has been public criticism of FAO for at least 30 years. In 1990, the US State Department expressed the view that *"The Food and Agriculture Organization has lagged behind other UN organizations in responding to US desires for improvements in program and budget processes to enhance value for money spent"*. Edoard Saouma, the Director General of FAO, was heavily criticised in Graham Hancock's book 'Lords of Poverty', published in 1989. Mention is made of Saouma's 'fat pay

packet', his 'autocratic' management style, and his 'control over the flow of public information'. Hancock concluded that *"One gets the sense from all of this of an institution that has lost its way, departed from its purely humanitarian and developmental mandate has become confused about its place in the world - about exactly what it is doing, and why"*. Sesmou said that:

"FAO, set up to develop world agriculture so as to enable the world to feed itself has disastrously failed in its task. It has ignored and even derided traditional agricultural methods and permits no international criticism of its policy of promoting Western-style intensive farming and the export of cash crops. FAO's performance is judged on the amount of money it spends, not on the effectiveness of its projects, it ignores the voices of the people it is supposed to be helping and it has close links with agribusiness internationals, whose products it actively promotes. The organization's Director-General has been much criticized by FAO staff and others for his autocratic style, and the political manoeuvring he has engaged in to ensure his re-election. A massive overhaul of FAO's basic philosophy, structure and function is urgently needed".

Dissatisfaction with the organization's performance was among the reasons for the creation of two new organizations after the World Food Conference in 1974, namely the World Food Council and the International Fund for Agricultural Development; by the early eighties there was intense rivalry among these organizations. At the same time, the World Food Programme, which started as an experimental 3-year programme under FAO, was growing in size and independence, with the Directors of FAO and WFP struggling for power.

4.6.20 International Monetary Fund

The International Monetary Fund (IMF), "an organization of 185 countries, headquarters in Washington, D.C., USA, working to foster global monetary cooperation, secure financial stability, facilitate international trade, promote high employment and sustainable economic growth, and reduce poverty", is an international organization that oversees the global financial system by observing

exchange rates and balance of payments, as well as offering financial and technical assistance.

The International Monetary Fund was conceived in July 1944, when the representatives of 45 governments met in the town of Bretton Woods, New Hampshire, United States of America, and agreed on a framework for international economic cooperation. The IMF was formally organized on December 27, 1945, when the first 29 countries signed its Articles of Agreement. Any country may apply for membership to the IMF. The application will be considered first by the IMF's Executive Board. After its consideration, the Executive Board will submit a report to the Board of Governors of the IMF with recommendations in the form of a "Membership Resolution." These recommendations cover the amount of quota in the IMF, the form of payment of the subscription, and other customary terms and conditions of membership. After the Board of Governors has adopted the "Membership Resolution," the applicant state needs to take the legal steps required under its own law to enable it to sign the IMF's Articles of Agreement and to fulfil the obligations of IMF membership.

A member's quota in the IMF determines the amount of its subscription, its voting weight, its access to IMF financing, and its allocation of Special Drawing Rights. A member state cannot unilaterally increase its quota — increases must be approved by the Executive Board and are linked to formulas that include many variables such as the size of a country in the world economy.

Two criticisms from economists have been that financial aid is always bound to the so-called "Conditionality", including Structural Adjustment Programs. Conditionality, which are the economic performance targets established as a precondition for IMF loans, it is claimed, retard social stability and hence inhibit the stated goals of the IMF, while Structural Adjustment Programs lead to an increase in poverty in recipient countries.

Typically, the IMF and its supporters advocate a Keynesian approach. As such, adherents of supply-side economics generally find themselves in open disagreement with the IMF. The IMF frequently advocates currency devaluation, criticized by proponents of supply-side economics as inflationary. Secondly, they link higher taxes

under "austerity programmes" with economic contraction. Complaints are also directed toward the International Monetary Fund gold reserve being undervalued.

4.6.21 International Labour Organization

The International Labour Organization (ILO), founded in 1919, was formed through the negotiations of the Treaty of Versailles, and was initially an agency of the League of Nations. It became a member of the UN system after the demise of the League and the formation of the UN at the end of World War II. There are currently 175 members of the ILO. Its headquarters are in Geneva, Switzerland.

Its Constitution, as amended to date, includes the Declaration of Philadelphia (1944) on the aims and purposes of the Organization. As well-known, ILO is a specialized agency of the United Nations that deals with labour issues. The primary goal of the ILO today is to promote opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and human dignity. In working towards this goal, the organization seeks to promote employment creation, strengthen fundamental principles and rights at work - workers' rights, improve social protection, and promote social dialogue as well as provide relevant information, training and technical assistance. At present, the ILO's work is organized into four thematic groupings or sectors: (1) Standards and fundamental principles and rights at work; (2) Employment; (3) Social Protection; and (4) Social Dialogue.

One of the principal functions of the ILO involves setting international labour standards through the adoption of Conventions and Recommendations covering a broad spectrum of labour-related subjects and which, together, are sometimes referred to as the International Labour Code.

Adoption of a Convention by the International Labour Conference allows governments to ratify it, and the Convention then becomes a treaty in international law when a specified number of governments have ratified it. All adopted ILO Conventions are considered international labour standards regardless of how many national governments have ratified them. The topics covered by them cover a wide range of issues, from freedom of association to health and safety at work, working

conditions in the maritime sector, night work, discrimination, child labour and forced labour.

The coming into force of a Convention results in a legal obligation to apply its provisions by the nations that have ratified it. Ratification of a Convention is voluntary. Conventions that have not been ratified by member states have the same legal force as Recommendations.

Recommendations do not have the binding force of Conventions, and are not subject to ratification by member countries. Recommendations may be adopted at the same time as Conventions to supplement the latter with additional or more detailed provisions. The intent of these recommendations is often to more precisely detail the principles of related Conventions. In other cases Recommendations may be adopted separately, and address issues not covered by, or unrelated to any particular Convention.

The ILO hosts the International Labour Conference in Geneva every year in June. At the Conference, Conventions and Recommendations are crafted and adopted by majority decision. The Conference also makes decisions on the ILO's general policy, work programme and budget.

Each member state is represented at the International Labour Conference by four delegates: two government delegates, an employer delegate and a worker delegate. All delegates have individual voting rights, and all votes are equal, regardless of the population of the delegate's member state. The employer and worker delegates are normally chosen in agreement with the most representative national organizations of employers and workers. Usually, the workers' delegates coordinate their voting, as do the employers' delegates.

4.6.22 International Finance Corporation

The International Finance Corporation, established in 1956, is a member of the World Bank Group and is headquartered in Washington, DC. It shares the primary objective of all World Bank Group institutions: to improve the quality of the lives of people in its developing member countries. IFC promotes sustainable private sector investment

in developing countries as a way to reduce poverty and improve people's lives. IFC is the largest multilateral source of loan and equity financing for private sector projects in the developing world. It promotes sustainable private sector development primarily by:

1. Financing private sector projects located in the developing world.
2. Helping private companies in the developing world mobilize financing in international financial markets.
3. Providing advice and technical assistance to businesses and governments.

Within the World Bank Group, the World Bank finances projects with sovereign guarantees, while the IFC finances projects without sovereign guarantees. This means that the IFC is primarily active in private sector projects, although some projects in the public sector (at the municipal or sub-national level) have recently been funded. Private sector financing is IFC's main activity, and in this respect is a profit-oriented financial institution and has never had an annual loss in its 50-year history. IFC's share capital, which is paid in, is provided by its member countries, and voting is in proportion to the number of shares held.

IFC has 179 member countries, which collectively determine its policies and approve investments. To join IFC, a country must first be a member of the International Bank for Reconstruction and Development (IBRD). IFC's corporate powers are vested in its Board of Governors, to which member countries appoint representatives. The Board of Governors delegates many of its powers to the Board of Directors, which is composed of the Executive Directors of the IBRD, and which represents IFC's member countries. The Board of Directors reviews all projects.

4.6.23 International Civil Aviation Organization

The International Civil Aviation Organization (ICAO), an agency of the United Nations, codifies the principles and techniques of international air navigation and fosters the planning and development of international air transport to ensure safe and orderly growth. Its headquarters are located in the Quartier International of Montreal, Canada.

The ICAO Council adopts standards and recommended practices concerning air navigation, prevention of unlawful interference, and facilitation of border-crossing procedures for international civil aviation. In addition, the ICAO defines the protocols for air accident investigation followed by transport safety authorities in countries signatory to the Convention on International Civil Aviation, commonly known as the Chicago Convention. The ICAO should not be confused with the International Air Transport Association (IATA), a trade organization for airlines also, headquartered in Montreal.

Unit summary

The UN-Specialized Agencies are often called part of the United Nations "family." The following organizations all have their own separate member states, governing bodies, executive heads, and secretariats. While these organizations are bound to the UN by legal agreements, they are not governed directly by UN organs.

Most organizations in the system are related to the United Nations through legal agreements executed pursuant to Articles 57 and 63 of the Charter. A key purpose of these special agreements, as stated in Article 58, was coordination of activities in the pursuit of economic, social, and cultural objectives. However, some provisions have never been fully implemented.

There are many UN organizations and agencies that function to work on particular issues. Some of UN-Specialized Organizations are summarized as Follows.

WMO	The World Meteorological Organization originated from the International Meteorological Organization, which was founded in 1873. Established in 1950, WMO became the specialized agency of the United Nations for meteorology (weather and climate), operational hydrology and related geophysical sciences. It has its headquarters in Geneva, Switzerland.
WIPO	The World Intellectual Property Organisation is a specialized agency of the United Nations created in 1967 and headquartered in Geneva, Switzerland. Its purpose is to encourage creative activity and to promote the protection

	of intellectual property throughout the world. The organisation administers several treaties concerning the protection of intellectual property rights.
WHO	The World Health Organization acts as a coordinating authority on international public health. Established on 7 April 1948, and headquartered in Geneva, Switzerland, the agency inherited the mandate and resources of its predecessor, the Health Organization, which had been an agency of the League of Nations.
World Bank	The World Bank, a part of the World Bank Group (WBG), makes loans to developing countries for development programmes with the stated goal of reducing poverty. The World Bank differs from the World Bank Group in that the former only comprises the International Bank for Reconstruction and Development and the International Development Association, while the latter incorporates these entities in addition to three others.
UPU	The Universal Postal Union, headquartered in Berne, Switzerland , coordinates postal policies between member nations, and hence the world-wide postal system. Each member country agrees to the same set of terms for conducting international postal duties.
UNIDO	The United Nations Industrial Development Organization (UNIDO) is a specialized agency in the United Nations system, headquartered in Vienna, Austria. The Organization's primary objective is the promotion and acceleration of industrial development in developing countries and countries with economies in transition and the promotion of international industrial cooperation. UNIDO believes that competitive and environmentally sustainable industry has a crucial role to play in accelerating economic growth, reducing poverty and achieving the Millennium Development Goals . The Organization therefore works

	<p>towards improving the quality of life of the world's poor by drawing on its combined global resources and expertise in the following three interrelated thematic areas:</p> <ul style="list-style-type: none"> • Poverty reduction through productive activities; • Trade capacity-building; and • Energy and environment.
UNESCO	<p>United Nations Educational, Scientific and Cultural Organization is a specialized agency of the United Nations established in 1945. Its stated purpose is to contribute to peace and security by promoting international collaboration through education, science, and culture in order to further universal respect for justice, the rule of law, and the human rights and fundamental freedoms proclaimed in the UN Charter.</p>
FAO	<p>The Food and Agriculture Organization of the United Nations leads international efforts to defeat hunger. Serving both developed and developing countries, FAO acts as a neutral forum where all nations meet as equals to negotiate agreements and debate policy. FAO's mandate is to raise levels of nutrition, improve agricultural productivity, better the lives of rural populations and contribute to the growth of the world economy. FAO is the largest of UN agencies and its headquarters are in Rome, Italy.</p>
ITU	<p>The International Telecommunication Union was established to standardize and regulate international radio and telecommunications. It was founded as the International Telegraph Union in Paris on 17 May 1865. Its main tasks include standardization, allocation of the radio spectrum, and organizing interconnection arrangements between different countries to allow international phone calls — in which regard it performs for telecommunications a similar function to what the UPU performs for postal services. It has its headquarters in Geneva, Switzerland, next to the main</p>

	United Nations campus.
IMO	<p>The International Maritime Organization, formerly known as the Inter-Governmental Maritime Consultative Organization, was established in 1948 through the United Nations to coordinate international maritime safety and related practices. However the IMO did not enter into full force until 1958.</p> <p>Headquartered in London, the IMO promotes cooperation among governments and the shipping industry to improve maritime safety and to prevent marine pollution. IMO is governed by an Assembly of members and is financially administered by a Council of members elected from the Assembly. The work of IMO is conducted through five committees and these are supported by technical sub-committees. Member organizations of the UN organizational family may observe the proceedings of the IMO. Observer status may be granted to qualified non-governmental organizations.</p> <p>The IMO is supported by a permanent secretariat of employees who are representative of its members. The secretariat is composed of a Secretary-General who is periodically elected by the Assembly, and various divisions including, <i>inter alia</i>, marine safety, environmental protection, and a conference section.</p>
ILO	<p>The International Labour Organization deals with labour issues. Its headquarters are in Geneva, Switzerland. Founded in 1919, it was formed through the negotiations of the Treaty of Versailles, and was initially an agency of the League of Nations. It became a member of the UN system after the demise of the League and the formation of the UN at the end of World War II. Its Constitution, as amended to date, includes the Declaration of Philadelphia on the aims and purposes of the Organization.</p>

	Its secretariat is known as the International Labour Office.
IAEA	<p>The International Atomic Energy Agency is an intergovernmental forum for scientific and technical cooperation in the field of nuclear technology. It seeks to promote the peaceful use of nuclear energy and to inhibit its use for military purposes. The IAEA was set up as an autonomous organization in 29 July 1957. Prior to this, in 1953, U.S. President Dwight D. Eisenhower envisioned the creation of this international body to control and develop the use of atomic energy, in his "Atoms for Peace" speech before the UN General Assembly. Its current membership is 144 countries.</p>
ICAO	<p>The International Civil Aviation Organization was founded in 1947. It codifies the principles and techniques of international air navigation and fosters the planning and development of international air transport to ensure safe and orderly growth. Its headquarters are located in the Quartier international de Montréal of Montreal, Canada.</p> <p>The ICAO Council adopts standards and recommended practices concerning air navigation, prevention of unlawful interference, and facilitation of border-crossing procedures for international civil aviation. In addition, the ICAO defines the protocols for air accident investigation followed by transport safety authorities in countries signatory to the Convention on International Civil Aviation, commonly known as the Chicago Convention.</p>
IFAD	<p>The International Fund for Agricultural Development (IFAD) was established as an international financial institution in 1977, as one of the major outcomes of the 1974 World Food Conference and a response to the situation in the Sahel. IFAD is dedicated to eradicating rural poverty in developing countries. Its headquarters are in Rome, Italy</p>

Review Questions

1. Explain the general features of Specialized Agencies
2. Describe the similarities and differences that exist among Specialized Agencies of the United Nations.
3. Put in clear terms Sanction and Enforcement procedures of the Specialized Agencies
4. Explain the legislative process and development of international law by Specialized Agencies
5. How do Specialized agencies interpret their constitutional texts?
6. Summarize the functions, objectives, and historical background of the following UN Specialized Agencies.
 - a) World Bank Group
 - b) World health organization
 - c) Food and Agriculture organizations

CHAPTER FIVE

REGIONAL ORGANIZATION

Under the previous chapter we have seen in depth the UN specialized agencies. As we have already known the UN hosts a large number of Specialized Agencies within the UN family, such as the international Labour Organization (ILO), the International Civil Aviation Organization (ICAO), the United Nations Education, Scientific and Cultural Organization (UNESCO), the world Health Organization (WHO), the Universal Postal Union (UPU), the International Telecommunication Union (ITU), the International Maritime Organization (IMO), the World Intellectual Property Organization (WIPO), the International Atomic Energy Agency (IAEA), or the World Meteorological Organization (WMO) and other organizations, as provided for in Article 57 of the UN Charter. In addition, there are a number of international economic and financial organizations.

