PRINCIPLES OF INTERNATIONAL LAW

Dr. Atul Kumar Sahuwala

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Preface

"Principles of International Law" delves into the foundational norms and rules that govern the conduct of states and other international actors in the global community. At its core, the book provides an in-depth exploration of the fundamental principles that underpin the international legal system and shape relations between states.

Sovereignty stands as a fundamental principle, asserting the exclusive authority of states over their territories and domestic affairs. This principle forms the cornerstone of the international order, ensuring that states are free to govern themselves without external interference.

Non-intervention is another key principle, prohibiting states from interfering in the internal affairs of other states. This principle seeks to maintain peace and stability by respecting the sovereignty and autonomy of states.

The principle of peaceful settlement of disputes encourages the resolution of conflicts through diplomatic negotiations and legal mechanisms rather than resorting to force. It reflects the commitment of the international community to resolving disputes peacefully and promoting stability.

Additionally, principles such as the prohibition of aggression, respect for human rights, and adherence to international treaties and agreements are central to international law. These principles aim to promote security, cooperation, and respect for the rights and dignity of individuals.

The book also delves into the role of international organizations and institutions in upholding and enforcing international law. Organizations such as the United Nations play a crucial role in promoting peace, security, and cooperation among states and ensuring compliance with international legal norms.

Through case studies, analysis of landmark legal cases, and examination of emerging trends, the book offers readers a nuanced understanding of the complexities of international law and its application in the global context. It serves as an invaluable resource for students, scholars, policymakers, and practitioners seeking to navigate the dynamic landscape of international relations and law.

In 'Principles of International Law,' readers explore the foundational norms and rules governing relations between states and other international actors in the global community.

–Author

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General Principles of International Law

B. Cheng, *General Principles of Law as Applied by International Courts and Tribunals* (1953); A. McNair, 'The General Principles of Law Recognised by Civilized Nations', 33 BYIL 1 (1957); G. Herczegh, *General Principles of Law and the International Legal Order* (1969); E. Zoller, *La Bonne Foi en Droit International Public* (1977); M. Ake-hurst, 'The Application of General Principles of Law by the Court of Justice of the European Communities', 52 BYIL 29 (1981); B. Vitanyi, 'Les Positions Doctrinals Concernant le Sens de la Notion de "Principes Ge´ne´raux de Droit Reconnus par les Nations Civilize´es" ', 86 RGDIP 48 (1982)

The inclusion of 'general principles of law recognised by civilized nations' in Article 38 is widely believed to have been intended to allow the ICJ to consider and apply general principles of municipal law, and in practice they are occasionally relied upon when gaps need to be filled. The ICJ has only rarely relied on general principles, although other international tribunals, such as the ECJ, have relied on general principles of municipal law to assist in reaching conclusions. The general principles relating to good faith in the exercise of rights and prohibitions on the abuse by a state of a right which it enjoys under international law have been invoked by the ICJ and arbitral tribunals which have considered international environmental issues.

The principle of good faith appears to have been relied upon by the President of the Tribunal in the *Fur Seal Arbitration* in finding that the exercise of a right for the sole purpose of causing injury to another (abuse of rights) is prohibited.

The award in the *Trail Smelter* case is also cited as an example of reliance upon the principle of good faith which governs the exercise of rights, to ensure that a proper balance is struck between a state's rights and obligations and a 'recognition of the interdependence of a person's rights and obligations'.

The abuse of rights doctrine is also considered to provide the basis for the rule that a state must not interfere with the flow of a river to the detriment of other riparian states,and is related to the principle requiring respect for mutual interests which is now reflected in Principle 21 of the Stockholm Declaration and Principle 2 of the Rio Declaration, namely, *sic utere tuo ut alienum non laedas.* The principle of 'good faith' was relied upon by the ICJ in the *Nuclear Tests* cases to enable it to reach its conclusion on the legal effect of a French unilateral declaration that it would cease atmospheric nuclear tests. In recognising that unilateral declarations could have the effect of creating legal obligations which are binding 'if given publicly, and with an intent to be bound, even though not made within the context of international negotiations', the Court stated that:

One of the basic principles governing the creation and performance of legal obligations, whatever their source, is the principle of good faith. Trust and confidence are inherent in international co-operation, in particular in an age when this co-operation in many fields is becoming increasingly essential. just as the very rule of *pacta sunt servanda* in the law of treaties is based on good faith, so also is the binding character of an international obligation assumed by unilateral declaration.

Thus interested states may take cognisance of unilateral declarations and place confidence in them, and are entitled to require that the obligation thus created be respected.

The ICJ held that a number of communications made by senior government officers speaking for France created binding legal obligations for that country. States which make unilateral declarations may establish binding environmental obligations.

Examples include: the declaration by the UK that it would cease to permit the disposal of sewage sludge in the North Sea by the end of 1998; the joint declaration by the EC and its member states that they would stabilise their emissions of carbon dioxide at 1990 levels by the year 2000; and the declaration by Japan that it would prohibit driftnet fishing by the end of 1993.

It is important to recall, however, that these and other such declarations need to be considered carefully, as they are often drafted to allow discretion in the act required by a state, or may only be intended to have political or domestic effects.

Other 'general principles' which have relevance for environmental matters include: the obligation to make reparation for the breach of an engagement; the principle that a person may not plead his or her own wrong; the principle that no one may be a judge in his or her own suit; and 'elementary considerations of humanity' and 'fundamental general principles of humanitarian law'.

Equity

It is also important to consider the role of 'equity', which allows the international community to take into account considerations of justice and fairness in the establishment, operation or application of a rule of international law. In the *North Sea Continental Shelf* cases, the ICJ described the concept of equity as being a 'direct emanation of the idea of justice' and a 'general principle directly applicable aslaw'which should be applied as par to international law' to balance up the various considerations which it regards as relevant in order to produce an equitable result'.

In that case, the ICJ held there were no rigid rules as to the exact weight to be attached to each element in a case, and that equity was not an exercise of discretion or conciliation or the operation of distributive justice.The ICJ has linked equity with acquiescence and estoppel, and applied it to the conservation of fishery resources to achieve an 'equitable solution derived from the applicable law'.

Equity can therefore operate as a part of international law to inform the application of a particular rule. It may also be applied by the ICJ to decide a case *ex aequo et bono*, if the parties to a dispute agree, in application of Article 38(2) of the Statute of the Court, although no such judgment has yet been given by the ICJ. Many environmental treaties refer to or incorporate equity or equitable principles.

In applying equity in these treaties, it will be proper to establish its meaning in the context of its use in a particular treaty. Since, however, treaties rarely provide a working definition of equity, states, international organisations and international courts and tribunals may, ultimately, have to refer back to the general concept as interpreted and applied by the ICJ and other international tribunals.

SUBSIDIARY SOURCES

The main subsidiary sources are the decisions of courts and tribunals and the writings of jurists. The ICJ has only recently come to deal with the substantive aspects of international environmental protection: in the *Nuclear Tests* cases the dispute was settled by the ICJ before the merits could be addressed. The ICJ has considered the conservation of fisheries resources (*Icelandic Fisheries* cases), guiding principles of general application (*Corfu Channel* case, *North Sea Continental Shelf* cases), the protection of the environment in times of war and armed conflict (Advisory Opinion on *The Legality of the Threat or Use of Nuclear Weapons*) and general norms of international environmental law and principles governing the law of shared watercourses (*Gabcikovo-Nagymaros* case).

Other international courts dealing with environmental issues are the European Court of Justice (which has been called upon to interpret and apply EC environmental law and international agreements such as 1973 CITES, the 1979 Berne Convention and the GATT), the European Court of Human Rights, the

WTO Appellate Body and the International Tribunal for the Law of the Sea, as well as panels established under the Canada–US Free Trade Agreement.Awards of international arbitral tribunals have also contributed to the development of international environmental law. Four stand out in particular: the 1893 decision in the *Pacific Fur Seals Arbitration*, the 1941 decision in the much cited *Trail Smelter* case, the 1957 award of the *Lac Lanoux Arbitration*, and the 2003 award in the *OSPAR Information* case. National courts and tribunals are increasingly faced with the task of interpreting international obligations in this field, and the jurisprudence of these tribunals is becoming an increasingly important source of reference in the development of international environmental law and policy.