Under this chapter we will see some major regional international organizations. After in depth analysis of this chapter, the student will be able to:-

1. Describe the role of regional organizations in keeping of regional and international security;
2. Analyze the origins, developments, objectives, functions and roles of some European Organizations, such as The European Union;
3. Explain the reasons for the establishment of some American Organizations; particularly The Organization of American States;
4. Assess the decisive role of the Arab League in creating conducive atmosphere in Arab States; and
5. Describe the socio-economic and political goals of the Asia and Far East Regional organizations.

5.1 Introduction: Chapter VIII of the UN Charter - Regional Organizations

Even prior to the league, 'regionalism,' in the sense of a grouping of States by a common bond of policy, existed. The Monroe doctrine or the British Empire are obvious examples. Article 21 of the league covenant recognized that the new global

organisation must co-exist with such regional groupings by providing that “Nothing in this convention shall be deemed to affect the validity of international engagements such as treaties of arbitration or regional understandings like the Monroe doctrine for securing the maintenance of peace.” The league therefore saw the creation of the Balkan Entente, the Locarno Agreements, and the Briand proposal for a European Union. When, at San Francisco, the same problem of reconciling the new global organisation with regional understanding arose, there was already in existence a fairly comprehensive inter-American system (Pan-American Union), which in 1948 was to become the “Organization of American States.” Moreover the newly-formed League of Arab States was inaugurated by the Pact of March 22, 1945.

5.2 Regional and global Security

Chapter VIII of the UN Charter: Regional Arrangements

Article 52

1. Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations.
2. The Members of the United Nations entering into such arrangements or constituting such agencies shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council.
3. The Security Council shall encourage the development of pacific settlement of local disputes through such regional arrangements or by such regional agencies either on the initiative of the states concerned or by reference from the Security Council.
4. This Article in no way impairs the application of Articles 34 and 35.

Article 53

1. The Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council, with the exception of measures against any enemy state, as defined in paragraph 2 of this Article, provided for pursuant to Article 107 or in regional arrangements directed against renewal of aggressive policy on the part of any such state, until such time as the Organization may, on request of the Governments concerned, be charged with the responsibility for preventing further aggression by such a state.

2. The term enemy state as used in paragraph 1 of this Article applies to any state which during the Second World War has been an enemy of any signatory of the present Charter.

Chapter VIII of the UN Charter states that the Security Council should encourage associations or agencies that promote peace at the regional level. The Security Council may make use of such regional organizations to enforce its peacekeeping goals. However, regional organizations may not take any military action without UN authorization except against an aggressor state.

Article 52

1. Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations.
2. The Members of the United Nations entering into such arrangements or constituting such agencies shall make every effort to achieve pacific

settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council.

3. The Security Council shall encourage the development of pacific settlement of local disputes through such regional arrangements or by such regional agencies either on the initiative of the states concerned or by reference from the Security Council.
4. This Article in no way impairs the application of Articles 34 and 35.

Article 53

1. The Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council, with the exception of measures against any enemy state, as defined in paragraph 2 of this Article, provided for pursuant to Article 107 or in regional arrangements directed against renewal of aggressive policy on the part of any such state, until such time as the Organization may, on request of the Governments concerned, be charged with the responsibility for preventing further aggression by such a state.
2. The term enemy state as used in paragraph 1 of this Article applies to any state which during the Second World War has been an enemy of any signatory of the present Charter.

In order to meet the fears of the American States, in particular, provision was expressly made to ensure that the new arrangements for collective security in the Charter, operating under the Security Council, should not stultify the arrangements already in being on a regional basis. Article 52(1) of the Charter therefore provides that:

“Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action provided that such arrangements or agencies and their activities are consistent with the purposes and principles of the United Nation.”

Clearly, the concern here is to avoid a conflict between the respective security systems of the United Nations and the “regional arrangements”.

However, the attempt at San Francisco to reconcile the conflicting claims of regionalism and universalism produced a compromise which has within it two areas of latent difficulty.

The first area of difficulty was “enforcement” of action which, under Article 53, cannot be taken except under the authorization of the Security Council. The practice of the OAS has shown a tendency to minimize this restriction on the scope of regional collective action of a coercive character in three ways. First the OAS in the Dominican case in 1965, and the Arab League in Kuwait in 1961 and in the Lebanon in 1976, have developed a concept of “regional peace-keeping” involving the use of armed forces but not for “enforcement action. Secondly, the OAS has taken a broad definition of the notion of “collective self-defence”, which under Article 51 of the charter, is clearly distinct from enforcement action and does not require prior authorization. Thus the view that has been taken would not confine self-defence to ‘armed attack’ but would embrace indirect aggression or subversion: this view is reflected in the 1962 Punta del Este Declaration. This view was long criticized by the Soviet Union, although the intervention by Warsaw Pact countries in Czechoslovakia in 1968 seems to have marked a reversal of policy. Thirdly, the OAS (and the US in particular), has argued that the concept of “enforcement action” subject to prior authorization by the Security Council does not embrace measures falling short of the use of armed force or taken pursuant to a recommendation as opposed to a decision and moreover, that the Security Council’s “authorization” can lie in an *ex post facto* approval or even failure to disapprove the action.

The second area of difficulty was that of peaceful settlement of disputes. Article 33 includes resort to regional arrangements as a method which the parties must use “first of all,” before having recourse to the Security Council. Article 52 (2) and (3) imposed upon the parties and the Security Council the obligation to utilize regional procedures for settlement. However, Article 52(4) specifically states that “this Article in no way impairs the application of Article 34 and 35”, so that the Council’s own right to

investigate a dispute or situation, and the member state's right to appeal to the council seemed to be preserved; the inherent contradictions are obvious.

Thus, in the practice of the OAS, the Arab League and the OAU, the thesis that regional procedures have a "priority" over the security council's procedures for settlement has been advanced and even in its extreme form in the U.S argument in the Guatemalan case in 1954, an "exclusive" competence over inter-regional disputes so as to deny a state the right to appeal to the security council. This argument over jurisdictional competence was politically motivated, especially in an OAS practice where the U.S.A feared that reference to the security council would bring a soviet veto and where the soviet union feared that the OAS procedures would be dominated by U.S. influence.

The security council, after a somewhat questionable abdication of jurisdiction in the Guatemalan case, has more recently shifted towards a more pragmatic approach in which, whilst supporting the use of regional procedures, it nevertheless retains a "supervisory" jurisdiction by maintaining the question on its own agenda (as in the Haitian and Panama Cases in 1963 and 1964) and even, in the case of the Dominican Republic in 1965, dispatching its own observer mission.

Any attempt to rationalize the competing claims to jurisdiction over a dispute must take account of three basically different categories of "disputes".

1. "Disputes" which involve an actual threat to peace-here the situation properly belongs in Chapter VII, not Chapter VI, and the "primary responsibility" of the Security Council to deal with the matters is clear: there can be no question of "Priority" for regional procedures. Equally clearly, there is nothing to prevent the Security Council utilizing regional procedures to assist in any measures taken under chapter VII, but they do this subject to the council's primary responsibility.
2. Disputes involving a potential threat to international Peace-here, the matter seems to fall squarely under Chapter VI of the Chapter, so that the rights of the council under Article 34, and of states under Article 35, are clear.

Reference to a regional organization's procedures becomes a matter of convenience, not of obligation, and much depends on the willingness of the parties to accept such a reference.

3. Disputes involving no actual or potential threat to international peace—here the priority of the regional procedures is undisputed, and the matter ought not to be referred to the security council.

The difficulty about these developments is that they expand the role of regional arrangements in the vital areas of the regulation of coercion without necessarily offering any real guarantee that this role will be subject to the safeguards of world opinion which, whatever the weaknesses of the UN, do find reflection in UN organs. The regional arrangements are not microcosms of the UN: in general they are a professed bias—against “Communism”, “capitalism” “colonialism”, etc—and do not guarantee the objectively desirable in any authorization of the use of coercion against another state. Nor can one region develop a role which can be denied to another region, so that whatever the OAS can do under the UN charter, so can the OAU, etc; it is not therefore desirable for regional autonomy to develop too far in this area.

Not all organizations with membership limited to states in a given area are regarded as “regional arrangements” in the sense of Chapter VIII. The relative subordination of the regional arrangement to the security council was needed because it was politically embarrassing once the “cold war” developed, and western powers wished to create an organization for security against the Soviet Union, yet any “regional arrangement” they contrived would be virtually under the control of an organ of the United Nations in which the Soviet Union held a veto. Hence the North Atlantic Treaty Organisation, formed in 1949, made no mention of any relationship to the security council as a “regional arrangement”, nor did it contain any provision providing for action only upon the authorization of the council or for reporting activities “in contemplation.” Instead the treaty expressed the organization to be one for “collective self-defence,” under Article 51 of the charter, and, correspondingly, embodies only the obligation to report “measures taken” to the council. The question whether all regional security arrangements must necessarily be “regional arrangements” under the charter is complicated by the fact that no definition of a regional arrangement is given in the charter; various attempts to insert one at San Francisco were rejected on the ground

of incompleteness. Sir Eric Beckett argued that “regional arrangements” were essentially different from organizations for collective self-defence. His contention was that Article 53 envisages the use of regional arrangements for “enforcement action,” and this term, as evidenced by Article 2(5) and 50, means “action ordered or authorized by the proper organ of the United Nations.” Such action, he contended, is essentially different from action in self-defence which the charter recognizes and does not require any prior authorization from the Security Council. Kelsen has denied that “enforcement action” has so restricted a meaning. Beckett’s further argument was that whereas chapter VIII of the Charter indicates a number of matters with which regional arrangements may appropriately deal, collective self-defence is not amongst them. To this Kelsen replied that such express mention would have been superfluous in view of Article 51, and “such matters relating to the maintenance of international peace and security as are appropriate for regional action” is in any event perfectly apt to include collective self-defence. Beckett’s final argument was that regional arrangements contemplate the case of action against a member state of the arrangement, whereas collective self-defence contemplates attack from a state outside the organization; Kelsen maintains this has “no basis in the Charter”.

One writer has suggested elsewhere that, in this form, the problem posed is a sterile one. The question is not whether a given organization is a regional arrangement or not, but rather whether particular action is taken as a regional arrangement or not. No one doubts the capacity of the organization of American States, which is expressly stated to be a “regional arrangement” in Article 1 of the Treaty of Bogota, 1948, to take collective self-defence, and in so doing it would be subject to the obligations of Article 51; chapter VIII would be irrelevant to that situation. But assume a situation where the action contemplated is coercive action directed against a state and authorized by a competent UN organ (here we accept the *expenses case* definition of “enforcement action”), and clearly, the regional organization must act only under the authority of that organ.

We shall see, therefore, that certain of the regional security arrangements purport to be “regional arrangements” under chapter VII of the charter, whereas others do not. We shall also see that the scope of regional organizations is much wider than either that of “regional arrangements” or even regional collective security organizations.

Whilst it is true that, because of the outbreak of the “cold war” and the consequent breakdown of the UN collective security system, regionalism has developed most in the form of organizations for collective security, it has never been contended that collective security was the only domain in which the principle of regionalism could operate. It was self-evident that, in the political and economic fields, greater progress might be made on a regional basis, between states whose fundamental similarity of political and economic institutions lessened the barriers to progress and co-operation. The United Nations itself recognized this fact by establishing the regional economic commissions, like ECA, ECE, ESCAP, ECLA. Hence, nothing in the UN Charter has equally prevented the growth of regional organizations in these other fields, and many of the organizations to be dealt with will be seen to have no connection with the “regional arrangements” mentioned in Article 52, or, indeed, with collective security as such.

By and large, and setting aside the development of the regional blocs for military purposes, the development of these strong regional tendencies has been a beneficial one in terms of the co-operation achieved between states. There is, however, a certain danger which is most obvious in the collective security field but which is also of a general character, namely that states may so concentrate on their regional associations as to minimize their efforts to co-operation on a global or universal basis through the United Nations and the specialized agencies. Trygve Lie once said “regional arrangements can never be a substitute for world organization.” Indeed, these developments should be regarded as complementary to, and not a substitution for, those embraced by the UN and its agencies.

5.3 European organizations

5.3.1 The Council of Europe

In 1945, at the end of the second World War, Europe was marked by unprecedented devastation and human suffering. It faced new political challenges, in particular reconciliation among the peoples of Europe. This situation favoured the long held idea of European integration through the creation of common institutions.

In his famous speech at the University of Zurich in 1946, Sir Winston Churchill called for a United States of Europe and the creation of a Council of Europe.

At a specific congress of more than a thousand government representatives, politicians and civil society in The Hague in 1948, the future structure of the Council of Europe was discussed. There were two schools of thought competing: some favoured a classical international organisation with representatives of governments, while others preferred a political forum with parliamentarians. Both approaches were finally combined through the creation of the Committee of Ministers and the Parliamentary Assembly under the Statute of the Council of Europe of 1949.

The Council of Europe was founded on the 1949-05-05 Treaty of London. It is the oldest international organisation with legal personality recognised under public international law working for European integration and has observer status with the United Nations. The Statute of the Council of Europe was signed in London on that day by ten states: Belgium, Denmark, France, Ireland, Italy, Luxembourg, the Netherlands, Norway, Sweden and the United Kingdom. Many states followed, especially after the democratic transitions in central and eastern Europe during the early 1990s. With the exception of Belarus, Kazakhstan and the Holy See all European states have acceded the Council of Europe.

The seat of the Council of Europe is in Strasbourg in France. Having held its first meeting in Strasbourg's University Palace in 1949, its headquarters are in the Palace of Europe, the Human Rights Palace and adjacent buildings.

Article 1(a) of the Statute states that "*The aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress.*" Therefore, membership is open to all European states which seek European integration, accept the principle of the rule of law and are able and willing to guarantee democracy, fundamental human rights and freedom.

The Council of Europe's most important achievement is the European Convention on Human Rights, adopted in 1950, which created the European Court of Human Rights in Strasbourg. The Court supervises compliance with the European Convention on Human Rights and thus functions as the highest European court for human rights and fundamental freedoms. Since the council of Europe is an organization of general competence, it differs from other European organizations, which will be discussed under the section of European organizations. The latter organizations are organizations of limited competences.

The institutions of the Council of Europe are:

- The Secretary General, who is elected for a term of five years by the Parliamentary Assembly and heads the Secretariat of the Council of Europe.
- The Committee of Ministers, comprising the Ministers of Foreign Affairs of all 47 member states who are represented by their Permanent Representatives and Ambassadors accredited to the Council of Europe.
- The Parliamentary Assembly (PACE), which comprises national parliamentarians from all member states and elects its President for two years.
- The Congress of the Council of Europe (Congress of Local and Regional Authorities of Europe), which was created in 1994 and comprises political representatives from local and regional authorities in all member states.
- The European Court of Human Rights, created under the European Convention on Human Rights of 1950, composed of a judge from each member state elected for a renewable term of six years by the Parliamentary Assembly and headed by the elected President of the Court.
- The Commissioner for Human Rights, who is elected by the Parliamentary Assembly for a non-renewable term of six years since the creation of this position in 1999. This position has been held since 2006 by Thomas Hammarberg from Sweden.
- Information Offices of the Council of Europe in many member states.
- The European Commission for the Efficiency of Justice (CEPEJ)

5.3.2 The North Atlantic Treaty Organisation

The North Atlantic Treaty Organisation (NATO), also called the North Atlantic Alliance, the Atlantic Alliance, or the Western Alliance, is an international organization for peace and defense established in 1949, from the North Atlantic Treaty signed in Washington, D.C., USA, on April 4, 1949. Its headquarters are in Brussels, Belgium.

Its members in the beginning were: The United States, Belgium, the Netherlands, Luxembourg, France, the United Kingdom, Canada, Portugal, Italy, Norway, Denmark and Iceland. Three years later, on 18 February 1952, Greece and Turkey also joined.

In 1954 the Soviet Union suggested that it should join NATO to preserve peace in Europe. The NATO countries did not agree as it would destroy the purpose of NATO.