The writings of jurists have played a less significant role in developing international environmental law. The *Trail Smelter* case relied on the writings of Professor Eagleton, and there is some evidence that international jurisprudence on environmentalissueshas been influenced byacademic and other writings.

THE RELATIONSHIP BETWEEN DOMESTIC AND INTERNATIONAL LAW

When examining the relationship between international law and municipal law, it is important to analyse the clash between dualism and monism. Both concepts entail the concurrent existence of international and domestic law. The question to be assessed is the nature of the co-habitation of these legal orders. Is there a legal order which supersedes the other? Or do they exist cooperatively and non-contentiously? Under the dualism doctrine, a clear distinction is created between international and municipal law, establishing them as separate legal orders which regulate different subjects. Thus, while international law involves the regulation of the relationship between sovereign states, domestic law confers rights to persons and entities within the sovereign state.

It is therefore important to point out that under the dualism doctrine, neither legal order has an absolute, undeniable power to create, alter or challenge the rules of the other system. In that regard, the use of international law in domestic courts can only be allowed through an instrument in municipal law which confers rights to that effect. According to the dualism principle, in a case of conflict between municipal and international law, the domestic courts would apply the former.

In contrast, monism asserts the supremacy of international law within the municipal sphere and describes the individual as a subject of international law. The doctrine is established when international and municipal law form a part of the same system of norms which are based on general notions of fairness. The latter concept somewhat translates into an alternative theory which entails that international and municipal law are superseded by a general legal order which rests upon the rules of natural law.

In the eyes of the monists, the state merely represents an amassing of individuals who are subjects of international law. Although monism clearly

possesses a logical and equitable basis (since it estops states with higher capabilities from imposing their own legal rules as the highest and most sophisticated authority) it is submitted that this doctrine directly contradicts established legal rules. For instance, with respect to the position of states, the law recognises that economic entities such as corporations possess a legal personality. In that regard, to claim that sovereign states do not have a legal capacity would not only deprive international law of its primary purpose (to regulate the relationship between states) but would also overtly undermine the doctrine of separation of powers, which is a fundamental part of contemporary democracy.

The state merely represents an amassing of individuals who are subjects of international law.

When discussing the methods of coordination between municipal and international law, academic views challenge the presumptions drawn by the followers of monism and dualism that the two legal orders share a common field of operation. In Sir Fitzmaurice's view the two systems work in different spheres. This affords them an equal degree of supremacy and precludes them from entering into conflict. When a state does not act in accordance with international law it is not a question of conflict of laws but rather a conflict of obligations. As such, the consequences will relate to that state's position on the international political scene, but will not, *prima facie*, undermine the validity of its internal laws.

With regards to the relation between the states' obligations and municipal law, the legal position is unambiguous. A state cannot use provisions of its own law as a defence to a claim against it for alleged breaches of international law. This rule is exemplified in the *Alabama Claims*arbitration where the United States was awarded damages against Great Britain for the latter's breach of its obligations as a neutral state during the American Civil War.

In the *Free Zones* case it was decided that 'France cannot rely on its own legislation to limit the scope of its international obligations'. Furthermore, in the Advisory Opinion in the *Greco-Bulgarian Communities* case it was stated that 'it is a generally accepted principle of international law that in the relations between Powers who are contracting Parties to a treaty, the provisions of municipal law cannot prevail over those of the treaty'. If a state has signed to a treaty and its domestic laws violate any provisions of that treaty, the state must change said laws in order to fulfil its international obligations. Due regard must be paid to the decisions of municipal courts as they provide jurisprudential guidance on the effect of the particular domestic law. The relationship between international law and municipal law should be viewed as one of cooperation and symbiosis. As such, international law should recognise doctrines and concepts created by municipal law.

The practical implications of this argument arise when considering the admissibility of municipal courts' decisions in the International Court of Justice (ICJ). In the*Brazillian Loans* case the Permanent Court of International Justice

(the predecessor to the ICJ) decided that due regard must be paid to the decisions of municipal courts as they provide jurisprudential guidance on the effect of the particular domestic law in the municipal sphere. Although, in accordance with the Court's jurisdiction, international law is primarily applied, it will nevertheless be logical to assume that parties will rely on provisions of municipal law as part of their arguments. As such, they must present said laws in the form of evidence before the court.

As part of the continuous evolution of international law, the ICJ must recognise concepts created by municipal law which historically have had effect on international relations. Thus, where legal issues arise concerning a matter which is not covered by international law, reference will be made to the relevant rules in municipal law. In such cases the court cannot blatantly disregard municipal law as there are no relevant provisions of international law which can be applied.

In conclusion, by examining the relevant academic principles and case law, one can infer that the generally accepted view describes that international and municipal law are supreme in their own spheres. However, one can also argue that there has been a fusion of the operating fields of both concepts. In the spirit of modernisation, both the municipal and international courts have recognised the need to resort to the other's sphere of operation as aids to interpretation. Moreover, as you will read in the second part of this feature, the English courts have recognised the confinement of the fundamental doctrines of Parliamentary Supremacy and *stare decisis*. In that regard, although the segregation barrier between the municipal and international sphere remains existent, it is no longer infrangible.

INTERNATIONAL RULES ON IMPLEMENTING INTERNATIONAL LAW IN DOMESTIC LEGAL SYSTEMS

Most international rules to become operative need the cooperation and the willingness by State officials and individuals to apply such rules within the domestic system. However, there is no international regulation as to how national systems are to give effect to international rules.

Under traditional international law:

- A State cannot invoke its national legislation to excuse the breach of its international obligations
- With respect to treaties, a State cannot invoke internal law to justify a breach of its treaty obligations. Art. 27 VC
- *Exchange of Greek and Turkish Populations*, PCIJ: There exists a general duty for States to bring national law into conformity with their international obligations. This holding would have the consequence of double breach whenever a state fails to fulfill its international obligations. First it would breach the specific rule which gives rise to

the conflict; second, it will breach its general duty to make national rules conform to international law. However, State practice shows there is no such general duty, with the consequence that a breach merely triggers a claim for damages or a request for injunction by the aggrieved party.

Modern International Law shows evolution in two directions:

- Some treaties, in addition to laying out other obligations, also impose an obligation on their signatories to enact implementing legislation so as to give effect to international norms at the municipal level (*e.g.*, some of the rule of the 4 Geneva Conventions of 1949; a number of human rights treaties, the statutes of the ICTY, ICTR)
- Certain general rules that have acquired the status of jus cogens require States to adopt the necessary implementing legislation. See Furundzija, ICTY: Due to its peremptory character, the rule prohibiting torture requires that States enact national legislation prohibiting and designed to prevent torture at the national level. In such cases, where a State fails to enact national legislation prohibiting torture and, further engages in torture, his conduct would result in a double breach (breach of its international obligation to enact national legislation and breach of its international obligation to not engage in torture). Limitation: some individualism still prevails in the international community and States will not bring a claim for violation of the general duty to pass national implementation laws if their interests have not been negatively affected, under the pretext that they do not want to meddle in another State's internal affairs.
- International law still lacks any regulations on the mechanisms of implementation and leaves each State complete freedom as to how it fulfills its obligations, which results in total lack of uniformity. This state of affairs is the result of national self-interest, and still strong attachment to the concept of sovereignty and reluctance to submit to international control

TRENDS EMERGING AMONG THE LEGAL SYSTEMS OF STATES

MODALITIES OF IMPLEMENTATION

Two basic trends: Automatic standing incorporation:

- A national constitution, or law, or judicial decision enjoin a state and its nationals to apply certain existing or future international rules
- Eeffect of such national provisions is to incorporate international rules into the domestic legal order without the requirement for further action other than notice (usually, through publication in the OJ)
- This mechanism allows for automatic and instantaneous adjustment of national laws to international legal standards

Legislative ad hoc incorporation:

- International law becomes applicable only through specific, *ad hoc*, legislation
- Distinction between statutory *ad hoc* incorporation (when a law sets out in detail the various obligations, powers and rights deriving from the international rule) and automatic ad hoc incorporation of international law (a law provides that the international obligation at issue is an integral part of national law, the effect being the same as an automatic standing incorporation with the difference that it is done on an *ad hoc* basis). The former is more appropriate for non self-executing international rules, while the latter (whether permanent or *ad hoc*) is best fit for self-executing international norms.