When West Germany joined the organization on 9 May 1955 it was described as "a decisive turning point in the history of our continent" by Halvard Lange, Foreign Minister of Norway at the time. Indeed, the result was the Warsaw Pact, signed on 14 May 1955 by the Soviet Union and its satellite states in response to NATO. This hardened the positions of the two opposing sides of the Cold War.

After the Cold war in 1999, three former communist countries, Hungary, the Czech Republic, and Poland joined the NATO. On 29 March 2004 seven more Northern European and Eastern European countries joined NATO: Estonia, Latvia and Lithuania and also Slovenia, Slovakia, Bulgaria, and Romania. A number of other countries have also wished to join the alliance, including Albania, Macedonia, Georgia, and Croatia.

5.3.3 Western European Union

The Western European Union (WEU) is a partially dormant European defence and security organization; and the headquarters are in Brussels. WEU was created by the Treaty on Economic, Social and Cultural Collaboration and Collective Self-Defence

signed at Brussels on 17 March 1948 (the Brussels Treaty), as amended by the Protocol signed at Paris on 23 October 1954, which modified and completed it.

The Brussels Treaty was signed by Belgium, France, Luxembourg, the Netherlands and the United Kingdom. Conceived largely as a response to Soviet moves to impose control over the countries of Central Europe, the Treaty represented the first attempt to translate into practical arrangements some of the ideals of the European movement. Its main feature was the commitment to mutual defence should any of the signatories be the victim of an armed attack in Europe. In September 1948, military co-operation was initiated in the framework of the Brussels Treaty Organisation. A plan for common defence was adopted, involving the integration of air defences and a joint command organisation.

By demonstrating their resolve to work together, the Brussels Treaty powers helped to overcome the reluctance of the United States to participate in the nascent European security arrangements. Talks between these powers and the United States and Canada began shortly afterwards, leading to the signature of the North Atlantic Treaty in Washington on 4 April 1949. Denmark, Iceland, Italy, Norway and Portugal were invited and agreed to accede to the Treaty, which formalised the commitment by the United States and Canada to the defence of Europe. Article 5 of the Treaty states that an armed attack against one of the signatories shall be considered an attack against them all and that each party will then take such action as it deems necessary to restore and maintain the security of the North Atlantic area.

The need to back up the commitments of the Washington Treaty with appropriate political and military structures led to the creation of the North Atlantic Treaty Organisation (NATO). In December 1950, with the appointment of General Eisenhower as the first Supreme Allied Commander of Europe (SACEUR), the Brussels Treaty powers decided to merge their military organisation into NATO, which had become the central element in the West European and North Atlantic security system.

Meanwhile, the desire to integrate the Federal Republic of Germany into the emerging security structures prompted France, in October 1950, to propose the creation of a European Army which would operate within the framework of the Alliance. This proposal led to the signature, in May 1952, of the Treaty setting up a European Defence Community (EDC) in which Belgium, France, Italy, Luxembourg, the Netherlands and the Federal Republic of Germany were due to participate. However, in August 1954 the French National Assembly refused to ratify the Treaty. The failure of the EDC meant that an alternative way had to be found to integrate the Federal Republic of Germany into the Western security system. At a special Conference convened in London in September 1954 and attended by the Brussels Treaty powers, the United States, Canada, the Federal Republic of Germany and Italy, it was decided to invite the latter two countries to join the Brussels Treaty. The conclusions of the conference were formalised by the Paris Agreements, signed in October of that year, which amended the Brussels Treaty, created Western European Union (WEU) as a new international organisation and provided for the Federal Republic of Germany and Italy to join. The signatories of the Paris Agreements clearly stated their three main objectives in the preamble to the modified Brussels Treaty:

To create in Western Europe a firm basis for European economic recovery;
To afford assistance to each other in resisting any policy of aggression;
To promote the unity and encourage the progressive integration of Europe.

Its two most important provisions are contained in Articles V and VIII.3:

“If any of the High Contracting Parties should be the object of an armed attack in Europe, the other High Contracting Parties will, in accordance with the provisions of Article 51 of the Charter of the United Nations, afford the Party so attacked all military and other aid and assistance in their power.”
(Article V)

“At the request of any of the High Contracting Parties, the Council shall be immediately convened in order to permit them to consult with regard to any situation which may constitute a threat to peace, in whatever area this threat should arise, or a danger to economic stability.” (Article VIII.3)

In November 1988, a Protocol of Accession was signed by the WEU Member States with Portugal and Spain. The ratification process was completed in March 1990. Greece followed a similar process in 1992 and 1995 thus bringing the total WEU membership to 10.

From 1954 to 1973, WEU played an important role by promoting the development of consultation and co-operation in Western Europe, in the aftermath of the Second World War.

It permitted:

- the integration of the Federal Republic of Germany into the Atlantic Alliance;
- the restoration of confidence among Western European countries by assuming responsibilities for arms control;
- settlement of the Saar problem;
- consultation between the European Community founding Member States and the United Kingdom.

The three major elements of the WEU are the Council of Ministers, The Council President, and the Secretary-General. The WEU is led by a Council of Ministers, assisted by a Permanent Representatives Council at ambassadorial level. A Parliamentary Assembly (composed of the delegations of the member states to the Parliamentary Assembly of the Council of Europe) would oversee the work of the Council. Social and cultural aspects of the Brussels Treaty were handed to the Council of Europe to avoid duplication of responsibilities within Europe.

The WEU has a rotating 6 month presidency. When the President of the Council of the EU belongs to a country that is also a member of the WEU then that member is also the President of the WEU, and when a non member heads the EU a different member state takes over the presidency. From January 1, 2005 until July 1, 2005 Luxembourg was the President. It was then handed over to the UK, which unusually continued as President for a second term on January 1, 2006 when non-member Austria took over the EU presidency. The organisation's Secretary-General is Javier Solana, appointed on November 20, 1999. He is also the European Union's High Representative for the Common Foreign and Security Policy and head of the European Defence Agency.

5.3.4 The organization for Economic Cooperation and Development (OECD)

The forerunner of the OECD was the Organisation for European Economic Co-operation (OEEC). The OEEC was formed in 1947 to administer American and Canadian aid under the Marshall Plan for the reconstruction of Europe after World War II. Its headquarters were established at the Château de la Muette in Paris in 1949.

The OECD took over from the OEEC in 1961. Since then, The OECD has brought together the governments of countries committed to democracy and the market economy from around the world to help its member countries to achieve sustainable economic growth and employment; to raise the standard of living in member countries while maintaining financial stability; to assist other countries economic development; and contribute to growth in world trade – all this in order to contribute to the development of the world economy. The OECD also shares expertise and exchanges views with more than 100 other countries and economies, from Brazil, China, and Russia to the least developed countries in Africa. Its founding Convention also calls on it to assist sound economic expansion in other countries and to contribute to growth in world trade on a multilateral, non-discriminatory basis.

The OECD's 30 members. The 30 member countries of the OECD are: Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Spain, Sweden, Switzerland, Turkey, United Kingdom, United States. Twenty of these countries became members on 14 December 1960, when the Convention establishing the organisation was signed. The others have joined over the years.

In contrast to many other international organisations, becoming a member of the OECD is not something that is automatically open to applicant countries. The member countries of the Organisation, meeting in its governing body (the Council), decide whether a country should be invited to join the OECD and on what conditions. This decision is taken at the end of what might be called the accession process.

The council, Committees and secretariat drive the OECD works. Decision-making power is vested in the OECD Council. It is made up of one representative per member country, plus a representative of the European Commission. The Council meets regularly at the level of permanent representatives to the OECD and decisions are taken by consensus. The Council meets at ministerial level once a year to discuss key issues and set priorities for OECD work. The work mandated by the Council is carried out by the OECD secretariat.

5.3.5 European Free Trade Association

The European Free Trade Association (EFTA) is a European trade bloc which was established on May 3, 1960 as an alternative for European states which were either unable to, or chose not to, join the then-European Economic Community (now the European Union).

The EFTA Convention was signed on January 4, 1960 in Stockholm by seven states- United Kingdom, Denmark, Norway, Sweden, Austria, Switzerland and Portugal. The Stockholm Convention was subsequently replaced by the Vaduz Convention. This Convention provides for the liberalisation of trade among the member states.

During the 1960s Its original members were often referred to as the Outer Seven, as opposed to the Inner Six of the then-styled European Economic Community. Finland became an associate member in 1961 (becoming a full member in 1986), and Iceland joined in 1970. The United Kingdom and Denmark joined the European Community in 1973 (together with Ireland), and hence ceased to be EFTA members. Portugal also left EFTA for the European Community in 1986. Liechtenstein joined in 1991 (previously its interests in EFTA had been represented by Switzerland). Finally, Austria, Sweden and Finland joined the European Union in 1995 and hence ceased to be EFTA members. Today only Iceland, Norway, Switzerland, and Liechtenstein remain members of EFTA (of which only Norway and Switzerland are founding members). Three of the EFTA countries are part of the European Union Internal Market through the Agreement on a European Economic Area (EEA), which took effect in 1994; the fourth, Switzerland, opted to conclude bilateral agreements with the EU. In addition, the EFTA states have jointly concluded free trade agreements with a number of other countries.

EFTA is governed by the EFTA Council and serviced by the EFTA Secretariat. In addition, in connection with the EEA Agreement of 1992, two other EFTA organisations were established, the EFTA Surveillance Authority and the EFTA Court.

5.3.6 The European Communities

The European Community is an amalgam of three separate communities: the European Coal and Steel Community, established by the Treaty of Paris in 1951 to regulate production and liberalize Europe's trade in coal and steel products; the European Atomic Energy Community, formed by the Treaty of Rome in 1957; and the European Economic Community, also created by the Treaty of Rome. All three were established to encourage political and economic cooperation among member countries, notably France and Germany, that had repeatedly warred with each other. By 1967 the institutions of the European Economic Community (or Common Market) became common to all three communities. Today it is conventional to refer to the European Community (as the EC or the Community) in the singular, whether one means the Economic Community or all three initiatives.

5.3.6.1 European Coal and Steel Community

The Schuman Declaration of 9 May 1950, based on the work of Jean Monnet, laid out a plan for a European Community to pool the coal and steel of its members in a common market. He proposed that: "*Franco-German production of coal and steel as a whole be placed under a common High Authority, within the framework of an organisation open to the participation of the other countries of Europe.*" Such an act was intended to help economic growth and cement peace between France and Germany, who had previously been long time enemies. Coal and steel were particularly symbolic as they were the resources necessary to wage war. It would also be a first step to a "European federation". Upon taking effect it, in stages, replaced the International Authority for the Ruhr.

The 100 article long Treaty of Paris, establishing the European Coal and Steel Community, was signed on 18 April 1951 by France, Germany, Italy, Belgium, Luxembourg and the Netherlands, following a proposal from French Foreign Minister Robert Schuman, and created a common market for coal and steel between its members. It is also known as the Schuman Plan, after the French foreign minister, Robert Schuman, who proposed it in 1950. The European Coal and Steel Community (ECSC) was an experimental six-nation international organisation and the first to be based on supranational principles and served as the foundation for the modern-day European Union.

Timeline of treatiesMember nations of ECSC pledged to pool their coal and steel resources by providing a unified market for their coal and steel products, lifting restrictions on imports and exports, and creating a unified labor market. The ECSC was, through the establishment of a common market for coal and steel, to work towards economic expansion, increase employment and raise the standard of living in the Community. It was to progressively bring about a rational distribution of high level production while ensuring stability and employment. The common market was opened on 10 February 1953 for coal, and on 1 May 1953 for steel.

Six years after the Treaty of Paris, the Treaties of Rome were signed by the six ECSC members, creating the European Economic Community (EEC) and the European Atomic Energy Community (EAEC or Euratom). These Communities were based, with some adjustments, on the ECSC. The Treaties of Rome were to be in force for an unlimited period, unlike the Treaty of Paris which was to expire after fifty years. These two new communities worked on atomic energy cooperation and the creation of a union. however, their fields rapidly expanded with the EEC becoming the most important tool for political unification, overshadowing the ECSC.

Despite being separate communities with separate legal personalities, three Communities initially shared the Common Assembly and the European Court of Justice. The other institutions were separate: the Councils and the High Authority/Commissions. Due to a desire to avoid duplication, the Merger Treaty of 1969 merged the ECSC and Euratom with the EEC, forming the European Communities. The ECSC continued to exist as part of this, as the Communities became part of the European Union, but the Treaty of Paris expired in 2002. The

Community was not replaced but its activities and resources were absorbed by the European Community.

5.3.6.2 European Economic Community

European Economic Community (EEC), an organization established (1958) by a treaty signed in 1957 by Belgium, France, Italy, Luxembourg, the Netherlands, and West Germany (now Germany), was known informally as the Common Market. Britain, Ireland, and Denmark were admitted in 1973. Three southern European countries were allowed to join once they installed democratic governments—Greece in 1981, Spain and Portugal in 1986. Other Western European countries (Austria, Finland, Sweden, and Switzerland) belong to the European Free Trade Association, or EFTA (as did Britain, Ireland, and Denmark before 1973). EFTA has traditionally concentrated on trade liberalization, in contrast to the EC's more ambitious agenda of economic and political integration

The EEC was the most significant of the three treaty organizations that were consolidated in 1967 to form the European Community (EC; known since the ratification [1993] of the Maastricht treaty as the European Union). The EEC had as its aim the eventual economic union of its member nations, ultimately leading to political union. It worked for the free movement of labor and capital, the abolition of trusts and cartels, and the development of joint and reciprocal policies on labor, social welfare, agriculture, transport, and foreign trade.

In 1958, Britain proposed that the Common Market be expanded into a transatlantic free-trade area. After the proposal was vetoed by France, Britain engineered the formation (1960) of the European Free Trade Association (EFTA) and was joined by other European nations that did not belong to the Common Market. Beginning in 1973, EFTA and the EEC negotiated a series of agreements that would insure uniformity between the two organizations in many areas of economic policy, and by 1995, all but four of EFTA's members had transferred their memberships from EFTA to the European Union.

The EC's most important achievement has been its customs union. It was completed in 1968, when each of the six members abolished tariffs and quotas on goods from the

other five member countries and adopted a common external tariff on goods from the rest of the world. Monetary unification and the single market program are the other two main achievements of the EEC.

The Single Market Program was set out in a white paper published by the European Commission in 1985. It recommended nearly three hundred measures to remove obstacles to intra-European competition. The Single European Act (SEA) of 1986 committed EC members to implement those measures by the end of 1992.

The SEA will affect Europe's every nook and cranny. Trucks hauling merchandise will no longer have to stop at the border between EC countries, except for health and safety inspections. Governments may no longer discriminate in procurement or in awarding public works contracts. Every European country will have to recognize the product standards of the others. Remaining barriers to the movement of capital and labor across the EC's internal frontiers will be removed. EC residents will be able to shift their funds from one country to another without having to worry about capital controls, and will be able to work in another member country without having to secure a work permit or obtain local technical accreditation. National tax codes will be harmonized to simplify economic decision making.

5.3.6.3 European Atomic Energy Community

The European Atomic Energy Community, or EURATOM, is an international organization composed of the members of the European Union. It was established on March 25, 1957, by a second treaty of Rome, signed the same day as the more famous Treaty of Rome which instituted the European Economic Community (EEC). The European Atomic Energy Community is a separate entity, but membership and organization is fully integrated with the European Union. The organisational structures of EURATOM and EEC (together with the now defunct European Coal and Steel Community -ECSC-), merged in 1967, by virtue of the Merger Treaty (signed in 1965). The purposes of Euratom were to create a specialist market for atomic energy and distribute it through the Community and to develop nuclear energy and sell surplus to non-Community States.

Some suggest that EURPITOM should disappear in a similar way to ECSC and merge the European Community and the European Atomic Energy Community in a new European Community and Treaties. In particular, that was proposed during the development of the Treaty establishing a Constitution for Europe; however, it was decided to exclude Euratom from the legal personality of the new European Union, because of concerns that anti-nuclear sentiment in some member states would then be needlessly turned against the constitution.

5.3.7 European Union

The European Union (EU) is a political and economic community of twenty-seven member states with supranational and intergovernmental features, located primarily in Europe, established by the Treaty on European Union (the Maastricht treaty). The European Union is the most powerful international organization so far in history, in some ways resembling a state; some legal scholars believe that it should not be considered as an international organization at all, but rather as a sui generis entity.

The political climate after the end of World War II favoured unity in Western Europe, seen by many as an escape from the extreme forms of nationalism which had devastated the continent. One of the first successful proposal for European cooperation came in 1951 with the European Coal and Steel Community. This had the aim of bringing together control of the coal and steel industries of its member states, principally France and West Germany. This was with the aim that war between them would not then be possible, as coal and steel were the principle resources for waging war. The Community's founders declared it "a first step in the federation of Europe". The other founding members were Italy, and the three Benelux countries Belgium, the Netherlands, and Luxembourg.

Two additional communities were created in 1957: the European Economic Community (EEC) establishing a customs union, and the European Atomic Energy Community (Euratom) for cooperation in developing nuclear energy. In 1967 the Merger Treaty created a single set of institutions for the three communities, which were collectively referred to as the *European Communities*, although more commonly just as the European Community (EC).

In 1973 the European Communities enlarged to include Denmark, the Republic of Ireland and the United Kingdom. Norway had negotiated to join at the same time but a referendum rejected membership and so it remained outside. Greece, Spain and Portugal joined in the 1980s.

In 1985 the Schengen Agreement created largely open borders without passport controls between those states joining it. In 1986 the European flag was adopted by the Communities and leaders signed the Single European Act. This revised the way community decision making operated in light of its greater membership, aimed to further reduce trade barriers and introduce greater European Political Cooperation. In 1990 after the fall of the Iron Curtain, the former East Germany became part of the Community as part of a newly reunited Germany. With enlargement toward eastern Europe on the agenda, the Copenhagen criteria for candidate members to join the European Union were agreed.

The Maastricht Treaty came into force on 1 November 1993. Maastricht established a revised structure and the name 'European Community' officially replaced the earlier 'European Communities'. The European Community now formed one of three pillars of the new *European Union*, which included co-operation in matters of foreign policy and home affairs. The term *European Union* generally replaced the term *European Community*, which will be abolished by the Treaty of Lisbon along with the pillar system.

In practice, the European Community is simply the old name for the European Union. Legally, however, they must be distinguished. The European Union has no legal personality; it is not an international organization, but a mere bloc of states. The European Community is one of three international organizations these states are members of the other two are the European Coal and Steel Community and the European Atomic Energy Community. These three organizations used to have separate institutions; but in 1961 they were merged, though legally speaking they are still separate organizations.

Austria, Sweden and Finland joined in 1995. The Amsterdam Treaty in 1997 amended the Maastricht treaty in areas such as democracy and foreign policy. Amsterdam was followed by the Treaty of Nice in 2001, which revised the Rome and Maastricht treaties to allow the EU to cope with further enlargement to the east. In 2002 euro notes and coins replaced national currencies in 12 of the member states. In 2004 ten new countries (eight of which had formerly been Eastern Bloc countries) joined the EU. At the start of 2007 Romania and Bulgaria joined the EU and the euro was adopted by Slovenia. On 1st January 2008, Malta and Cyprus joined the Eurozone. A treaty establishing a constitution for the EU was signed in Rome in 2004, intended to replace all previous treaties with a new single document. However, it never completed ratification after rejection by French and Dutch voters in referenda. In 2007, it was agreed to replace that proposal with a new Reform Treaty that would amend rather than replace the existing treaties. This treaty was signed on 13 December 2007 in Lisbon and will be known as the Lisbon treaty. It will come into effect in January 2009 if ratified by that date.

The EU creates a single market by a system of laws which apply in all member states, guaranteeing the freedom of movement of people, goods, services and capital. It maintains a common trade policy, agricultural and fisheries policies, and a regional development policy. In 1999 the EU introduced a common currency, the euro, which has been adopted by fifteen member states. It has also developed a role in foreign policy, and in justice and home affairs. Passport control between many member states has been abolished under the Schengen Agreement.

Main policies of the European Union are:-

- Free trade of goods and services among member states.
- A common external customs tariff, and a common position in international trade negotiations.
- Removal of border controls between its member states (excluding the UK and Ireland, which have derogations)
- Freedom for citizens of its member states to live and work anywhere within the EU, provided they can support themselves
- Freedom for its citizens to vote in local government and European Parliament elections in any member state

- Free movement of capital between member states
- Harmonization of government regulations, corporations law and trademark registrations
- A single currency, the Euro (excluding the UK, Sweden and Denmark, which have derogations)
- Common agricultural and fisheries policies.
- co-operation in criminal matters, including sharing of intelligence (through EUROPOL and the Schengen Information System), agreement on common definition of criminal offences and expedited extradition procedures
- a common foreign policy
- a common security policy, including the creation of a 60,000-member Rapid Reaction Force for peacekeeping purposes, an EU military staff and an EU satellite centre (for intelligence purposes)
- a common policy on asylum and immigration
- a common system of indirect taxation, the VAT, as well as common customs duties and excises on various products
- funding for the development of disadvantaged regions (structural and cohesion funds)
- funding for programs in candidate countries and other Eastern European countries, as well as aid to many developing countries
- funding for research

Generally speaking, European Union policies are divided into three main areas, called pillars. The first or 'Community' pillar concerns economic, social and environmental policies. The second or 'Common Foreign and Security Policy' (CFSP) pillar concerns foreign policy and military matters. The third or 'Justice and Home Affairs' (JHA) pillar concerns co-operation in the fight against crime.

Within each pillar, a different balance is struck between the supranational and intergovernmental principles. Supranationalism is strongest in the first pillar, while the other two pillars function along more intergovernmental lines. In the CFSP and JHA pillars the powers of the Parliament, Commission and European Court of Justice with respect to the Council are significantly limited, without however being altogether eliminated.

Important institutions of the EU include the European Commission, the European Parliament, the Council of the European Union, the European Council, the European Court of Justice and the European Central Bank.

The European Union is composed of 27 independent sovereign countries which are known as member states: Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom. Four Western European countries that have chosen not to join the EU have been partly integrated into the EU's economy; Iceland, Liechtenstein and Norway are a part of the single market through the European Economic Area, and Switzerland has similar ties through bilateral treaties. The microstates' relationships can include use of the euro and other co-operation.

There are three official candidate countries, Croatia, Macedonia and Turkey; the western Balkan countries of Albania, Bosnia and Herzegovina, Montenegro and Serbia are officially recognised as potential candidates. To join the EU, a country must meet the Copenhagen criteria, defined at the 1993 Copenhagen European Council. These require a stable democracy which respects human rights and the rule of law; a functioning market economy capable of competition within the EU; and the acceptance of the obligations of membership, including EU law. Evaluation of a country's fulfilment of the criteria is the responsibility of the European Council.

5.3.8 Communist Information Bureau (Cominform)

The Warsaw manifesto of October 5, 1947, which emanated from a conference of representatives of various communist parties in Eastern, and to a lesser extent western, Europe resolved to set up an information Bureau consisting of representatives of the communist parties of Yugoslavia, Bulgaria, Romania, Hungary, Poland, Soviet Union, Czechoslovakia, France and Italy. Its function was to organize interchange of experiences and co-ordination of the activities of the communist parties on the basis of mutual agreement, and it was to consist of two representatives

from each central committee and to be located in Belgrade. Cominform is an Eastern Europe organization.

It will be seen that the COMINFORM is not, really, a governmental organization, but rather an organ of consultation between communist parties; however, in the main, the identification between the communist parties and the governments in these countries is so close as to justify treating the COMINFORM as an organization whereby, indirectly, the various governments can consult on common problems, especially those of a political nature. Of course, France and Italy stand out as the anomalies; they can neither be treated as part of Eastern Europe nor does the same identification of policy between the communist party and Government be said to exist in these countries. As was said at the beginning of this book, classifications have to be as a matter of convenience which cannot stand the test of scientific accuracy.

5.3.9 The Warsaw Treaty Organization

The organization began with the signature of a Treaty of Friendship, Co-operation and Mutual Assistance at Warsaw on May 4, 1955, a treaty initially of 20 years' duration, to which there are now seven parties, Bulgaria, Czechoslovakia, German Democratic Republic, Hungary, Poland, Romania and the U.S.S.R. China, Mongolia, North Korea and North Vietnam at one time sent observers to the Political Consultative Committee but ceased to do so in 1962 and Albania withdrew from membership in 1968 after the Soviet invasion of Czechoslovakia. Like Cominform, The Warsaw Treaty Organization is an Eastern Europe organization

The organization is a direct counterpart of NATO, and, as the preamble recites, was prompted by the re-armament of western Germany and its inclusion in NATO consequent upon the formation of WEU. The treaty reaffirms the obligations of Article 2(4) of the UN charter, and contains an undertaking to work for general disarmament and to consult on all international questions relating to the common interests of the Members; membership is open to all other states "irrespective of their social and state systems" ready to assist in preserving peace. It is, therefore, in practice only and not by its terms confined to Eastern Europe; this is consistent with

the repeated invitation by the U.S.S.R. to the Western Powers to join in a general European security treaty.

The crux of the security system lies in Article 4 whereby, on the basis of Article 51 of the UN Charter, an armed attack in Europe on any Member gives rise to the individual and collective obligation to render "immediate assistance... by all the means it may consider necessary, including the use of armed force." Whereas, originally, the Treaty was interpreted to apply only to aggression by an external power, the soviet intervention in Hungary in 1956 and the combined invasion of Czechoslovakia by the Soviet Union and other Warsaw Pact members in 1968, which was justified on the basis of the Treaty, has clearly demonstrated that the Treaty is not so limited in practice.

The organizational structure established to achieve this consists of a political Consultative Committee, a plenary committee meeting once or twice a year, and with equality of voting power for all members and voting by unanimity. This has power to set up auxiliary organs, and in fact a permanent Commission has been established to give continuity to the work between sessions.

The establishment of a joint command for the armed forces of the Members was specifically envisaged in the treaty, and this has been achieved: the armies of the member countries are in effect treated as an organic whole and there is a staff of the Joint Armed Forces.

So far as can be ascertained from the available material, which is very sparse in comparison to that on NATO, the Warsaw Treaty Organisation is nothing like the developed NATO, constitutionally speaking. It is essentially a defensive alliance, with organs for consultation and co-operation, and does not purport to attain the wider economic and political aims of NATO, nor does it have the very comprehensive structure of organs which NATO possesses.

5.3.10 Council for Mutual Economic Aid (Comecon or CMEA)

This was established at an economic conference in Moscow in January 1949, obviously as a counterpart to OEEC which had been established in Western Europe in the previous year. The nine Member States are Bulgaria, Cuba, Czechoslovakia, German Democratic Republic, Hungary, Mongolia, Poland, Romania and U.S.S.R. In addition China, Vietnam and the peoples' republic of Korea have observer status, although China ceased attending in 1962 and Yugoslavia has accepted associate member status since 1965. Like Cominform and The Warsaw Treaty Organization, the Council for Mutual Economic Aid is an Eastern Europe organization

The Council is described as "an open organisation which can be entered by other European States which agree with the principles" (of comecon), and Members participate on the basis of equal representation, decisions affecting any Member being made "only with the agreement of the interested country," there is considerable emphasis on the retention of full sovereignty by all members and soviet writers emphasize that the organization contains no "supranational" element. The council meets in regular sessions in rotation in the capitals of the participating Members. It is, in principle, simply an organ for consultation between governments in the economic field. Until 1956 it operated largely on the technical level but from 1956 onwards (East Berlin meeting) it drew up more comprehensive five-year plans for economic co-ordination, plans which were further extended at the Moscow meeting in 1958 at which china, Mongolia, Korea and Vietnam People's Republic were represented. The council has established seven permanent subsidiary organs or "meetings" dealing with such matters as legal questions, state Labour Agencies, water Agencies, internal Trade and so forth. In 1962 a new charter for the council was adopted, deleting the clause confining membership to European states and a new body, the executive committee, added. This committee, assisted by a permanent secretariat, meets every three months and is given policy-making and executive powers. In practice, whilst no member is bound to comply with decisions to which it has not consented, the national economic policies are strongly influenced by decisions of the committee and of the Council.

5.4 The American organizations

5.4.1 The Organization of American States (OAS)

The notion of closer hemispheric union in the American continent was first put forward by Simón Bolívar who, at the 1826 Congress of Panama, proposed creating a league of American republics, with a common military, a mutual defense pact, and a supranational parliamentary assembly. This meeting was attended by representatives of Gran Colombia (comprising the modern-day nations of Colombia, Ecuador, Panama, and Venezuela), Peru, the United Provinces of Central America, and Mexico, but the grandly titled "Treaty of Union, League, and Perpetual Confederation" was ultimately only ratified by Gran Colombia. Bolívar's dream soon foundered with civil war in Gran Colombia, the disintegration of Central America, and the emergence of national rather than continental outlooks in the newly independent American republics.

The pursuit of regional solidarity and cooperation again came to the forefront in 1889–90, at the First International Conference of American States. Gathered together in Washington, D.C., 18 nations resolved to found the International Union of American Republics, served by a permanent secretariat called the Commercial Bureau of the American Republics (renamed the "International Commercial Bureau" at the Second International Conference in 1901–02). These two bodies, in existence as of 14 April 1890, represent the point of inception to which today's OAS and its General Secretariat trace their origins.

At the Fourth International Conference of American States (Buenos Aires, 1910), the name of the organization was changed to the "Union of American Republics" and the Bureau became the "Pan American Union".

The experience of World War II convinced hemispheric governments that unilateral action could not ensure the territorial integrity of the American nations in the event of extra-continental aggression. To meet the challenges of global conflict in the postwar world and to contain conflicts within the hemisphere, they adopted a system of collective security, the Inter-American Treaty of Reciprocal Assistance (Rio Treaty) signed in 1947 in Rio de Janeiro.

The Ninth International Conference of American States was held in Bogotá between March and May 1948 and led by U.S. Secretary of State George Marshall, a meeting which led to a pledge by members to fight communism in America. This was the event that saw the birth of the OAS as it stands today, with the signature by 21 American countries of the Charter of the Organization of American States on 30 April 1948 (in effect since December 1951). The meeting also adopted the American Declaration of the Rights and Duties of Man, the world's first general human rights instrument.

The transition from the Pan American Union to OAS, international organization, headquartered in Washington, D.C., United States, was smooth. Its members are the thirty-five independent states of the Americas. The Director General of the former, Alberto Lleras Camargo, became the Organization's first Secretary General.

In the words of Article 1 of the Charter, the goal of the member nations in creating the OAS was "to achieve an order of peace and justice, to promote their solidarity, to strengthen their collaboration, and to defend their sovereignty, their territorial integrity, and their independence." Article 2 then defines eight essential purposes:

- To strengthen the peace and security of the continent.
- To promote and consolidate representative democracy, with due respect for the principle of nonintervention.
- To prevent possible causes of difficulties and to ensure the pacific settlement of disputes that may arise among the member states.
- To provide for common action on the part of those states in the event of aggression.
- To seek the solution of political, judicial, and economic problems that may arise among them
- To promote, by cooperative action, their economic, social, and cultural development.
- To eradicate extreme poverty, which constitutes an obstacle to the full democratic development of the peoples of the hemisphere.
- To achieve an effective limitation of conventional weapons that will make it possible to devote the largest amount of resources to the economic and social development of the member states.

Over the course of the 1990s, with the end of the Cold War, the return to democracy in Latin America, and the thrust toward globalization, the OAS made major efforts to reinvent itself to fit the new context. Its stated priorities now include the following:- strengthening democracy; working for peace; defending human rights; fostering free trade; fighting the drugs trade and promoting sustainable development

5.4.2 Organization of Central American States

The Organization of Central American States is a regional organisation, formed on October 14, 1951 at a meeting in San Salvador to promote regional cooperation, integrity and unity in Central America.. Member states are Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua. The organization includes executive, legislative, and economic councils and the Central American Court of Justice; it established its main purpose-the Central American Common Market. This goal was reached in 1960, but OCAS members cooperated on little else.

The Charter of San Salvador was ratified by all the governments of Central America, and on August 18, 1955 the foreign ministers held their first meeting in Antigua Guatemala. There ensued the Declaration of Antigua Guatemala, which decreed that subordinate organizations should be formed under ODECA, to help establish systems of organization and procedure so there would be no restrictions to free intercourse, to economic cooperation, to better sanitary conditions for member nations, and to continued progress in the “integral union” of the Central American nations.