The Rank of International Rules within National Legal Orders:

- Some States put international rules incorporated into the national system at the same level as national legislation. When there is a conflict between the two, general principles regarding rules of same rank, apply. Under this regime, a simple law can repeal an international law as it applies to that State and thwart its application at the national level. The State will still incur international responsibility.
- Some States accord international rules a status higher than that of national legislation. When a State has a *flexible* constitution (*i.e.*, one that can be amended by a simple act of parliament), the only way to give international rules primacy is to entrench them, so that they cannot be modified by a simple legislative majority. However, States with flexible constitutions have not adopted such a practice. States having a rigid constitution (sets special requirements for its amendment and provides for judicial oversight of national legislation to insure its constitutionality), if the constitution provides for the incorporation of international norms, these acquire constitutional or quasi-constitutional rank, and the legislature is precluded from passing a contrary law unless it can satisfy the stringent requirements for constitutional amendment.

What Makes a State Choose One Approach vs. Another?

Statist v. international approach States that tend to adopt the statist (nationalist) approach prefer legislative ad hoc incorporation and give international rules the same rank as national legislative acts States that favour the internationalist approach opt for automatic standing or ad hoc incorporation and give international rules superiority over national legislative enactments.

The Relationship between the Executive and the Legislative Powers

A problem may arise when the executive branch makes a treaty without involvement by the legislature.

- Whenever a treaty covers areas that are within the competence of parliament

  To prevent governments from concluding treaties so as to bypass the legislature, such States require the intervention of the legislature to

transform the international obligation into the national legal order. These countries opt for the ad hoc incorporation (whether automatic or legislative). In other words, the Parliament must pass a law that either makes applicable the relevant international law on all subjects of the national legal order, or sets out all the rules contained in the treaty, thereby transforming them into national law.

- Whenever parliaments do not play a role in the decision of the State to be bound by the treaty. Even then, in order to require parliaments to exercise some control over foreign policymaking, they will be at least required to give their consent to the incorporation of the treaty. Therefore, the automatic standing incorporation has very limited scope and applicability.

TECHNIQUES OF IMPLEMENTATION

Customary International Law

- Diversity in implementing customary international law, although one common feature is that all national systems provide for automatic standing incorporation: national constitutions and statutes provide that customary international law becomes binding from the moment it emerges, and has, at the national level the same content as it has at the international level. Why? Because it would be difficult for each county's legislature to decide on the existence and content of a customary rule, as customary rules, by their nature, evolve slowly and their content is not often clearly defined
- Some states (*e.g.*, Belgium until recently) have taken the approach that a customary rule needs national implementation before it can become applicable at the national level.
- Some customary rules, which are very general in nature, need be supplemented by national legislation in order for them to become applicable at the national level (*e.g.*, some of the rules regarding the continental shelf)
- Rank of international customary laws in the national systems of States varies: some states that have rigid constitutions proclaim that international custom prevails over any inconsistent national legislation and, in some of these states, the constitution provides for judicial review of legislative acts which ensures their constitutionality and compliance with international law; other states don't have provisions that give custom a rank higher to that of regular legislation, the consequence being that general principles as to rank will apply and may trigger that State's international responsibility.

Treaty Law

Modalities of Implementation:

- *All modalities can be observed:* Standing automatic incorporation, statutory *ad hoc*, and automatic *ad hoc*

- Many national systems make treaties binding upon domestic authorities upon the treaty publication in the OJ or Official Bulletin (France, many African countries)
- USA – treaties that are duly ratified by the President, after approval by the Senate are the supreme law of the land with State's constitution or judicial decision to the contrary, not with standing.
- In UK – treaties do not bind national authorities unless they are translated into national legislation. Rationale with respect to UK approach is that, because the executive makes treaty, the parliament must necessarily be involved, by virtue of the doctrine of separation of powers, for the treaty to become applicable at the national level
- Italy and Germany practice automatic *ad hoc* incorporation

Non-Self Executing Treaties

Some treaties, by their nature are non-self-executing, *i.e.*, cannot be applied directly into the national system and need additional national legislation. See Foster and Elam v. Neilson – US Supreme Court reasoned that when parties to a treaty engage to perform a particular act, the treaty addresses itself to the political, not the judicial department, and therefore, the legislature must execute that contract, before it can become a rule for the court. Other national courts have held similarly as to particular treaty provisions (*e.g.*, Fujii v. State of California, the SC of California held that art 55 and 56 of the UN Charter on human rights were not self-executing.

National courts tend to broaden the notion of non-self executing treaties, thereby shielding national systems from legal change.

Status of International Treaties and Possible Conflict with Later Legislation:

- Status of treaties and the approach when they conflict with national laws vary
- In countries with rigid constitutions, where the constitution provides for the incorporation of treaties, duly ratified treaties override national legislation (*e.g.*, the French constitution provides that, subject to reciprocity, treaties have an authority superior to that of national laws, but are lower in rank than the constitution. France had to pass a constitutional law to implement the ICC Statute (Statute of Rome). Supremacy of international norms is laid down in the Russian, Spanish, Bulgarian, Armenian constitutions.
- In countries where treaties are of equal rank with national legislation, there a several scenarios: *e.g.*, US – treaties have the same rank as federal legislation, so can be superseded by later federal law; in States that don't have provisions as to the implementation of treaties and their rank, the treaty's implementation is done ad hoc and the treaty's rank will depend on the rank and status of the particular ad hoc implementing legislation.
- What if a treaty is implemented by an ordinary legislation and a later law contradicts the treaty? Possible solutions to this problem: Courts

tend to uphold the principle of interpretation whereby in case of doubt a national law must be construed so as not to conflict with a duly ratified treaty, based on the rational that, short of clear and explicit legislation to repeal the law implementing the treaty, the legislature must have intended to abide by the general rule of fundamental law that treaties must be respected (*pacta sunt servanda*); another view was advanced by some Italian lawyers and a Russian scholar that the rule implementing an international treaty is a special rule (by virtue of its role and origin) and as such should prevail over subsequent legislation (which is ordinary in nature) based on the principle that a later, general rule does not supersede an earlier special rule.

The Rights of Individuals v. the Discretionary Power of States in Treaty Implementation

The scenario: a State party to a treaty fails to implement some of its provisions, which results in denying individuals within that State's national system their rights under the treaty. This occurs in situation where the rights of the nationals of State A deriving from a treaty between State A and State B are not respected or State B has failed to pass implementing legislation. State A may exercise diplomatic protection over its nationals, but that is totally within State A's discretion, and may lead to the individuals' rights being compromised.

Implementation of Binding Decisions of International Organizations:

- Some international organizations have the power to adopt legally binding decisions. Some of these decisions pertain the organization's internal functioning, while others produce external effects. To become effective at the national level, these decisions need implementing legislation (*e.g.*, UN SC resolutions imposing sanctions on Iraq). As to mechanisms, a few countries provide that such decisions are binding upon their publication in the OJ. Most states do not provide for such a mechanism, so in these situations, or when the decision is not self-executing, States will need to pass implementing legislation
- EU (regulations have direct binding effect in national systems, while directives (with the exception of 3 types of directives) need implementing legislation.

DOMESTIC IMPLEMENTATION OF INTERNATIONAL LAW IN INDIA

Domestic Implementation of International Law in India, now a day's modern technology, communications and trade have made states more interdependent than ever before, and more willing to accept International rules on a vast range of problems of common concerns. Aviation Law is the branch of Law that concern the regulation of over flights in the Airspace, Air travel, and associated Legal and business concern. The Globalization, Liberalization, Privatization, De-

regulation and Re-regulations are forcing global community to enforce the existing International and conclude more International arrangements keeping in view of the above developments. In simple terms we may define Air Law as "the body of rules governing the use of airspace and its benefit for Aviation, general public and Nations of the World." Air Law concerns the management of global airspace. Transport of air Passengers, Cargo helps grow National Economy and Tourism. The development of a country is linked to the growth of Airports, Aircraft and Air routes. Today Aviation is a big National Industry in most parts of the World.