This was followed by the creation of the Central American Common Market (MCCA), the Central American Bank for Economic Integration (BCIE), and the Secretariat for Central American Economic Integration (SIECA) in 1960. In 1973, ODECA was suspended and progress in regional integration came to a standstill. Some 20 years later, in 1993, a new integration framework, the Central American Integration System (SICA), came into existence. SICA is made up of three Community Organs, the Central American Court of Justice (CCJ), the Central American Parliament (PARLACEN), and the Secretariat General of the Central American Integration System (SG-SICA).

5.4.3 Central American Common Market

The Central American Common Market (CACM) is an economic trade organization between five nations of Central America. It was established on December 13, 1960 between the nations of Guatemala, El Salvador, Honduras and Nicaragua in a conference in Managua. These nations ratified the treaties of membership the following year. The treaty established (1961) a secretariat for Central American economic integration, which Costa Rica joined in 1963; Panama now has observer status in some areas. Its offices are in Guatemala City, Guatemala.

The CACM has succeeded in removing duties on most products moving among the member countries, and has largely unified external tariffs and increased trade within the member nations. By 1970 trade between member nations had risen more than tenfold over 1960 levels, and imports doubled and a common tariff was established for 98% of the trade with nonmember countries. However, it has not achieved the further goals of greater economic and political unification that were hoped for at the organization's founding, mainly caused by the CACM's inability and lack of reliable means to settle trade disputes.

The 1969 war between El Salvador and Honduras led to the latter's effective withdrawal, and the political turmoil in Central America during the 1970s and 80s left the organization moribund. The 1990s saw a revival of the organization, but its ultimate place with respect to the Central American Free Trade Agreement (signed 2004, and including the Dominican Republic and the United States) and the proposed (2001) Free Trade Area of the Americas is unclear.

5.4.4 The LATIN AMERICAN INTEGRATION ASSOCIATION (LAIA)

The Asociación Latinoamericana de Integración (the Latin American Integration Association; known as ALADI or, occasionally, by the English acronym LAIA) is a Latin American trade integration association, was established as a result of the Montevideo Treaty of 1980 to succeed the Latin American Free Trade Association (LAFTA) of 1960. LAFTA was formed following negotiations that took place throughout 1958 under the direction of the United Nations Economic Commission for Latin America. These negotiations culminated in the signing of the Montevideo

Treaty of 1960 by Argentina, Brazil, Chile, Mexico, Paraguay, Peru, and Uruguay. LAFTA membership increased throughout the 1960s with Colombia and Ecuador joining in 1961, Venezuela in 1966, and Bolivia in 1967. LAFTA did not originally call for a common external tariff nor did it immediately seek to form an economic union. A Latin American common market was discussed but only as a long-term goal. The newly formed association did call for the dismantling of tariffs and other trade barriers between member states. In 1969, however, in a meeting in Caracas, rancor developed over proposals to begin working toward a common market. Although consideration of the proposal was postponed until 1980, Colombia and Uruguay continued to disagree with the thrust of the 1969 meeting. Because of continuing internal dissension LAFTA became little more than a trade and marketing association. By 1980 only 14 percent of trade between LAFTA members could be related to the Montevideo agreement. One of the accomplishments of LAFTA, however, was the creation of the Multilateral Compensation and Reciprocal Credit Mechanism. The agreement was signed by the central banks of member countries in 1965 and began operating in June 1966.

In June 1980 representatives met in Acapulco and later in Montevideo, and voted to dissolve LAFTA and replace it with the Latin American Integration Association. The signatories to the 1980 treaty were Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Mexico, Paraguay, Peru, Uruguay, and Venezuela. While succeeding the Latin American Free Trade Association (LAFTA) of 1960, LAIA nonetheless strived to keep intact the economic integration process begun by LAFTA. The main objective of LAIA is the establishment of a common market, in pursuit of the economic and social development of the region by reducing restrictions on trade between its members. The ALADI promotes the creation of an area of economic preferences in the region, aiming at a Latin American common market, through three mechanisms:

- Regional tariff preference granted to products originating in the member countries, based on the tariffs in force for third countries
- Regional scope agreement, among member countries
- Partial scope agreements, between two or more countries of the area

As the Montevideo is a "framework treaty", by subscribing to it, the governments of the member countries authorize their representatives to legislate through agreements on the economic issues of greatest importance to each country. Either regional or partial scope agreements may cover tariff relief and trade promotion; economic complementation; agricultural trade; financial, fiscal, customs and health cooperation; environmental conservation; scientific and technological cooperation; tourism promotion; technical standards and many other fields.

It was decided that the new association would have less closely defined goals, no specific timetable for goal implementation, and fewer strictures overall. The aim of LAIA is to reduce or remove trade barriers while leaving members free to enter into separate trade and tariff agreements. While LAIA does not call for all-inclusive tariff reductions, there are preferential tariffs for regional products and regional agreements on matters related to agricultural products, technology exchange, and environmental and tourism affairs. LAIA also recognizes an economic hierarchy and its trade and tariff agreements take into account the level of economic development of each country. Member nations are divided into three categories: Argentina, Brazil, and Mexico are considered to be most developed; Chile, Colombia, Peru, Uruguay, and Venezuela are considered to be in a stage of intermediate development; and Bolivia, Ecuador, and Paraguay are the least-developed members. An "eventual objective" of LAIA is, however, the establishment of a regional common market.

The principal governing organ of LAIA is the Council of Ministers of Foreign Affairs. This body is composed of the ministers of foreign affairs of the 11 member countries unless an official other than the Foreign Minister is responsible for LAIA matters. The council meets annually to review activities and set policy. LAIA's Evaluation and Convergence Conference reviews activities, promotes new programs, makes recommendations to the secretariat, and reviews preferential arrangements. The political body of the LAIA is the Committee of Representatives that is made up of a permanent representative of each member country and the representative's deputy. The committee is responsible for concluding agreements, implementation of treaty provisions, and convenes the council and conference. The aforementioned secretariat is headed by a secretary-general who is elected by the council for a renewable three-year term and is responsible for most LAIA technical and administrative tasks.

5.4.5 Latin American Economic System

The Latin American Economic System, officially known as Sistema Económico Latinoamericano (SELA), is a regional intergovernmental organization that groups 27 Latin American and Caribbean countries. SELA was established on 17 October 1975, by the Panama Convention, and currently counts on the membership of the following countries: Argentina, Barbados, Belize, Bolivia, Brazil, Colombia, Costa Rica, Cuba, Chile, Ecuador, Dominican Republic, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Trinidad & Tobago, Uruguay, and Venezuela. Its headquarters are in Caracas, Venezuela.

This regional organization is established to promote a consultation and coordination system for the consensus on joint positions and common strategies for the Latin American and Caribbean region on economic issues vis-à-vis countries, groups of countries, international fora and organizations, Launch cooperation and integration among the countries of Latin America and the Caribbean.

SELA carries out consultation, coordination and cooperation activities in work areas of globalization, external economic relations, international trade, financing and foreign investment, regional integration, economic and social policies and technical cooperation.

The Latin American Council is the principal decision-making body of SELA. Each Member State has one representative to this Council, which meets regularly once a year. Its responsibilities include determining the institution's general policies and formulating specific declarations in the form of Decisions approved on a consensual basis.

5.4.6 The Caribbean Community

The Caribbean Community (CARICOM), originally the Caribbean Community and Common Market, was established by the Treaty of Chaguaramas which came into effect on August 1, 1973. The first four signatories were Barbados, Jamaica, Guyana and Trinidad and Tobago.

CARICOM replaced the 1965–1972 Caribbean Free Trade Association (CARIFTA), which had been organized to provide a continued economic linkage between the English-speaking countries of the Caribbean following the dissolution of the West Indies Federation which lasted from January 3, 1958 to May 31, 1962.

Revised Treaty of Chaguaramas establishing the Caribbean Community including the CARICOM Single Market and Economy (CSME) was signed by the Heads of Government of the Caribbean Community on July 5, 2001 at their Twenty-Second Meeting of the Conference in Nassau, the Bahamas. After the revised Treaty of Chaguaramas, CARICOM reorganised itself into a state-like Government structure made up of the Executive, Legislative and Judiciary.

Progress has been hindered by the failure to agree on development policy, and Trinidad and Tobago reached an agreement in May 1979 to form a separate Organisation of East Carinean States (OECS)

Currently CARICOM has 15 full members. These are:- Antigua and Barbuda (4 July 1974), Bahamas (4 July 1983) (not part of customs union), Barbados (1 August 1973), Belize (1 May 1974), Dominica (1 May 1974), Grenada (1 May 1974), Guyana (1 August 1973), Haiti (provisional membership on 4 July 1998, full membership on 2 July 2002), Jamaica (1 August 1973), Montserrat (a territory of the United Kingdom) (1 May 1974), Saint Kitts and Nevis (26 July 1974 as Saint Christopher-Nevis-Anguilla), Saint Lucia (1 May 1974) , Saint Vincent and the Grenadines (1 May 1974) Suriname (4 July 1995), Trinidad and Tobago (1 August 1973).

5.4.7 The treaty for Amazonian Co-operation

The Treaty for Amazonian Cooperation (TAC) was signed in Brasilia, Brazil, on July 3, 1978, by the foreign ministers of the eight Amazonian countries: Bolivia, Brazil, Colombia, Ecuador, Guyana, Peru, Suriname, and Venezuela. It is a legal instrument of a technical nature that seeks to promote the harmonious and integrated development of the basin as a foundation for a model of regional economic complementarity to improve the lives of the local people and permit the conservation and rational use of their resources. The TAC is a framework treaty with provisions for

agreements on specific issues. It is flexible enough to adjust to the changes and needs of the region.

The TAC provides for collaboration among the member countries to promote scientific and technological research and the exchange of information, rational use of natural resources, freedom of navigation on the Amazon river system, protection of navigation and trade, preservation of the cultural heritage, health care, the creation and operation of research centers, establishment of an appropriate transport and communications infrastructure, an increase in tourism, and cross - border trade. All these measures are to be implemented bilaterally or by groups of countries to promote the harmonious development of the territories involved.

5.4.8 The Andean Community of Nations

The Andean Community of Nations, a trade bloc, was began as a Sub-regional Agreement within LAFTA and was founded in 1969 by Bolivia, Chile, Colombia, Ecuador and Peru. Under the Treaty of Bogota of 26 May 1969, these countries moved towards closer integration than was possible within LAFTA itself, and the sub-regional grouping was approved by the LAFTA Permanent Executive Committee. In 1973, the pact gained its sixth member, Venezuela. In 1976, however, its membership was again reduced to five when Chile withdrew. Venezuela announced its withdrawal in 2006, reducing the Andean Community to four member states. So now it is comprises only the South American countries of Bolivia, Colombia, Ecuador and Peru. The trade bloc was called the Andean Pact until 1996 and came into existence with the signing of the Cartagena Agreement in 1969. Its headquarters are located in Lima, Peru.

The organs are the commission, which is the supreme organ, the “Board” or “Junta” (a technical organ of three members somewhat akin to the commssion of the European Communities), the Committes which advise the Board and the Court of Justice. The present signs indicate progress because in 1979 the decision was taken to establish a Parliamnet and a Council of Foreign Ministers. The Andean development Corporation is a separate institution, but one with which the Commission and the Board maintain contact. The commission exercises the real power, usually by two-

thirds majority vote, but the negative vote of any member will defeat a proposal. However, its decisions once adopted are directly applicable within the member countries.

Recently, with the new cooperation agreement with Mercosur, the Andean Community gained four new associate members: Argentina, Brazil, Paraguay and Uruguay. These four Mercosur members were granted associate membership by the Andean Council of Foreign Ministers meeting in an enlarged session with the Commission (of the Andean Community) on July 7, 2005. This move reciprocates the actions of Mercosur which granted associate membership to all the Andean Community nations by virtue of the Economic Complementarity Agreements (Free Trade agreements) signed between the CAN and individual Mercosur members.

Nowadays, the Andean Community and Mercosur comprise the two main trading blocs of South America. In 1999, these organizations began negotiating a merger with a view to creating a South American Free Trade Area (SAFTA). On December 8, 2004 it signed a cooperation agreement with Mercosur and they published a joint letter of intention for future negotiations towards integrating all of South America in the context of the Union of South American Nations, patterned after the European Union.

5.5 The Middle East

5.5.1 Arab League

The British Empire realized the Urge of Unity Within Arab States (Pan Arabism) in the early part of the twentieth century, which helped them secure the cooperation of the Arabs, leading them to revolt against the Turkish-ruled Ottoman Empire during World War I. The British promised to help the Arabs establish a united Arab kingdom under Sherif Hussein of Mecca, which would encompass the Asian part of the Arab World (including the modern day Arabian peninsula, Iraq, Syria, Lebanon, Palestine, Israel and Jordan). After winning the war, however, the British betrayed Sharif Hussein and instead helped divide the region into mini states, implementing their policy of "Divide and Rule."

The British needed Arab cooperation once more during World War II, and again returned to play the Pan-Arabism card by encouraging the formation of the League. Many Arab intellectuals believe that the British did not want the League to act as a step towards Arab unity, but actually used the League to prevent it.

The Egyptian government first proposed the Arab League in 1943. Egypt and some of the other Arab states wanted closer cooperation without the loss of self-rule that would result from total union.

After time taking efforts, the Arab League was established. The Arab League (Arabic: *الليغة العربية المتحدة*), also called League of the Arab States (Arabic: *الليغة العربية لولاءة عمارة*), is a regional organization of Arab States in the Middle East and North Africa. It was formed in Cairo on March 22, 1945 with six members: Egypt, Iraq, Transjordan (renamed Jordan after 1946), Lebanon, Saudi Arabia, and Syria. Yemen joined as a member on 5 May 1945. It currently has 22 members. Countries that later joined are: Algeria (1962), Bahrain (1971), Comoros (1993), Djibouti (1977), Kuwait (1961), Libya (1953), Mauritania (1973), Morocco (1958), Oman (1971), Qatar (1971), Somalia (1974), Southern Yemen (1967), Sudan (1956), Tunisia (1958), and the United Arab Emirates (1971). The Palestine Liberation Organization was admitted in 1976. Egypt's membership was suspended in 1979 after it signed a peace treaty with Israel; the league's headquarters was moved from Cairo, Egypt, to Tunis, Tunisia. In 1987 Arab leaders decided to renew diplomatic ties with Egypt. Egypt was readmitted to the league in 1989 and the league's headquarters was moved back to Cairo.

The original charter of the Arab League created a regional organization of sovereign states that was neither a union nor a federation. Among the goals the league set for itself were winning independence for all Arabs still under alien rule, and to prevent the Jewish minority in Palestine (then governed by the British) from creating a Jewish state. The members eventually formed a joint defense council, an economic council, and a permanent military command. The main goal of the League was to:

draw closer the relations between member States and co-ordinate collaboration between them, to safeguard their independence and sovereignty, and to consider in a general way the affairs and interests of the Arab countries.

The Arab League is involved in political, economic, cultural, and social programs designed to promote the interests of member states. The Arab League has served as a forum for member states to coordinate their policy positions and deliberate on matters of common concern, settling some Arab disputes and limiting conflicts such as the Lebanese civil wars of 1958. The Arab League has served as a platform for the drafting and conclusion of almost all landmark documents promoting economic integration among member states, such as the creation of the Joint Arab Economic Action Charter, which set out the principles for economic activities of the League. It has played an important role in shaping school curricula, and preserving manuscripts and Arab cultural heritage. The Arab League has launched literacy campaigns, and reproduced intellectual works, and translated modern technical terminology for the use of member states. It encourages measures against crime and drug abuse and deals with labor issues (particularly among the immigrant Arab workforce). The Arab League has also fostered cultural exchanges between member states, encouraged youth and sports programs, helped to advance the role of women in Arab societies, and promoted child welfare activities.