In the course of the 1970s, the US introduced the deregulation process upon which the then European Economic Community followed suit. It started its own phase cross-border liberalization process. That movement forced States to open their air transport markets – and to forget about National economic interests. This was so far a unique Venture which was completed in 1997, their moment on which all intra-Community services were made available to Community air carriers. Perhaps unsurprisingly, International Air Law and European Community Law did not form a Natural bond.

The developments in the Asia/Pacific Region and in India, the Asia/pacific region offer abundant opportunities as the fastest growing aviation region in the World. The reasons for this optimism include the strong economic expansion, significant ethnic ties with various efforts to promote tourism to/from the region. The size and economic potential of the region has acted as a catalyst for development of new aircraft types, and manufactures foresees a big market for future new Aircraft. Within this region, India is a long-term potential giant.

Entering into International and Agreements is one of the attributes of the Sovereignty. Though International Law requires a State to carry out its International Obligations undertaken by it by ratifying International, but it does not govern the process of incorporating International Law into Municipal Law. In fact, the State follows different processes of incorporating International law into their domestic Legal system, depending on their Constitutional Provisions in this respect. Thus, the process of implementation of International Law at National level varies in different Countries. The divergent State practices pertaining to incorporation of International Law into Municipal Law have been explained by two schools of Law: Monist and Dualist. India follows the Dualist theory for the implementation of International Law at Domestic level. International Law does not automatically become part of National Law in India. It, therefore, requires the Legislation to be made by the parliament for the implementation of International Law in India.

India's obligations under International Law into the Constitutional Provision relating to implementation of International Law in pronouncing its decision in a case concerning issues of International Law. Through 'judicial activism' the Indian judiciary has played a proactive role in implementing India's International obligation under International, especially in the field of human rights and Environmental Law.

International Air Law proceeds from adherence to sovereignty and State supervision of Air Transport, not only for safety and security but also for economic matter such as market access and pricing, the EC proclaims the market approach: from internal market via the common market to an open market. This market approach is also governed by principle regarding the protection of passengers and other consumers, and the environment. Frictions between European Community Law and International Law will not only arise and have not only arisen in the area of economic regulation but also of consumer and Environmental protection.

Air Law therefore is concerned with the National and Global order. It provides order in air-space. It makes possible the duties and rights of the member States of the ICAO. Above all Air Law is vitally concerned with the economic activities of the modern Societies. Air Law also provides a means for cooperation among Nation based on Sovereign equality and fair and equal opportunity.

UN COMMISSION ON SUSTAINABLE DEVELOPMENT

In 1992, pursuant to its mandate in Agenda 21, the General Assembly and ECOSOC established the UN Commission on Sustainable Development (CSD). The CSD comprises representatives of fifty-three states elected by ECOSOC with due regard to equitable geographical distribution, and on the basis of representation at a high level including ministerial participation.

Other member states of the UN and its specialised agencies and other observers of the UN are able to participate as observers, and international organisations (including the EC) participate to assist and advise the Commission in the performance of its functions; non-governmental organisations are also entitled to 'participate effectively' in the Commission's work and contribute to its deliber-ations. The CSD is assisted by a secretariat based in New York and meets annually in New York.

The Commission makes recommendations to ECOSOC and, through it, to the General Assembly. The Commission's objectives are to ensure the effective follow-up of [UNCED], as well as to enhance international co-operation and rationalise the intergovernmental decision-making capacity for the integration of environment and development issues and to examine the progress of the implementation of Agenda 21 at the national, regional and international levels, fully guided by the principles of the Rio Declaration on Environment and Development and all other aspects of the Conference, in order to achieve sustainable development.

The CSD is the UN body primarily responsible for sustainable development issues and has ten enumerated environmental functions. From an international legal perspective, the most significant are those requiring it to monitor progress in the implementation of Agenda 21 and the integration of environmental and developmental goals; to consider information provided by governments, including periodic communications or reports; to consider information regarding

the progress made in the implementation of environmental conventions, which is provided by relevant conferences of the parties; and to make recommendations to the General Assembly on the implementation of Agenda 21.The Commission can 'receive and analyse relevant input from competent non-governmental organisations', a function representing a compromise between those states which sought to deny NGOs any role in the activities of the Commission, and those states which envisaged NGOs providing regular information, and even complaints, along the lines of the procedures established by the UN Human Rights Committee. In practice, the involvement of non-state actors is organised around the categories of 'major groups' recognised in Section III of Agenda 21.

The Commission is recognised as being open, transparent and accessible to non-state actors. The Commission's other functions include: reviewing progress towards the UN target of 0.7 per cent of the gross national product of developed countries for official development assistance; reviewing the adequacy of funding and mechanisms; enhancing dialogue with NGOs and other entities outside the UN system; and considering the results of reviews by the Secretary General of all the recommendations of UNCED.

The CSD divided its work programme into three areas: the first addresses financial resources and mechanisms, transfer of technology and other cross-sectoral issues; the second reviews the implementation of Agenda 21, taking into account progress in the implementation of relevant environmental conventions; and the third is a high-level meeting to consider the implementation of Agenda 21 on an integrated basis, to consider emerging policy issues, and to provide the necessary political impetus to implement the decisions and commitments of UNCED.

Since its first session, in June 1993, the Commission has organised its work around thematic clusters of topics and a multi-year thematic programme of work.

The thematic clusters are based upon the various chapters of Agenda 21, and address the following themes:

- Critical elements of sustainability;
- Financial resources and mechanisms;
- Education, science, transfer of environmentally sound technologies, cooperation and capacity-building;
- Decision-making structures;
- The roles of major groups;
- Health, human settlement and freshwater;
- Land, desertification, forests and biodiversity;
- Atmosphere, oceans and all kinds of seas; and
- Toxic chemicals and hazardous wastes.

Under the multi-year thematic programme of work, the CSD has annually reviewed various aspects of these clusters, on the basis of information submitted by governments in the form of periodic communications or national reports. These reports are used by the secretariat to prepare analytical reports comprising

an annual overview report on the progress made in the implementation of Agenda 21, and thematic reports corresponding to the Agenda 21 sectoral clusters in accordance with the multi-year programme of work.

The information provided by governments includes the following:

- Policies and measures adopted to meet the objectives of Agenda 21;
- Institutional mechanisms to address sustainable development issues;
- Assessments of progress to date;
- Measures taken and progress achieved to reach sustainable production and consumption patterns and lifestyles, to combat poverty and to limit population growth;
- The impact of environmental measures on the national economy;
- Experience gained and progress in strategies to improve social conditions and environmental sustainability;
- Specific problems and constraints encountered;
- The adverse impact on sustainable development of trade-restrictive and dis-tortive policies, and measures and progress in making trade and environment mutually supportive;
- Assessments of capacity;
- Assessments of needs and priorities for external assistance;
- Implementation of Agenda 21 commitments related to finance;
- Assessments of the effectiveness of activities and projects of international organisations; and
- Other relevant environment and development activities.

WSSD reviewed the functioning of the Commission and concluded that, although its original mandate remained valid, the Commission needed to be strengthened and more emphasis needed to be placed on reviewing and monitoring the implementation of Agenda 21 and on fostering the coherence of implementation, initiatives and partnerships. To this end, WSSD recommended that the Commission should limit the number of issues addressed in each session and limit negotiations to every two years.

OTHER SUBSIDIARY BODIES ESTABLISHED BY THE GENERAL ASSEMBLY

The General Assembly has established numerous other bodies with less direct responsibility for environmental issues. The UN Conference on Trade and Development (UNCTAD) was established by the General Assembly in 1964 as one of its organs. UNCTAD's functions include promoting international trade with a view to accelerating the economic growth of developing countries, and formulating and implementing principles and policies on international trade and the related problems of economic development. The eighth session of UNCTAD, held in 1992, adopted A New Partnership for Development: The Cartagena Commitment', which commits UNCTAD to a programme of ensuring that growth and development, poverty alleviation, rural development and the protection of the environment are 'mutually reinforcing'. UNCTAD has

convened international commodity conferences which have led to the negotiation and adoption of international agreements on individual commodities, under the Integrated Programme for Commodities.

The Bangkok Declaration and Programme of Action, adopted in February 2000 at the tenth session of UNCTAD, provide the main thrust for the current work of UNCTAD, as the focal point for the integrated treatment of development and the interrelated issues of trade, finance, investment, technology and sustainable development.