Each member has one vote on the League Council, decisions being binding only on those states that have voted for them. The aims of the League in 1945 were to strengthen and coordinate the political, cultural, economic, and social programs of its members, and to mediate disputes among them or between them and third parties. The signing on April 13, 1950, of an agreement on Joint Defense and Economic Cooperation also committed the signatories to coordination of military defense measures.

5.6 Asia and the Far East

5.6.1 The ANZUS Council

By Article VII of the tripartite security pact between Australia, New Zealand and the U.S.A (whose initials give rise to the term “Anzus”), a council was established “to consider matters concerning the implementation of this Treaty”; the treaty entered into force on April 29, 1952.

This organization is, like SEATO, on the NATO pattern as an organization for collective self-defence. It antedated SEATO and, since SEATO, has lost a good deal of its *raison d'être*. However, the two differ in the areas covered and in their definition of the *causes foederis*. The obligations of assistance in the event of aggression are not automatic, as in NATO, but of the much weaker kind which was in due course adopted for SEATO.

Apart from the council, a consultative organ of Foreign Ministers meeting annually, there have been established a council of deputies to meet in between sessions of the main council, and a military committee of military representatives meeting as the governments decide. Any decisions are by unanimity. In recent years the council has dealt with the possibilities of co-operation in the peaceful uses of atomic energy, so that the organization is not exclusively of a military character. ANZUS has no formal or informal relationship with NATO; this is unlikely so long as the United States opposes United Kingdom participation in ABZUS.

5.6.2 The Afro-Asian Solidarity Conference

The conference of Afro-Asian States, held at Bandung in 1955, was an ad hoc conference for the discussion of common problems and, in its final communiqué, put forward resolutions on matters such as economic co-operation, cultural co-operation, human rights and self-determination, problems of dependent peoples, and world peace. Twenty-nine governments were represented at that conference.

Subsequently, at Cairo in 1958, the second Afro-Asian Solidarity Conference was held and set up a permanent council, to meet annually. It was composed of one representative from each national committee, and a permanent secretariat headed by a secretary General. It is financed by the governments, but at the Cairo conference “peoples” rather than states were represented, there being 400 representatives from 46 peoples in Asia and Africa. The organization thus appears to be something of a hybrid, for it cannot be regarded as a strictly inter-governmental organisation since 1958.

Unit Summary

There are political regional organizations, some of which are supposed to interact with the United Nations in one way or another, as envisaged in Article 52 of the charter. There are now many forms of institutionalized regional cooperation and organization in Europe, the Americas, Asia, Africa, and the Pacific. The various forms of regional organization in Europe include the European Union and the Council of Europe, which had thirty-nine member states in 1996, following the admission of countries from Eastern Europe, and under the auspices of which, inter alia, the regional system of the protection of human rights under the European Human rights Convention has developed. Furthermore the organization for Cooperation and Security in Europe (OCSE), including the United States and Canada, emerged recently as a new organization from the Helsinki Process that had been established in 1975. Under the hegemony of the Soviet Union, the former bloc of socialist states had its own forms of regional organization and cooperation. Following the demise of the USSR, in 1991 the Commonwealth of Independent States (CIS) was formed by Russia, Belarus and Ukraine on the basis of the Minsk Agreement, the preamble of which stated that the Soviet Union 'as a subject of international law and geological reality no longer exists'. The CIS then expanded to eleven members (excluding Georgia and the Baltic states). In 1993 seven CIS states signed the CIS Charter which was later ratified by five other states (now in force for all former USSR republics, excluding the Baltic States). In April 1996, Russia, Belarus, Kazakhstan and Kyrgyzstan signed a document proclaiming their intention to create a commonwealth of Integrated States, and Russia and Belarus signed a treaty establishing a Commonwealth of sovereign Republics.

The main forms of political regional organization in other parts of the world include the Organization of American States (OAS), the Organization of Central American States (ODECA), the Organization of African Unity (OAU), the Association of South East Asian Nation (ASEAN) and the Arab League. Islamic countries have also established their own organization with the Islamic Conference in 1993 and in the Persian (or Arabian) gulf. Arab oil-producing states have sought to create a counterweight to the Islamic Republic of Iran in the Gulf Cooperation Council, after

the war between Iran and Iraq. The Commonwealth, which is the present name of what was formerly the British Empire, is a unique case with many forms of functional cooperation, such as the Commonwealth fund for technical Cooperation, without an organizational or constitutional framework, apart from the existence of the Commonwealth Secretariat, which has no executive functions.

These Political regional organizations are (or have been) often interacting to various degrees with defiance alliances, such as NATO, the dissolved Warsaw Pact, the still largely defunct Western European Union (WEU), and the now obsolete CENTO pact. They have been to large extent children of the Cold War and have now lost much of their previous military significance to organizations aimed at dealing with the economic aspects of the relations between states. NATO is currently in a process of restructuring itself with the prospect of including certain Eastern European states (against opposition from Russia) which is interconnected with the question of their admission as new member states of the European Union.

Most international organizations are of the traditional type, meaning that they are in essence based on inter-governmental cooperation of states which retain control of the decision-making and finance of the organization. To distinguish a new type of independent international organizations created on higher level of integration of member states, the term 'supranational organization' has been coined. While there are different views on the criteria for distinguishing supranational organizations from traditional forms of international institutions, it may be said that the transfer of sovereignty from the member states to the international level is more extensive as to the scope and nature of delegated powers and is characterized by the cumulative presence of the following elements:

1. the organs of the organization are composed of persons who are not government representatives;
2. the organs can take decisions by majority vote;
3. they have the authority to adopt binding acts;
4. some have direct legal effect on individuals and companies;
5. the constituent treaty of the organization and the measure adopted by its organs form a new legal order; and

6. Compliance of member states with their obligations and the validity of acts adopted by the organs of the organization are subject to judicial review by an independent court of justice.

The only existing international organization which currently meets all of these criteria in a sufficient degree is the European Community, or in other words, since the Treaty of Maastricht, the European Economic Community and its treaty). Community organs, especially those of the European Community, have extensive (and ever-increasing) powers of regulation vis-à-vis the member states and individuals and companies. The agreements establishing the European Communities and the secondary law created by community organs on the basis of these treaties form an independent legal order which can no longer be adequately grouped with categories of general international law. European Community law claims absolute priority over any conflict national law of the member states. All other international organizations are more or less based upon intergovernmental cooperation where states have retained their control over the organization and have not submitted to the decisions of independent organs. In fact the criteria for a supranational organization have been taken from the example of the European Community, which is often described as an entity *sui generis* in the contemporary pattern of the international organization of states.

The broad spectrum of international organizations has led to duplication in many areas, especially in the social and economic fields, raising problems of coordination, costs and efficiency. However, there is no doubt that the future development of the international legal system will not only rest on the activities of states, but also increasingly on the international organizations they have created themselves to overcome the limits of the capacity of national governments to deal effectively with transnational problems. One element of this process is that administrations and bureaucracies, also international ones, once established, tend to develop interests as well as a life and dynamism of their own. The important role of international organizations in international law-making has been discussed above in chapter four.

Review Questions

- 1) Explain how Regional organizations Contribute to global security.
- 2) Describe the historical background, development, objectives, functions and purposes of the European Union.
- 3) What are the root causes for the establishment of American states?
- 4) Explain the role of Arab League in peace security.
- 5) Summarize the functions, objectives, and historical background of the Asian and the Far East Regional Institutions.

CHAPTER SIX

AFRICAN REGIONAL AND SUB-REGIONAL ORGANISATIONS

As mentioned above, the United Nations Charter contemplates that the United Nations will be assisted by regional arrangements in the quest for international peace, provided that their activities are consistent with the purposes and principles of the Charter. Indeed article 52 (2) declares that members of the United Nations should make every effort to achieve pacific settlement of local disputes through regional arrangements before referring them to the Security Council.

In this chapter we will discuss one of the main regional arrangements, i.e. the African Union (AU) (previously the Organisation of African Unity (OAU)). We will also discuss other African regional and sub-regional organisations.

A student who successfully completes this chapter will be able to:

- Explain the origin of the AU;
- Elaborate the objectives for which the AU is established;
- Understand the principles underpinning the AU;
- Identify the organs of the AU;
- Explain the relationship between NEPAD and the AU;
- Appreciate various African sub-regional organisations.

6.1 The Organisation of African Unity (OAU)

The OAU was established on 25 May 1963 with the adoption of the OAU Charter by 32 African States in Addis Ababa, Ethiopia. The OAU was formally replaced by the African Union on 9 July 2002. Its membership comprises of 53 countries, i.e. all the independent African states, with the sole exception of Morocco. Morocco had formally withdrawn from the organisation in 1984 in protest against the admission of the Sahrawi Arab Democratic Republic (SADR). Morocco opposes SADR's claim to independent statehood and sovereignty over the territory of the former Spanish colony of Western Sahara, which it regards as part of its own national territory.

The OAU was designed as a regional intergovernmental organisation with the objective of promoting unity and solidarity among African states. The provisions of the OAU Charter reflect the overriding concerns of Africa in the late 1950s and 60s, namely, to ensure the rapid decolonisation of Africa and resultant self-determination for those African People that were still being ruled by colonial masters, and to protect newly acquired statehood by stressing sovereign equality of states, and the principle of non-interference in internal affairs. The Charter's focus was thus on the protection of the state, rather than the individual. To the extent that the OAU had concern for the question of human rights, such concern was largely concerned with the right of self-determination of peoples in the context of decolonisation and apartheid. In relation to the apartheid regime, the OAU at its very first session adopted resolutions condemning South Africa's policy of racial segregation as a serious threat to peace and international security, incompatible with its political and moral obligations as a member state of the UN and a grave danger to stability and peace in Africa and in the world.

During its 37 year existence, the OAU adopted 21 multilateral law-making treaties and resolutions, thereby contributing towards the development of international law. Sixteen of the 21 are in force. Included in these 16 is the African Convention on the Conservation of Nature and Natural Resources. Article 2 of the Convention articulates the principle of sustainable development, and respect for the environment as a common heritage of humankind or public good. Subsequently, the Bamako Convention on the Ban and the Import into Africa and Control of Transboundary Movement and Management of Hazardous Waste within Africa has reaffirmed a number of international law principles; for example, state responsibility for transboundary pollution, the 'polluter pays' principle, and obligations relating to sustainable management and resource utilisation. The OAU also introduced the African Nuclear Weapon-Free Zone Treaty (Treaty of Pelindaba).

The African Charter on Human and Peoples' Rights of 1981 became the first international instrument to recognise explicitly the right to a general satisfactory human right. The Charter also recognised the notion of 'peoples rights' as distinct from 'human rights' and highlighted the notion of third generation rights, including the right to development, the right to peace, and the aforementioned right to a

satisfactory environment. Another OAU treaty aimed at the protection of human rights is the African Charter on the Rights and Welfare of the Child.

The OAU Convention Governing the Specific Aspects of Refugee Problems in Africa is also worthy of mention. The Convention is credited with enriching the debate on the concept 'refugeehood', for example, by broadening the definition of a refugee and the scope of the principle of *non-refoulement* in international refugee law. In response to the problem of terrorism, the OAU also saw fit to introduce the OAU Convention on the Prevention and Combating of Terrorism, and, due to the scourge of mercenarism on the African continent, the OAU adopted the Convention for the Elimination of Mercenarism in Africa.

6.2 The African Union (AU)

6.2.1 The OAU becomes the African Union

In 2000, the OAU underwent a transformation to become the African Union (AU). The AU was established by the Constitutive Act of the African Union, adopted at the 36th ordinary session of the Assembly of Heads of State and Government of the OAU on 11 July 2000, in Lome, Togo. The AU was formally inaugurated in Durban, South Africa, on 9 July 2002, and the Secretariat of the AU is based in Addis Ababa, Ethiopia. By the time the AU was inaugurated in Durban, all the 53 former OAU member states, except the Democratic Republic of Congo and Madagascar, had ratified the Constitutive Act and deposited instruments of ratification with the Secretary General of the OAU. The Democratic Republic of Congo deposited its instrument of ratification on the day of inauguration itself, and Madagascar followed suit almost a year later, on 10 June 2003. To date, Morocco is not a member.

Why was the transformation from OAU to AU? A number of reasons might be identified. By the end of the 1980s, there was a widespread perception that the OAU was in a serious need of reform. For one thing, the original motivations for the OAU's creation- the Pan-Africanist ideals of securing independence for African peoples and utilising against colonial subjugation- no longer sustained the organisation following the period of decolonisation that Africa witnessed in the 1960s, 1970s, and into the

1980s. A new *raison d'être* was needed to unite the organisation. One goal would have been to focus on securing peace among Africa's newly independent states- a goal that would have been consistent with the OAU's function as a Pan-African body constituted to improve the lives of African peoples. However, increasingly the OAU came to be criticised for its failure to respond to serious conflicts between member states. In addition, several of Africa's leaders in the fight for independence led their newly liberated nations into totalitarianism, with an ineffectual OAU doing little to put an end to this African malaise. It did not help that OAU found itself caught between superpower rivalries during the Cold War, that ideological clashes led to debilitation of the OAU as it failed adequately to respond to civil wars that were fuelled by East/West interests (such as in Angola and Mozambique), and that development and reform programmes initiated by the OAU became symbolised by lofty words and promises as the OAU suffered from under-funding by member states, and an unwieldy Assembly structure, in which the 53 members inclined towards preserving national interests and sovereignty at the expense of a true commitment to regional cooperation and finding 'African solutions for African problems'.

6.2.2 Objectives of the AU

Due to the problems that beset the OAU, at the end of the 20th century African leaders chose to start afresh with the AU. The core objectives of the AU evidence a commitment by African leaders not only to tackle the key economic and social issues facing the continent, but also to improve the AU relative to the weaknesses that had come to cripple the OAU. The objectives of the AU as set out in article 3 of the AU's Constitutive Act are replicated as follows.

The objectives of the Union shall be to:

- a) Achieve greater unity and solidarity between the African countries and the peoples of Africa,
- b) Defend the sovereignty, territorial integrity and independence of its Member States;

- c) Accelerate the political and socioeconomic integration of the continent; promote and defend African common positions on issues of interest to the continent and its peoples;
- d) Encourage international cooperation, taking due account of the Charter of the United Nations and the Universal Declaration of Human Rights;
- e) Promote peace, security, and stability on the continent;
- f) Promote democratic principles and institutions, popular participation and good governance;
- g) Promote and protect human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant human rights instruments;
- h) Establish the necessary conditions which enable the continent to play its rightful role in the global economy and in international negotiations
- i) promote sustainable development at the economic, social and cultural levels as well as the integration of African economies;
- k) Promote cooperation in all fields of human activity to raise the living standards of African peoples;
- l) Coordinate and harmonize the policies between the existing and future Regional Economic Communities for the gradual attainment of the objectives of the Union;
- m) Advance the development of the continent by promoting research in all fields, in particular in science and technology;
- n) Work with relevant international partners in the eradication of preventable diseases and the promotion of good health on the continent.

The aforementioned fourteen objectives are designed to enhance political cooperation and economic integration amongst African states, and include the promotion of

sustainable development, democratic principles and good governance, social justice, gender equality, and good health. While these objectives focus on inter-African cooperation, together they point to a general theme of upgrading Africa's position on the international plane so that African states might play an increased role in the world economy and in global negotiations.

6.2.3 Principles

As provided under article 4 of the Constitutive Act of the AU, there are principles in accordance with which the AU is supposed to function. Comparing with article 2 of the UN Charter that enumerates the principles of the UN, article 4 of the Constitutive Act of the AU clearly lays down the principles of the Union. Besides, this provision incorporates new principles which are not included in the UN Charter. Article 4 of the Constitutive Act of the African Union is read as:

The Union shall function in accordance with the following principles:

- a. Sovereign equality and interdependence among Member States of the Union;
- b. Respect of borders existing on achievement of independence;
- c. Participation of the African peoples in the activities of the Union;
- d. Establishment of a common defence policy for the African Continent;
- e. Peaceful resolution of conflicts among Member States of the Union through such appropriate means as may be decided upon by the Assembly;
- f. Prohibition of the use of force or the threat to use force among Member States of the Union;
- g. Non-interference by any Member State in the internal affairs of another;
- h. The right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity;
- i. Peaceful coexistence of Member States and their right to live in peace and security;
- j. The right of Member States to request intervention from the Union in order to restore peace and security;
- k. Promotion of self-reliance within the framework of the Union;
- l. Promotion of gender equality;

- m. Respect for democratic principles, human rights, the rule of law and good governance;
- n. Promotion of social justice to ensure balanced economic development;
- o. Respect for the sanctity of human life, condemnation and rejection of impunity and political assassination, acts of terrorism and subversive activities;
- p. Condemnation and rejection of unconstitutional changes of governments.