The Bangkok Programme of Action made a number of specific recommendations on the focus of UNCTAD's work on trade and the environment.Other bodies created by the General Assembly which play a role in international environmental issues include: the United Nations Institute on Training and Research (UNITAR), whose role is to carry out training programmes and initiate research programmes; the UN Population Fund, which promotes awareness of the social, economic and environmental implications of national and international population problems; the Committee on Peaceful Uses of Outer Space (COPUOS) to review international co-operation in peaceful uses of outer space and study associated legal problems; the Scientific Committee on Effects of Atomic Radiation (UNSCEAR) to consider the effects of radiation levels and radiation on humans and their environment; and the United Nations Human Settlements Programme, known as UN-Habitat, which has a mandate to promote sustainable human settlements development in all countries with due regard for the carrying capacity of the environment in accordance with the Habitat Agenda adopted at the Habitat II Conference held in Istanbul in 1996. Additionally, several human rights treaties have established committees to monitor implementation which report on their activities to parties and to the General Assembly. Of particular relevance to environmental matters are the Human Rights Committee (established under the 1966 International Covenant on Civil and Political Rights) and the Committee on Economic, Social and Cultural Rights (established under the 1966 International Covenant on Economic, Social and Cultural Rights).

In November 2002, the Committee on Economic, Social and Cultural Rights issued a 'General Comment recognising access to safe drinking water and sanitation as a human right, which stresses that water is a limited natural resource and a public commodity fundamental to life and health'. Economic and Social Council (ECOSOC)

The Economic and Social Council (ECOSOC), which has fifty-four members serving three-year terms, has competence over international economic, social, cultural, educational and health issues, and related matters. Although it does not have an express mandate over environmental issues, it has addressed a broad range of topics which are directly related to the environment. ECOSOC makes recommendations with respect to the General Assembly, to the UN members and to specialised agencies, and it can also prepare draft conven-tions. ECOSOC has responsibility for co-ordinating the activities of specialised agencies, including UNEP and the CSD, and obtaining regular reports from them. This

co-ordinating function was underlined by UNCED which called for ECOSOC to assist the General Assembly by 'overseeing system-wide co-ordination, overview on the implementation of Agenda 21 and making rec-ommendations'.

ECOSOC has contributed to the development of international environmental law. In 1946, it convened the 1949 UN Scientific Conference on the Conservation and Utilisation of Resources (UNCCUR), the predecessor to the Stockholm and Rio Conferences. It receives the reports of the UNEP Governing Council and the CSD, which are passed on to the General Assembly. Since it does not have any committees which focus exclusively on the environment, it has not itself served as a forum for important decisions on these matters. It has, however, established subsidiary bodies relevant to the environment.

The five Regional Economic Commissions, established under Article 68 of the UN Charter, have contributed significantly to the development of international environmental law. Under the auspices of the UN Economic Commission for Europe (UNECE), regional treaties have been adopted on: transboundary air pollution; environmental impact assessment; industrial accidents; protection of watercourses; and public access and participation in environmental decision making. The UNECE Group of Senior Advisers to UNECE Governments on Environmental and Water Problems has also adopted numerous recommendations on water issues and biodiversity conservation, as well as a draft UNECE Charter on Environmental Rights and Obligations. In 1995, the UNECE ministers adopted the Environmental Programme for Europe, the first attempt to set long-term environmental priorities at the pan-European level and to make Agenda 21 more operational in the European context. It covers a broad range of issues and contains some 100 recommendations.

The other UN Regional Economic Commissions are responsible for Asia and the Pacific (ESCAP), Africa (ECA), Latin America and the Caribbean (ECLAC) and West Asia. Although the Regional Economic Commissions have not yet promoted the negotiation of international environmental agreements, they play some role in developing 'soft' instruments and the regional preparatory arrangements for international conferences and meetings.

ECOSOC recently established the UN Forum on Forests with a mandate to promote the management, conservation and sustainable development of all types of forests and to strengthen long-term political commitment to this end. Over the first five years of its operation, in addition to its more generalised activities, the Forum is to work on a mandate for developing a legal framework for all types of forests.

Other relevant ECOSOC subsidiary bodies include: the newly established Permanent Forum on Indigenous Issues, an expert advisory body with a mandate to consider indigenous issues relating to economic and social development, culture, the environment, education, health and human rights; the Commission on Population and Development; the Commission on Social Development; the Commission on Human Rights; the Committee on Energy and Natural Resources for Development; and the Standing Committee for Development Policy. The

now-disbanded Commission on Transnational Corporations carried out useful work examining the relationship between transnational corporations and international environmental obligations. Security Council

The Security Council, which has primary responsibility in the UN system for the maintenance of international peace and security, has only recently addressed international environmental issues. Its five permanent members and ten members elected for a period of two years can adopt legally binding resolutions which give it the potential to develop a significant role.

The Security Council's first foray into environmental affairs was in 1991, when it adopted a resolution holding Iraq liable for, *inter alia*, damage to the environment resulting from the invasion of Kuwait. In the following years it met for the first time at the level of heads of government or state, and adopted adeclaration which affirmed that 'non-military sources of instability in the economic, social, humanitarian and ecological fields have become threats to peace and security'.

In recognising the link between environment and security, the Security Council has opened the door to further consideration of significant environmental matters, and over time it is increasingly likely that the Council will address issues relating to environmental emergencies and their consequences. More recently, the Security Council has addressed the link between the illegal exploitation of natural resources and armed conflict in Africa. Trusteeship Council

The Trusteeship Council assists the Security Council and the General Assembly in performing the UN's functions under the International Trusteeship System of Chapter XII of the UN Charter. The Trusteeship Council has one administering power (US) and four non-administering powers (China, France, Russia and the United Kingdom). Its basic objectives include the promotion of political, economic, social and educational advancement of the inhabitants of trust territories, without specifying environmental objectives. Although the Trusteeship Council has not played a direct role in the development of international environmental law, its obligation to respect these basic objectives provides a role in natural resource issues, including conservation.

The role of the Trusteeship Council was therefore indirectly at issue in the case concerning *Certain Phosphate Lands in Nauru*, where Nauru asked the ICJ to declare Australia's responsibility for breaches of international law relating to phosphate mining activities, including, *inter alia*, breaches of Article 76 of the UN Charter and the Trusteeship Agreement between Australia, New Zealand and the United Kingdom.

As the number of international trusteeships has steadily declined, alternative functions for the Trusteeship Council have been proposed. One idea, put forward by President Gorbachev of the Soviet Union in 1990, was to expand the trusteeship function to include responsibility for environmental protection in areas beyond national jurisdiction, the global commons. Although the suggestion received widespread attention, it was rejected at UNCED, and has not since been revived.

THE FUNCTIONS OF INTERNATIONAL LAW

International law and institutions serve as the principal framework for international co-operation and collaboration between members of the international community in their efforts to protect the local, regional and global environment.

At each level, the task becomes progressively more complex as new actors and interests are drawn into the legal process: whereas just two states negotiated the nineteenth-century fishery conservation conventions, more than 150 states negotiated the 1992 Climate Change Convention and the 2000 Biosafety Protocol.

In both cases, however, the principles and rules of public international law and international organisations serve similar functions: to provide a framework within which the various members of the international community may cooperate, establish norms of behaviour and resolve their differences. The proper functions of international law are legislative, administrative and adjudicative functions.

The legislative function, provides for the creation of legal principles and rules which impose binding obligations requiring states and other members of the international community to conform to certain norms of behaviour. These obligations place limits upon the activities which may be conducted or permitted because of their actual or potential impact upon the environment. The impact might be felt within the borders of a state, or across the boundaries of two or more states, or in areas beyond the jurisdiction and control of any state.

The administrative function of international law allocates tasks to various actors to ensure that the standards imposed by the principles and rules of international environmental law are applied. The adjudicative function of international law aims to provide mechanisms or fora to prevent and peacefully settle differences or disputes which arise between members of the international community involving the use of natural resources or the conduct of activities which will impact upon the environment. As will be seen, since the mid-1990s the adjudicative function has assumed increasing importance in interpreting and applying – and even developing – the rules of international law in the field of the environment.