6.2.4 Structure of the AU

Under the AU's Constitutive Act, various new bodies are established and the supreme body of the OAU- the Assembly of Heads of State and Government- has been remodelled to become the AU Assembly. The AU Assembly retains supremacy within the overall structures of the AU and remains composed of heads of state and government or their duly accredited representatives. The Assembly meets at least once a year in ordinary session, and may meet more than that in extraordinary session. Its functions include determining the common policies of the Union, considering requests for membership of the Union, monitoring the implementation of policies and decisions of the Union and ensuring compliance therewith by all member states, and adopting the budget of the Union.

The Executive Council, which is in turn subversion to the Assembly, is composed of Ministers of Foreign Affairs or other government designates, and is expected to engage in policy-making in areas of common interest to the member states across a broad range of disciplines such as foreign trade, energy, industry and mineral resources, water resources and irrigation, transport and communications, education and social security.

In order to provide technical assistance to the Executive Council in its policy-decision making, a number of Specialised Technical Committees are established by the Act, such as Committees on rural economy and agriculture, monetary and financial affairs, trade, customs and immigration matters, industry, science, technology, energy, natural resources and environment, and on health, labour and social affairs.

Other bodies include a Pan-African Parliament which, by article 17, is intended to ensure the full participation of African peoples in the development and economic integration of the continent. On 18 March 2004, the Pan-African Parliament was inaugurated. It sits at Gallagher Estate, Midrand, in the Gauteng province of South Africa. The Parliament's powers are laid out in a Protocol to the Act, and it is modelled on the European Union's Parliament, which plays a central role in ensuring the democratic nature of the EU. Like its European counterpart, the Pan-African has as one of its objectives the promotion of the principles of human rights and democracy, and is required to encourage good governance, transparency and accountability in member states. The parliament is composed of five representatives from each state which should include at least one woman in their delegations and must reflect the diversity of political opinions in each National Parliament or other deliberative organ. In the first five years, the parliament has consultative and advisory powers only, but thereafter it will have legislative powers.

While the Pan-African Parliament is envisaged as something akin to a legislature for Africa, the African Court of Justice will act as the regional adjudicator, staffed by judges whose charge under article 26 is that they be seized with matters of interpretation arising from the application or implementation of [the Constitutive Act of the Union]. The Court is yet to be created, not least because of problems with funding; and there remains some debate about the relationship of the African Court of Justice with the African Court on Human and Peoples' Rights.

Another notable body of the new AU is its peace and Security Council, which is modelled on the UN Security Council. It has been tasked with taking decisions on conflict prevention, management and resolution, and is described as a collective security and early warning arrangement to facilitate timely and efficient response to conflict and crisis situations in Africa. To this end, the Council may authorise peace missions, and recommend to the Assembly that the AU intervene in certain situations where grave crimes (such as crimes against humanity, war crimes and genocide) are being perpetrated. The establishment of the peace and Security Council of the AU thus provides a clearly defined mechanism for determining situations representing a serious threat to legitimate order and the steps necessary to restore peace and stability to member states, in close cooperation with the UN Security Council.

So that its aims might be achieved, an African Standby Force has been created for deployment on the instructions of the Peace and Security Council, a Continental Early Warning System has been set in place in order to facilitate the anticipation and prevention of conflicts, and a Panel of the Wise (made up of five highly respected African personalities from various segments of the society who have made outstanding contribution to the cause of peace, security and development on the continent) has been constituted to advise the Peace and Security Council on all issues pertaining to the promotion, and maintenance of peace, security and stability in Africa. Aside from its emergency powers, the Council has a general mandate to develop a common defence policy and promote and encourage democratic practices, good governance and the rule of law, protect human rights and fundamental freedoms, respect for the sanctity of human life and international humanitarian law, as part of the efforts for preventing conflicts.

The Council is composed of 15 states reflecting the geographical regions of the continent and which, notably, are to be committed to principles of democratic governance, the rule of law and human rights as a requirement for membership of the Council. The Council generally takes its decisions by consensus, but where the consensus cannot be reached, then, on matters of substance, the Council adopts its decision by a two-thirds majority vote.

In addition to the creation, by article 19, of three Pan-African financial institutions- the African Central Bank- the last body worth mentioning is the Economic, Social and Cultural Council. It is described as being an advisory organ composed of different social and professional groups of the Member States of the Union, and is composed of 150 civil society organisations covering such diverse interests as those of women, children, the elderly, the disabled, professional groups, NGOs, workers, employees, traditional leaders, academics, and religious and cultural organisations. With the advice and encouragement of these diverse interest groups, the Council will aim to fulfil its function of promoting human rights, the rule of law, good governance and gender equality.

6.3 The New Partnership for Africa's Development (NEPAD) and Peer Review

The transition of the OAU to the AU must be understood against the backdrop of another African development: NEPAD. In January 2001, President Thabo Mbeki of South Africa unveiled a programme (then known as the Millennium African Recovery Programme, or MAP) for Africa's 'recovery' at the World Economic Forum meeting in Davos, Switzerland. During the fifth extraordinary OAU/African Economic Community (AEC) summit held in Sirte, Libya, in March 2001, the MAP was integrated with the new Africa initiative presented by President Abdoulaye Wade of Senegal. The combined programme was subsequently renamed NEPAD. NEPAD has been described as a holistic, comprehensive and integrated strategic framework for the socioeconomic development of Africa, with a programme of action that embraces initiatives on peace and security, democracy and political governance, as well as economic and corporate governance. The importance of NEPAD is that it is an African-led, African-owned and Africa-managed initiative underpinned by an agreed set of principles to which the participating countries commit themselves.

NEPAD was formally adopted as a program of the OAU at a summit on July 2001, and is a pledge by African leaders to achieve certain goals. In terms of NEPAD'S founding document, African leaders recognise that failures of political and economic leadership in many African countries impede the coherent mobilisation of resources into productive areas of activity in order to attract and facilitate domestic and foreign investment. To that end, various strategies are adopted in the document to which the leaders commit themselves, with the ultimate goal to consolidate democracy and sound economic management, people-centred development and to hold each other accountable in terms of the agreements outlined in the programme. Implementation of NEPAD'S commitments is undertaken through a Heads of State and Government Implementation Committee, chaired by Nigeria, and with Senegal and Algeria as vice-chairs. Seventeen other states, representing different geographical areas of Africa, make up the remainder of the 20-strong Committee.

What is the relationship between NEPAD and AU? There was earlier confusion about the position of NEPAD under the AU and concerns over duplication and competition. The mainstay of NEPAD's plan for the promotion of democracy and human rights is its African Peer Review Mechanism (APRM) in terms of which African states hold

each other accountable to agreed principles of good governance. With the creation of the AU, peer review is now placed under the direct control of the AU. Peer review is to take place under the auspices of the AU's Conference on Security, Stability, Development and Cooperation in Africa (CSSDCA) Unit. The potential advantage of this move is that the obligations for the 53 member states under the AU are obligatory, whereas the NEPAD African Peer Review Mechanism is a voluntary arrangement (other than those states- significantly smaller in number than compared with the 53 member states of the AU that have chosen to be bound). Implementation of the CSSDCA review process is thus mandatory for the AU member states. Amongst other measures, implementation of the CSSDCA process is to be achieved by the designation of focal points in states to coordinate and monitor their implementation of the CSSDCA core values, and through the creation of national coordinating committees. Member states' performance will be monitored by a standing conference of the CSSDCA every two years. To assist in the monitoring process, the national units set up by member states will coordinate with the CSSDCA Unit and civil society and others to produce country reports.

These developments are important, and look impressive on paper. What remains to be seen, however, is whether African states have the political? to mobilise the AU peer review mechanism to act against errant member states.

6.4 African sub-regional organisations

In addition to African organisations at the regional level, there are various sub-regional organisations functioning in different regions of Africa with the purposes of, *inter alia*, prompting peace, security and trade among member states. Four of the most noticeable African sub-regional organisations are briefly discussed below.

6.4.1 The Economic Community of West African States (ECOWAS)

6.4.1.1 History and background

The idea for a West African community goes back to President William Tubman of Liberia, who made the call in 1964. A subsequent agreement was signed between Côte d'Ivoire, Guinea, Liberia and Sierra Leone in February 1965, but this came to

nothing. In April 1972, General Gowon of Nigeria and General Eyadema of Togo re-launched the idea, drew up proposals and toured 12 countries, soliciting their plan from July to August 1973. A meeting was then called at Lomé from 10-15 December 1973, which studied a draft treaty. This was further examined at a meeting of experts and jurists in Accra in January 1974 and by a ministerial meeting in Monrovia in January 1975. Finally, 15 West African countries signed the treaty for an Economic Community of West African States (Treaty of Lagos) on 28 May 1975. The protocols launching ECOWAS were signed in Lomé, Togo on 5 November 1976. In July 1993, a revised ECOWAS Treaty designed to accelerate economic integration and to increase political co-operation, was signed. Members of ECOWAS are: Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, the Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo.

6.4.1.2 Objectives

ECOWAS aims to promote co-operation and integration in economic, social and cultural activities, ultimately leading to the establishment of an economic and monetary union through the total integration of the national economies of member states. It also aims to raise the living standards of its peoples, maintain and enhance economic stability, foster relations among member states and contribute to the progress and development of the African Continent.

The revised treaty of 1993, which was to extend economic and political co-operation among member states, designates the achievement of a common market and a single currency as economic objectives, while in the political sphere it provides for a West African parliament, an economic and social council and an ECOWAS court of justice to replace the existing Tribunal and enforce Community decisions. The treaty also formally assigned the Community with the responsibility of preventing and settling regional conflicts.

6.4.1.3 Structure

The Community consists of the Authority of Heads of State and Government, the Council of Ministers, the Mechanism for Conflict Prevention, Management and

Resolution, Peace and Security, the Community Tribunal, the ECOWAS Parliament, the Executive Secretariat and six Specialized Technical Commissions. The ECOWAS Treaty also makes provision for an Economic and Social Council (ECOSOC), with an advisory role, to be composed of representatives of the “various categories of economic and social activity”. This body has not yet been established.

The Authority of Heads of State and Government of Member States is the supreme institution of the Community and is composed of Heads of State and/or Government of Member States. The Authority is responsible for the general direction and control of the Community and take all measures to ensure its progressive development and the realization of its objectives. The Authority meets at least once a year in an ordinary session. An extraordinary session may be convened by the Chairman of the Authority or at the request of a Member State provided that such a request is supported by a simple majority of the Member States. The office of the Chairman is held every year by a Member State elected by the Authority.

The Council comprises the Minister in charge of ECOWAS Affairs and any other Minister of each Member State. The Council is responsible for the functioning and development of the Community. The Council meets at least twice a year in ordinary session. One of such sessions immediately precedes the ordinary session of the Authority. An extraordinary session may be convened by the Chairman of the Council or at the request of a Member State provided that such request is supported by a simple majority of the Member States. The office of Chairman of the Council is held by the Minister responsible for ECOWAS Affairs of the Member State elected as Chairman of the Authority.

The treaty also provides for a Community Tribunal, whose composition and competence are determined by the Conference of Heads of State and Government. The Tribunal interprets the provisions of the treaty and settles disputes between member states that are referred to it.

The Executive Secretariat is responsible for the smooth functioning of the Community and for the implementation of the decisions of the Authority. The Secretariat's headquarters are based in Abuja, Nigeria. The Executive Secretary is elected for a four-year term.

In addition to the aforementioned institutions, the following Technical Commissions are established within the Economic Community of West African States: Food and Agriculture; Industry, Science and Technology and Energy; Environment and Natural Resources; Transport, Communications and Tourism; Trade, Customs, Taxation, Statistics, Money and Payments Political, Judicial and Legal Affairs, Regional Security and Immigration; Human Resources, Information, Social and Cultural Affairs; and Administration and Finance Commission. The Authority may, whenever it deems appropriate, restructure the existing Commissions or establish new Commissions. Each commission shall comprise representatives of each Member State. Each Commission may, as it deems necessary, set up subsidiary commissions to assist it in carrying out its work. It shall determine the composition of any such subsidiary commission.

In October 1999, ECOWAS decided to establish a Court of Justice following a two-day meeting of Justice Ministers in Abuja. The court will address complaints from member states and institutions of ECOWAS, as well as issues relating to defaulting nations. The court has a president, chief registrar and seven judges and is a permanent institution.

The other important organ of the ECOWAS is the ECOWAS Parliament. The ECOWAS Parliament convened in May 2002, with 115 individuals representing all the member states except Côte d'Ivoire. Togo, Liberia, Cape Verde, Guinea Conakry, Guinea Bissau, Republic of Benin, the Gambia and Sierra Leone have 5 Parliamentarians each; Burkina Faso, Mali, Niger and Senegal have 6 Parliamentarians each; Côte d'Ivoire is entitled to 7 representatives; Ghana has 8 and Nigeria has 35. Membership is constituted from the membership of the national parliaments of each member state. Should the member lose his or her seat in the national parliament, they would lose their seats in the regional parliament. The ECOWAS Parliament is situated in Abuja, Nigeria and at present only acts in a consultative and advisory capacity. Currently, commentators have proposed the Parliament to acquire legislative powers in the future, as well as to institute directly elected representatives.

6.4.2 Common Market for Eastern and Southern Africa (COMESA)

6.4.2.1 History and background

COMESA traces its genesis to the mid 1960s. The idea of regional economic co-operation received considerable impetus from the buoyant and optimistic mood that characterised the post-independence period in most of Africa. The mood then was one of pan-African solidarity and collective self-reliance born of a shared destiny. It was under these circumstances that, in 1965, the United Nations Economic Commission for Africa (ECA) convened a ministerial meeting of the then newly independent states of Eastern and Southern Africa to consider proposals for the establishment of a mechanism for the promotion of sub-regional economic integration. The meeting, which was held in Lusaka, Zambia, recommended the creation of an Economic Community of Eastern and Central African states.

An Interim Council of Ministers, assisted by an Interim Economic Committee of officials, was subsequently set up to negotiate the treaty and initiate programmes on economic co-operation, pending the completion of negotiations on the treaty.

In 1978, at a meeting of Ministers of Trade, Finance and Planning in Lusaka, the creation of a sub-regional economic community was recommended, beginning with a sub-regional preferential trade area, which would be gradually upgraded over a ten-year period to a common market until the community had been established. To this end, the meeting adopted the "Lusaka Declaration of Intent and Commitment to the Establishment of a Preferential Trade Area for Eastern and Southern Africa" (PTA) and created an Inter-governmental Negotiating Team on the Treaty for the establishment of the PTA. The meeting also agreed on an indicative time-table for the work of the Intergovernmental Negotiating Team.

After the preparatory work had been completed a meeting of Heads of State and Government was convened in Lusaka on 21st December 1981 at which the Treaty establishing the PTA was signed. The Treaty came into force on 30th September 1982 after it had been ratified by more than seven signatory states as provided for in Article 50 of the Treaty.

The PTA was established to take advantage of a larger market size, to share the region's common heritage and destiny and to allow greater social and economic co-operation, with the ultimate objective being to create an economic community. The PTA Treaty envisaged its transformation into a Common Market and, in conformity with this, the Treaty establishing the Common Market for Eastern and Southern Africa, COMESA, was signed on 5th November 1993 in Kampala, Uganda and was ratified a year later in Lilongwe, Malawi on 8th December 1994.

6.4.4.2 Priorities and objectives

COMESA (as defined by its Treaty) was established 'as an organisation of free independent sovereign states which have agreed to co-operate in developing their natural and human resources for the good of all their people' and as such it has a wide-ranging series of objectives which necessarily include in its priorities the promotion of peace and security in the region. However, due to COMESA's economic history and background its main focus is on the formation of a large economic and trading unit that is capable of overcoming some of the barriers that are faced by individual states.