Sovereignty and Territory

The international legal orderregulates the activities of an international community comprising states, international organisations and non-state actors. States have the primary role in the international legal order, as both international law-makers and holders of international rights and obligations. Under international law states are sovereign and have equal rights and duties as members of the international community, notwithstanding differences of an economic, social, political or other nature. The doctrine of the sovereignty and equality of states has three principal corollaries, namely, that states have: (1) a jurisdiction, prima facie exclusive, over a territory and a permanent population

living there; (2) a duty of non-intervention in the area of exclusive jurisdiction of other states; and (3) the dependence of obligations arising from customary law and treaties on the consent of obligor.

The sovereignty and exclusive jurisdiction of the 200 or so states over their territory means, in principle, that they alone have the competence to develop policies and laws in respect of the natural resources and the environment of their territory, which comprises:

1. The land within its boundaries, including the subsoil;
2. Internal waters, such as lakes, rivers and canals;
3. The territorial sea, which is adjacent to the coast, including its seabed, subsoil and the resources thereof; and
4. The airspace above its land, internal waters and territorial sea, up to the point at which the legal regime of outer space begins.

Additionally, states have limited sovereign rights and jurisdiction over other areas, including: a contiguous zone adjacent to the territorial seas; the resources of the continental shelf, its seabed and subsoil; certain fishing zones; and the 'exclusive economic zone'. It follows that certain areas fall outside the territory of any state, and in respect of these no state has exclusive jurisdiction. These areas, which are sometimes referred to as the 'global commons', include the high seas and its seabed and subsoil, outer space, and, according to a majority of states, the Antarctic.

The atmosphere is also sometimes considered to be a part of the global commons. This apparently straightforward international legal order worked satisfactorily as an organising structure until technological developments permeated national boundaries. This structure does not, however, co-exist comfortably with an environmental order which consists of a biosphere of interdependent ecosystems which do not respect artificial national territorial boundaries. Many natural resources and their environmental components are ecologically shared. The use by one state of natural resources within its territory will invariably have consequences for the use of natural resources and their environmental components in another state.

This is evident where a river runs through two or more countries, or where living resources migrate between two or more sovereign territories. What has only recently become clear is that apparently innocent activities in one country, such as the release of chlorofluorocarbons or (possibly) genetically modified organisms, can have significant effects upon the environment of other states or in areas beyond national jurisdiction. Ecological interdependence poses a fundamental problem for international law, and explains why international co-operation and the development of international environmental standards are increasingly indispensable: the challenge for international law in the world of sovereign states is to reconcile the fundamental independence of each state with the inherent and fundamental interdependence of the environment.

An additional but related question arises as a result of existing territorial arrangements which leave certain areas outside any state's territory: how can

international law ensure the protection of areas beyond national jurisdiction? While it is clear that under international law each state may have environmental obligations to its citizens and to other states which may be harmed by its activities, it is less clear whether such an obligation is owed to the international community as a whole.

International Actors

A second salient issue concerns the membership of the international community and the participation of actors in the development and application of the principles and rules of international environmental law.

In the environmental field it is clear that international law is gradually moving away from an approach which treats international society as comprising a community of states, and is increasingly encompassing the persons (both legal and natural) within and among those states. This is reflected in developments both in relation to law-making and law enforcement. This feature is similar to that which applies in the field of international human rights law, where non-state actors and international organisations also have an expanded role. This reality is reflected in many international legal instruments.

The Rio Declaration and Agenda 21 recognise and call for the further development of the role of international organisations and non-state actors in virtually all aspects of the international legal process which relate to environment and development. The 1998 Aarhus Convention provides clear rules on the rights of participation of non-state actors, in relation to access to information and justice, and the right to participate in environmental decision-making. Although the Convention's requirements are intended to apply at the national level, there is no reason why this rationale should not equally apply at the international level, including in the EU context.

RELATIONSHIP BETWEEN NATIONAL AND INTERNATIONAL LAW

Three different theories as to interplay between international law and municipal law:

- *Monistic View:*
  - Advocated by Moser and maintains the supremacy of municipal law: national law prevails over international legal rules, which were said to merely constitute "external State law"
  - International law proper does not exist, for it is made of States' external law
  - This theory maintained the existence of only one legal order – the national legal order and thus reflected the nationalism views of the major Powers
- *Dualistic Approach:*
  - Recognizes the authority of international customary rules and duly ratified treaties

  - It is based on the notion that international law and national law constitute two different, separate systems, which differ as to their subjects, their sources, and as to their rules' content
  - International law cannot directly regulate the conduct of individuals, international law has to be transformed into national laws for it to be binding on domestic authorities and individuals
  - It advocates compliance with international norms by turning them into national rules, but provides the possibility for non-implementation of international norms at the domestic level, when that would conflict with a State's interests, even though such conduct may result in the State incurring international responsibility.
  - This theory rests on moderate nationalism
- *Monistic View Advocating the Supremacy of International Law – advanced by H. Kelsen and according to which:*
  - There is unity between the international and national legal order
  - International law having primacy
  - National norms shall conform to international law. If a national norm contradicts international law, such norm shall be viewed as illegal.
  - The transformation of international rule into domestic systems is not necessary as far as international law is concerned, although it may be a requirement based on national constitutions.
  - Courts are required to apply international as well as national rules, and if constitution requires the application of international norms only if they have been translated into the national legal order, the court shall do so, although the failure to apply an international law norm will trigger the State's international responsibility. State is also responsible if, in the case of a conflict between national and international law, the courts are required to give priority to national rules.
  - Rests on internationalism and pacifism

THE RELATIONSHIP BETWEEN PUBLIC INTERNATIONAL LAW AND NATIONAL LAW

Public International Law and national law (municipal law as known in the Common Law Countries) are two legal systems. National law governs the domestic (internal) relations between the official authorities of a State and between these authorities and individuals as well as the relations between individuals themselves. Public International Law governs primarily the relations between States.

With the rise and extension of Public International Law, a question begins to arise as to the relationship between the national law of the States and the Public International Law. This question gives rise to many practical problems. What is

the status of the rules of Public International Law before a national court? What is the status of the rules of national law before an international court? Which rule does prevail in a case of conflict between the two laws? How do rules of Public International Law take effect in the internal law of a State?

The answers to the above questions are presented in the following sections: section one deals with the theories dealing with the relations between International Law and national law; section two deals with the attitude of International Law to national law; and section three deals with the attitude of various national laws to International Law.

THE THEORIES DEALING WITH THE RELATIONS BETWEEN INTERNATIONAL LAW AND NATIONAL LAW

There are two major theories on the relationship between Public International Law and national law. The first is the dualist theory. The second is the monist theory.

The dualist theory considers that International law and national law are two separate legal systems which exist independently of each other. Each of these two systems regulates different subject matters, function on different levels, and each is dominant in its sphere. Public International Law primarily regulates the conduct of sovereign States. National law regulates the conduct of persons within a sovereign State. On this view, neither legal system has the power to create or alter rules of the other. When national law provides that International Law be applied in whole or in part within the jurisdiction, this is merely an exercise of the authority of national law in the adoption or transformation of the rules of International Law into its legal system. The national law has a supremacy over the International Law; in the case of a conflict between International Law and national law, a national court would apply national law.

The monist theory, which upholds the unity of all law, regards International Law and national law as forming part of the same legal system (order). It argues that both laws are based upon the same premise, that of regulating the conduct and the welfare of individuals. However, it asserts the supremacy of International Law over national law even within the national sphere; in the case of a conflict between the two laws, International Law is supreme. It is notable that the position taken by each of these two theories is a reflection of its ideological background. The dualist theory adheres to positivism, while the monist theory follows natural law thinking and liberal ideas of a world society.

Facing these two basic theories, a third approach is introduced. This approach is somewhat a modification of the dualist theory. It attempts to establish a recognized theoretical view tied to reality. While it asserts that the two laws are of two distinct legal systems, it denies that a common field of operation exists as between International Law and national law by which one system is superior or inferior to the other. Each law is supreme in its own sphere (field). Just as one cannot talk in terms of the supremacy of one national law over another, but only of two distinct legal systems each operating within its own field, so

International Law and national law should be treated in the same way. Each law exists within a different juridical order. Because the above opposing theories, in reality, do not adequately reflect actual State practice, the scholars in each side have forced to modify their original positions in many respects, bringing them closer to each other, without, however, producing a conclusive answer on the true relationship between International Law and national law. This fact has led some legal scholars to pay less attention to these theoretical views and to prefer a more empirical approach seeking practical solutions in a given case. The method of solving a problem does not probe deeply into theoretical considerations, but aims at being practical and in accord with the majority of States practice and international judicial decisions. On this view, it is more useful for us to leave the theoretical controversy aside and direct our attention to the attitude of International Law to national law and the attitude of the various national laws to International Law; these are what are discussed in the following two sections.

The Attitude of International Law to National Law

International Law, in the international sphere, has a supremacy over national law. However, this principle does not mean that national law is irrelevant or unnecessary. International Law does not ignore national law. National law has been used as evidence of international custom or general principles of law, which are both sources of International Law. Moreover, International Law leaves certain questions to be decided by national law. Examples of these questions are those related to the spheres of competence claimed by States as regards State territory, territorial sea, jurisdiction, and nationality of individuals and legal persons, or those related to obligations to protect human rights and the treatment of civilians during belligerent occupation. Thus, the international court may have to examine national law related to these questions in order to decide whether particular acts are in breach of obligations under International Law, particularly, treaties or customary law.

A great number of treaties contain provisions referring directly to internal law or employing concepts which by implication are to be understood in the context of a particular national law. Many treaties refer to "nationals" of the contracting parties, and the presumption is that the term means persons having that status under the internal law of one of the parties.

The international courts, including the International Court of Justice and its predecessor, have regarded national law as a fact that the parties may provide by means of evidence and not to be taken by the court ex officio. Moreover in examining national law the courts have in principle regarded as binding the interpretation by national courts of their own laws.

The Attitude of National Laws to International Law

The attitude of national law to International Law is not that easy to summarize as the attitude of International Law to national law. This is because the laws of

different States vary greatly in this respect. However, States are, of course, under a general obligation to act in conformity with the rules of International Law; otherwise, they will be responsible for the violations of such rules, whether committed by their legislative, executive or judicial authority.

Further, States are obliged to bring national law into conformity with their obligations under International Law; for example, treaties may require a national legislation to be promulgated by the States parties. Nevertheless, International Law leaves to States the method of achieving this result. States are free to decide how to include their international obligations into their national law and to determine which legal status these have internally. In practice, on this issue there is no uniformity in the different national legal systems. However, the prevailing position appears to be dualist, regarding International Law and national law as different systems requiring the incorporation (adoption, transformation and reception are other concepts used) of the international rules on the national level.

Actually, the most important issues of the attitude of national legal systems to International Law concern the status of international customary law and international treaties. On these issues, the attitude of various national legal systems varies.

The survey of the attitudes adopted by various countries of the Common Law and Civil Law traditions leads to the following conclusions. The first of these is that most countries accept the operation of customary rules within their own jurisdictions, providing there is no conflict with existing laws, *i.e.*, if there is a conflict, national law is supreme; some countries allow International Law to prevail over national law at all time. The second conclusion is that as regards treaties, in some countries, certain treaties operate internally by themselves (self-executing) while others require undergoing a process of internal legislation. Some countries allow treaties to supersede all national laws (ordinary laws and the constitution), whether made earlier or later than the treaty, while others allow treaties to supersede only ordinary laws and only that made earlier than the treaty. Others adopt opposite positions.

MODERN TRENDS IN THE RELATIONSHIP BETWEEN INTERNATIONAL AND NATIONAL LAW

The monistic view has no scientific value. The dualistic approach did reflect the legal reality of the 19th and first half of the 20th century, but did not explain certain instances where, for example, international law addressed itself directly to individuals (*e.g.*, piracy laws). The Kelsian theory seemed, at the time it was advanced, rather utopian. It did, however, have a significant ideological impact. It consolidated the notion that States must bow to their international obligations and put them before national demands.

Today, some of the notions of the dualistic approach remain valid, while the Kelsenian theory is gaining momentum in that:

- International law is not a legal system totally separate from national systems
- It has a huge daily direct impact on national systems
- Many international rules address themselves directly to individuals, without the need of them having to be transformed into national rules
- Subject to certain limitations, international legal order is gradually evolving to encompass not only States, but also individuals and other aggregates cutting across the boundaries of states
- It is tending to become less horizontal in character and more of a *jus super partes* (*i.e.*, a law regulating conduct from above)
- Limitations: there are some treaties and customary rules create some community obligations (those which are intended to safeguard fundamental values), but they are still rare, states do not invoke them, although they are *erga omnes*, unless their interests are affected, which also explains the fact that aggravated responsibility is not yet firmly embedded in the world community; enforcement is problematic

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Substantive Scope of International Law

One way to employ liberal theory is as the first and indispensable step in any analysis of international law, focusing primarily on explaining the substantive content of international interaction. Explaining the substantive focus of law, a task at which few IR theories excel, is a particular comparative advantage of liberal theory. Realism and institutionalism seek to explain the outcome of strategic interaction or bargaining over substantive matters, but they take as given the basic preferences, and hence the substance, of any given interaction. Constructivists do seek to explain the substantive content of international cooperation, but do so not as the result of efforts to realize material interests and normative ideals transmitted through representative institutions, but rather as the result of conceptions of appropriate behaviour in international affairs or regulatory policy divorced from the instrumental calculations of societal actors empowered by the state.

For liberals, the starting point for explaining why an instrumental government would contract into binding international legal norms, and comply with them thereafter, is that it possesses a substantive purpose for doing so. From a liberal perspective, this means that a domestic coalition of social interests that benefits directly and indirectly from particular regulation of social interdependence is more powerfully represented in decision making than the countervailing coalition of losers from cooperation – compared to the best unilateral or coalitional alternatives. This is sometimes mislabeled a realist ("interest-based") claim, yet most such formulations follow more from patterns of convergent state

preferences than from specific patterns of state power. Thus, liberals have no reason to disagree with Jack Goldsmith and Eric Posner's claim that much important state behaviour consistent with customary international law arises from pure coincidence (independent calculations of interest or ideals), the use of IL as a coordination mechanism (in situations where symmetrical behaviour increases payoffs), or the use of IL to facilitate cooperation where coordinated self-restraint from short-term temptation increases long-term issue-specific payoffs (as in repeated bilateral prisoners' dilemma, where payoffs to defection and discount rates are low).

Contrary to Goldsmith and Posner, however, liberals argue that such cases do not exhaust the potential for analyzing or fostering legalized cooperation. The decisive point is that if social support for and opposition to such regulation varies predictably across time, issues, countries, and constituencies, then a liberal analysis of the societal and substate origins of such support for and against various forms of regulation is a logical foundation for any explanation of when, where, and how regulation takes place.

The pattern of preferences and bargaining outcomes helps define the underlying "payoffs" or "problem structure" of the "games" states play – and, therefore, help define the basic potential for cooperation and conflict. This generates a number of basic predictions, of which a few examples must suffice here. For liberals, levels of transnational interdependence are correlated with the magnitude of interstate action, whether essentially cooperative or conflictual.

Without demands from transnationally interdependent social and substate actors, a rational state would have no reason to engage in world politics at all; it would simply devote its resources to an autarkic and isolated existence. Moreover, voluntary (noncoercive) cooperation, including a sustainable international legal order that generates compliance and evolves dynamically, must be based on common or compatible social purposes. The notion that some shared social purposes may be essential to establish a viable world order, as John Ruggie observes (1982), does not follow from realist theory – even if some realists, such as Henry Kissinger, assumed it. The greater the potential joint gains and the lower the domestic and transnational distributional concerns, the greater the potential for cooperation. Within states, every coalition generally comprises (or opposes) individuals and groups with both "direct" and "indirect" interests in a particular policy: direct beneficiaries benefit from domestic policy implementation, whereas indirect beneficiaries benefit from reciprocal policy changes in other states.

Preferences help explain not only the range of national policies in a legal issue, but also the outcome of interstate bargaining, since bargaining is often decisively shaped by *asymmetrical interdependence* – the relative intensity of state preferences for inside and outside options. States that desire an outcome more will pay more – either in the form of concessions or coercion – to achieve it.