COMESA's current strategy can thus be summed up in the phrase 'economic prosperity through regional integration'. With its 21 member states, population of over 385 million and annual import bill of around US\$32 billion COMESA forms a major market place for both internal and external trading. Its area is impressive on the map of the African Continent and its achievements to date have been significant.

The COMESA states, in implementing a free trade area, are well on their way to achieving their target of removing all internal trade tariffs and barriers. Within 4 years after that COMESA will have introduced a common external tariff structure to deal with all third party trade and will have considerably simplified all procedures.

Other objectives which will be met to assist in the achievement of trade promotion include: Trade liberalisation and Customs co-operation, including the introduction of a unified computerised Customs network across the region;

improving the administration of transport and communications to ease the movement of goods services and people between the countries. creating an enabling environment and legal framework which will encourage the growth of the private sector, the establishment of a secure investment environment, and the adoption of common sets of standards. the harmonisation of macro-economic and monetary policies throughout the region.

6.4.2.3Institutions

Several institutions have been created to promote sub-regional co-operation and development. These include:

The COMESA Trade and Development Bank in Nairobi, Kenya
The COMESA Clearing House in Harare, Zimbabwe
The COMESA Association of Commercial Banks in Harare, Zimbabwe
The COMESA Leather Institute in Ethiopia
The COMESA Re-Insurance Company (ZEP-RE) in Nairobi, Kenya

In addition a Court of Justice was also established under the COMESA Treaty and became formally operational in 1998.

Further initiatives exist to promote cross border initiatives, form a common industrial policy and introduce a monetary harmonisation programme.

COMESA has evolved a comprehensive decision making structure at the top of which are the Heads of State of the 21 member countries. There is then a Council of Ministers responsible for policy making, 12 technical committees and a series of other advisory bodies (including specific relations with partner countries and the business community). In addition, each member state appoints liaison persons in their appropriate ministries who form part of the day-to-day communication process. Overall co-ordination is achieved through the Secretariat, based in Lusaka, Zambia, who will be happy to deal with all initial communication.

6.4.3 Intergovernmental Authority for Development (IGAD)

6.4.3.1 History and background

The Intergovernmental Authority on Drought and Development (IGADD) was formed in 1986 with a very narrow mandate around the issues of drought and desertification. Since then, and especially in the 1990s, IGADD became a vehicle for regional security and political dialogue.

The founding members of IGADD decided in the mid-1990s to revitalise the organisation into a full-fledged regional political, economic, development, trade and security entity similar to SADC and ECOWAS. It was envisaged that the new IGADD would form the northern sector of COMESA with SADC representing the southern sector.

One of the principal motivations for the revitalisation of IGADD was the existence of many organisational and structural problems that made the implementation of its goals and principles ineffective. The IGADD Heads of State and Government met on 18 April 1995 at an Extraordinary Summit in Addis Ababa and resolved to revitalise the Authority and expand its areas of regional co-operation. On 21 March 1996, the Heads of State and Government at the Second Extraordinary Summit in Nairobi approved and adopted an [Agreement Establishing the Intergovernmental Authority on Development \(IGAD\)](#). In April 1996 on the recommendation of the Summit of the Heads of State and Government, the IGAD Council of Ministers identified three priority areas of co-operation:

- Conflict Prevention, Management and Resolution and Humanitarian Affairs;
- Infrastructure Development (Transport and Communications);
- Food Security and Environment Protection.

IGAD has been designated as one of the pillars of the African Economic Community in terms of the AEC Treaty. IGAD signed the Protocol on Relations between the AEC and Regional Economic Communities on 25 February 1998. IGAD has collaborated with COMESA and the East African Community to divide projects among themselves so that there is no duplication and to avoid approaching the same donors with the

same projects. The member states of IGAD are Djibouti, Eritrea, Ethiopia, Kenya, Somalia, Sudan and Uganda

6.4.3.2 Objectives

IGAD aims to expand the areas of regional co-operation, increase the members' dependency on one another and promote policies of peace and stability in the region in order to attain food security, sustainable environmental management and sustainable development.

The IGAD strategy is to attain sustainable economic development for its member countries. Regional economic co-operation and integration are given special impetus and high priority to promote long-term collective self-sustaining and integrated socio-economic development. The leading principles of the IGAD strategy are stipulated in the agreement establishing IGAD, but are also mindful of the UN Charter and AU Constitutive Act.

IGAD's aims and objectives are to:

- Promote joint development strategies and gradually harmonise macro-economic policies and programmes in the social, technological and scientific fields;
- Harmonise policies with regard to trade, customs, transport, communications, agriculture and natural resources, and promote free movement of goods, services, and people within the sub-region;
- Create an enabling environment for foreign, cross-border and domestic trade and investment;
- Initiate and promote programmes and projects to achieve regional food security and sustainable development of natural resources and environmental protection, and encourage and assist efforts of member states to collectively combat drought and other natural and man-made disasters and their consequences;
- Develop a co-ordinated and complementary infrastructure in the areas of transport, telecommunications and energy in the sub-region;
- Promote peace and stability in the sub-region and create mechanisms within the sub-region for the prevention, management and resolution of interstate and intrastate conflicts through dialogue;
- Mobilise resources for the implementation of emergency, short-term, medium-term and long-term programmes within the framework of sub-regional co-operation;
- Facilitate, promote and strengthen co-operation in research development and application in science and technology.

6.4.3.3 Structure

IGAD has the following organs: Assembly of Heads of State and Government; Council of Ministers; Committee of Ambassadors; and Secretariat.

The Assembly of Heads of State and Government, which meets at least once a year, is the supreme organ of the Authority. A chairman is elected from the member states in rotation.

The Council of Ministers is composed of the Ministers of Foreign Affairs and one other focal minister designated by each member state. The Council meets at least twice a year.

The Committee of Ambassadors, comprising the Ambassadors or Plenipotentiaries of IGAD member states accredited to the country of IGAD's headquarters, advises and guides the Executive Secretary on the promotion of his efforts in realising the work plan approved by the Council of Ministers and on the interpretation of policies and guidelines which may require further elaboration.

The Secretariat is the executive arm of the Authority and is headed by an Executive Secretary appointed by the Assembly of Heads of State and Government for a term of four years, renewable once. The Secretariat, in addition to the Office of the Executive Secretary, has three divisions, namely Economic Co-operation, Agriculture and Environment, and Political and Humanitarian Affairs.

The Secretariat is responsible for the implementation of projects in food security and environmental protection, infrastructure development, transport and communications, conflict prevention, management and resolution and humanitarian affairs.

6.4.4 Southern African Development Community (SADC)

6.4.4.1 History and background

The Southern African Development Co-ordination Conference, SADCC, the forerunner of the SADC, the Community, was established in April 1980 by Governments of the nine Southern African countries of Angola, Botswana, Lesotho, Malawi, Mozambique, Swaziland, Tanzania, Zambia and Zimbabwe.

The formation of SADC was the culmination of a long process of consultations by the leaders of Southern Africa. Towards the end of the 1970's, it became clear to the

leaders of the region that just having a national flag and a national anthem would not meet the needs of the people for improved living standards.

Secondly, the positive experiences gained in working together in the group of Frontline States, to advance the political struggle, had to be translated into broader co-operation in pursuit of economic and social development.

From 1977, active consultations were undertaken by representatives of the Frontline States, culminating in a meeting of Foreign Ministers of the Frontline States in Gaborone, in May 1979, which called for a meeting of ministers responsible for economic development. That meeting was subsequently convened in Arusha, Tanzania, in July 1979. The Arusha meeting led to the birth of the Southern African Development Co-ordination Conference (SADCC) a year later (in 1980).

The transformation of the organization from a Coordinating Conference into a Development Community (SADC) took place on August 17, 1992 in Windhoek, Namibia when the Declaration and Treaty was signed at the Summit of Heads of State and Government thereby giving the organization a legal character.

The Member States are Angola, Botswana, the Democratic Republic of Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, United Republic of Tanzania, Zambia and Zimbabwe. SADC headquarters are located in Gaborone, Botswana.

6.4.4.2 Objectives

The objectives of SADC are to:

- Achieve development and economic growth, alleviate poverty, enhance the standard and quality of life of the people of Southern Africa and support the socially disadvantaged through regional integration;
- Evolve common political values, systems and institutions;
- Promote and defend peace and security;

- Promote self-sustaining development on the basis of collective self-reliance, and the interdependence of Member States;
- Achieve complementarity between national and regional strategies and programmes;
- Promote and maximise productive employment and utilisation of resources of the Region;
- Achieve sustainable utilisation of natural resources and effective protection of the environment;
- Strengthen and consolidate the long standing historical, social and cultural affinities and links among the people of the Region.

The ultimate objective of SADC, the Community is, therefore, to build a Region in which there will be a high degree of harmonisation and rationalisation to enable the pooling of resources to achieve collective self reliance in order to improve the living standards of the people of the region.

6.4.4.3 Institutions

The principal institutions of SADC following the adoption by the extra-Ordinary Summit of the Report on the Restructuring of SADC Institutions are as follows:

- **SUMMIT** - made up of Heads of State and/or Government, the Summit is the ultimate policy-making institution of SADC. It is responsible for the overall policy direction and control of functions of the Community. The Summit usually meets once a year around August/September in a member State at which a new Chairperson and Deputy are elected. Under the new structure, it is recommended that the Summit meets twice a year. More functions of the Summit are enumerated under Article 10 of the SADC Treaty.
- **THE TROIKA** - the Extra-Ordinary Summit decided to formalise the practice of a Troika system consisting of the Chair, Incoming Chair and the Outgoing Chair of SADC which has been effective since it was established by Summit at its meeting in Maputo, Mozambique in August 1999. Other member States may be co-opted into the Troika as and when necessary. This system has enabled the Organisation to execute tasks and implement decisions

expeditiously as well as provide policy direction to SADC Institutions in the period between regular SADC meetings.

- ORGAN ON POLITICS, DEFENCE AND SECURITY - the Extra-Ordinary Summit adopted the Report of the Ministerial Committee on Foreign Affairs, Defence and Security which met on November 23, 2000 in Harare, Zimbabwe and addressed the following issues, pertaining to the Organ, in particular that:

The Organ should be coordinated at the level of Summit on a Troika basis and reporting to the Chairperson of SADC.

The Chairperson of the Organ shall be on a rotation basis for a period of one year.

The Member State holding the Chairpersonship of the Organ shall provide the Secretariat services.

The Chairperson of the Organ shall not simultaneously hold the Chair of the Summit.

The structure, operations and functions of the Organ shall be regulated by the Protocol on Politics, Defence and Security Cooperation which shall be submitted to Summit in Blantyre in August 2001 for approval and signature.

- COUNCIL OF MINISTERS - the functions of the Council should remain as provided for under Article 11 of the Treaty. The Council of Ministers consists of Ministers from each Member State, usually from the Ministries of Foreign Affairs and Economic Planning or Finance. The Council is responsible for overseeing the functioning and development of SADC and ensuring that policies are properly implemented. The Council usually meets twice a year in January and just before the summit in August or September. Under the new structure it is recommended that the Council should meet four times a year.
- INTEGRATED COMMITTEE OF MINISTERS - this is a new institution aimed at ensuring proper policy guidance, coordination and harmonization of cross-sectoral activities.
- TRIBUNAL:- The Treaty also makes provision for a yet to be established Tribunal. A protocol to establish the Tribunal was signed in Windhoek, Namibia during the 2000 Ordinary Summit. Once established, the Tribunal

will ensure adherence to, and proper interpretation of the provisions of the SADC Treaty and subsidiary instruments, and to adjudicate upon disputes, referred to it.

- **SADC NATIONAL COMMITTEES:-** These Committees shall be composed of key stakeholders notably government, private sector and civil society in member States. Their main functions will be to provide inputs at the national level in the formulation of regional policies, strategies, as well as coordinate and oversee the implementation of the these programmes at the national level. The Committees shall also be responsible for the initiation of projects and issue papers as an input to the preparation of the Regional Indicative Development Plan.
- **STANDING COMMITTEE OF SENIOR OFFICIALS:-** the functions of this Committee shall remain as provided for under Article 13 of the Treaty. The Standing Committee of Officials consists of one Permanent/Principal Secretary or an official of equivalent rank from each Member State, preferably from a ministry responsible for economic planning or finance. This Committee is a technical advisory committee to the Council.

The Chairperson and Vice-Chairperson of the Standing Committee shall be appointed from the member States holding the Chairpersonship and Vice-Chairpersonship, respectively, of the Council.

- **SECRETARIAT:-** this is the principal executive institution of SADC responsible for strategic planning, co-ordination and management of SADC programmes. It is headed by an Executive Secretary and has its headquarters in Gaborone, Botswana.

The Extra-Ordinary Summit agreed that the Secretariat should be strengthened in terms of both its mandate and the provision of adequate resources for it to be able to perform its functions effectively as provided for under Article 14 of the Treaty and consistent with the Abuja Treaty.

Unit summary

The United Nations Charter contemplates that the United Nations will be assisted by regional arrangements in the quest for international peace, provided that their activities are consistent with the purposes and principles of the Charter. In line with this stipulation, various regional and sub-regional organisations have been set up in Africa. The AU is the principal regional institution in Africa, comprising of all African countries with the sole exception of Morocco. By replacing the OAU, the AU was established by the Constitutive Act of the African Union, adopted at the 36th ordinary session of the Assembly of Heads of State and Government of the OAU on 11 July 2000, in Lome, Togo.

The main reasons that necessitated the transformation from the OAU to AU are: change of the original motivations for the OAU's creation (i.e., the Pan-Africanist ideals of securing independence for African peoples and utilising against colonial subjugation- no longer sustained the organisation following the period of decolonisation); the need to focus on securing peace among Africa's newly independent states; and entrenching democratic regime (as opposed to dictatorial regimes) in the newly liberated nations. The objectives which the AU seeks to achieve are enshrined under article 3 of the Constitutive act of the AU. The principles that the Union shall follow in playing its roles are provided in article 4 of the same.

In order to effectively and efficiently discharge its functions, various organs are established under the AU. The AU Assembly is the supreme organ of the AU and composed of heads of state and government or their duly accredited representatives. Its functions include determining the common policies of the Union, considering requests for membership of the Union, monitoring the implementation of policies and decisions of the Union and ensuring compliance therewith by all member states, and adopting the budget of the Union. The Executive Council is composed of Ministers of Foreign Affairs or other government designates, and is expected to engage in policy-making in areas of common interest to the member states across a broad range of disciplines. So as to render technical assistance to the Executive Council in its policy-decision making, a number of Specialised Technical Committees are established by the Act.

While the Pan-African Parliament is envisaged as something akin to a legislature for Africa, the African Court of Justice will act as the regional adjudicator. Another important organ is the Peace and Security Council, which has been tasked with making decisions on conflict prevention, management and resolution. Other organs of the Union include: three Pan-African financial institutions and the Economic, Social and Cultural Council. The latter is described as being an advisory organ composed of different social and professional groups of the Member States of the Union.

NEPAD is another important institution in Africa at regional level. NEPAD has been described as a holistic, comprehensive and integrated strategic framework for the socioeconomic development of Africa, with a programme of action that embraces initiatives on peace and security, democracy and political governance, as well as economic and corporate governance.

In addition to organisations of Africa at regional level, there are various sub-regional institutions in different regions of Africa. These institutions are established, among others, to maintain peace and security and promote regional integration among member states. The most noticeable African sub-regional organisations include: ECOWAS, COMESA, IGAD and SADC.

Review questions

1. The AU comprises of different organs. Can NEPAD be taken as one organ of the AU? Why/why not? Go through the provisions of the Constitutive Act of the African Union and ascertain whether the creation of NEPAD has been foreseen by the Act or not.
2. What were the shortcomings of the OAU? Have these problems been effectively addressed by the African Union?
3. Ethiopia is a member state of IGAD. Critically analyse the negative and positive implications of this membership to Ethiopia.
4. Compare and contrast the principles of the AU with the UN.
5. Explain the purposes of sub-regional organisations of Africa in the face of the African Union and other African regional organisations.

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