Trade illustrates these tendencies. Shifts in comparative advantage and intra-industry trade over the past half-century have generated striking cross-issue

variations in social and state preferences. Trade creates coalitions of direct and indirect interests: importers and consumers, for example, generally benefit from trade liberalization at home, whereas exporters generally benefit from trade liberalization abroad. Patterns of trade matter as well. In industrial trade, intra-industry trade and investment means liberalization is favored by powerful economic interests in developed countries, and cooperation has led to a massive reduction of trade barriers. A long period of exogenous change in trade, investment, and technology created a shift away from North–South trade and a post–World War II trade boom among advanced industrial democracies.

Large multinational export and investment interests mobilized behind it, creating ever-greater support for reciprocal liberalization, thereby facilitating efforts to deepen and widen Generalized Agreement on Tariffs and Trade/World Trade Organization (GATT/WTO) norms. In agriculture, by contrast, inter-industry trade patterns and lack of developed-country competitiveness has meant that powerful interests oppose liberalization, and agricultural trade has seen a corresponding increase in protection. Both policies have massive consequences for welfare and human life. In trade negotiations, as liberal theory predicts, asymmetrical interdependence is also a source of bargaining power, with governments dependent on particular markets being forced into concessions or costly responses to defend their interests.

More recently, as developed economies have focused more on environmental and other public interest regulation, liberalization has become more complex and conflict-ridden, forcing the GATT/WTO and European Union (EU) systems to develop new policies and legal norms to address the legal complexities of "trade and" issues. In environmental policy, cross-issue variation in legal regulation (the far greater success of regulation of ozone depletion than an area such as climate change, for example) reflects, most fundamentally, variation in the convergence of underlying economic interests and public policy goals. The "fragmentation" of the international legal system due to multiple, overlapping legal commitments reflects, from a liberal perspectives, underlying functional connections among issues due to interdependence, rather than autonomous tactical or institutional linkage...

In global financial regulation, regulatory heterogeneity under conditions of globalization (especially, in this case, capital mobility) undermines the authority and control of national regulators and raises the risk of "races to the bottom" at the expense of individual investors and national or global financial systems.

Major concerns of international legal action include banking regulation, which is threatened when banks, investors, and firms can engage in offshore arbitrage, seeking the lowest level of regulation; regulatory competition, where pressures for lower standards are created by professional, political, and interest group competition to attract capital; and exacerbation of systemic risk by cross-border transmission of domestic financial risks arising from bad loans or investments, uninformed decisions, or assumed risk without adequate capital or collateral. Coordination of international rules and cooperation among regulators can address

some of these concerns, but in a world of regulatory heterogeneity, it poses the problem of how to coordinate policy and overcome political opposition from those who are disadvantaged by any standard. High levels of heterogeneity in this issue area, and the broad impact of finance in domestic economies, suggest that legal norms will be difficult to develop and decentralized in enforcement.

Similar variation can be observed in human rights. The most important factors influencing the willingness of states to accept and enforce international human rights norms involve domestic state–society relations: the preexisting level and legacy of domestic democracy, civil conflict, and such. Even the most optimistic assessments of legalized human rights enforcement concede that international legal commitments generally explain a relatively small shift in aggregate adherence to human rights. By contrast, liberal theories account for much geographical, temporal, and substantive variation in the strength of international human rights norms.

The fact that democracies and post-authoritarian states are both more likely to adhere to human rights regimes explains in part why Europe is so far advanced – and the constitutional norms and conservative legacy in the United States is an exception that proves the rule. Recent movement towards juridification of the European Convention on Human Rights system, with mandatory individual petition and compulsory jurisdiction, as well as the establishment of a court, occurred in part in response to exogenous shocks – the global spread of concern about human rights and the "second" and "third" waves of democratization in the 1980s and 1990s – and in part in order to impose them on new members.

Political rights are firmly grounded in binding international law, but socioeconomic and labour rights are far less so – a reflection not of the intrinsic philosophical implausibility of the latter, but of large international disparities in wealth and social pressures on governments to defend existing domestic social compromises. Even existing political rights are constrained in the face of economic interests, as when member states ignore indigenous rights in managing large developmental projects.

Liberal theories apply also to security areas, such as nuclear nonproliferation. Constructivists maintain that the behaviour of emerging nuclear powers – such as India, Pakistan, Israel, North Korea, and Iran – is governed by principled normative concerns about fairness and hypocrisy: if existing nuclear states were more willing to accept controls, new nuclear states would be. Realists argue that the application and enforcement of the nonproliferation regime is simply a function of the cost-effective application of coercive sanctions by existing nuclear states; were they not threatened with military retaliation, states would necessarily be engaged in nuclear arms races.

Both reasons may be important causes of state behaviour under some circumstances. The liberal view, by contrast, hypothesizes that acceptance of non-proliferation obligations will reflect the underlying pattern of material and ideational interests of member states and their societies. Insofar as they are concerned about security matters, it reflects particular underlying ideational or

material conflicts. Recent research findings on compliance with international nonproliferation norms confirm the importance of such factors. The great majority of signatories in compliance lack any evident underlying desire to produce nuclear weapons. Those that fail to sign face particular exogenous preference conflicts with neighbours or great powers.

INTERNATIONAL LAW DIRECTLY REGULATES SOCIAL ACTORS

A second way in which variation in social preferences helps explain institutional choice and compliance is that *international law and organizations may regulate or involve social ("non-state") actors directly*. Many international legal rules and procedures are not primarily designed to shape state policy and compliance, as in the classic model of public international law or conventional WTO dispute resolution, but to assist states in regulating domestic and transnational social actors. When states cooperate to manage matters such as transnational contract arbitration, money laundering, private aircraft, multinational firms, emissions trading, or the behaviour of international officials, for example, or when they assist refugees; establish institutions within failed states; or combat terrorism, criminality, or piracy; recognize nationalist movements; or grant rights of participation or representation to private actors in international deliberations, they directly influence domestic and transnational non-state actors such as corporations, nongovernmental organizations (NGOs), private individuals, political movements, international organizations, and criminal and terrorist organizations.

The legal enforcement of many such regulatory regimes functions by empowering individuals and groups to trigger international legal proceedings vis-à-vis states. As we shall see, the greater the range of private access to an international regime, all other things being equal, the more likely it is to be effective and dynamic. Often, such access is a function of the issue area itself. It is customary within nations for individuals to trigger litigation about rights, independent prosecutors to trigger criminal prosecutions, and interested parties to sue to assert economic rights and enforce contracts, and the international system is no different.

Many, perhaps most, international legal instruments are not "self-binding" for states at all, but are instead "other-binding". They do not force the signatory states to delegate direct sovereignty over government decisions, but are designed primarily to constrain non-state actors. Some regulate international organizations, establishing international procedures or regulating the actions of international officials. Many other international legal rules oversee the behaviour of private actors.

Much private international law governs corporate activity, individual transactions, investment, communications, and other transnational activities, mostly economic, by non-state actors. Which non-state actors are regulated and how they are regulated by international law is itself determined by the interests and political strength of those and other social groups.. Other rules govern different aspects of individuals and NGOs. It is conceivable that a government

may find such rules onerous, just as it may find an entrenched domestic law onerous, but there is no particular reason to assume that this is more likely in international than domestic life – or that there are "sovereignty costs" associated with international legal obligations of this kind. We cannot understand the attitude of states without the subtle understanding of state-society relations provided by liberal theory.

FUNDAMENTAL CONFLICTS OVER INTERNATIONAL LAW

The 17th, 18th and 19th centuries saw the growth of the concept of a "nation-state", which comprised nations controlled by a centralized system of government. The concept of nationalism became increasingly important as people began to see themselves as citizens of a particular nation with a distinct national identity. Until the beginning of the 20th century, relations between nation-states were dictated by Treaty, unenforceable agreements to behave in a certain way towards another state. Many people now view the nation-state as the primary unit of international affairs.

States may choose to voluntarily enter into commitments under international law, but they will often follow their own counsel when it comes to interpretation of their commitments. As the 20th century progressed, a number of violent armed conflicts, including WWI and WWII, exposed the weaknesses of a voluntary system of international treaties. In an attempt to create a stronger system of laws to prevent future conflicts, a vehicle for the application of international law was found in the creation of the United Nations, an international law making body, and new international criminal laws were applied at the Nuremberg trials. Over the past fifty years, more international laws and law making bodies have been created. Many people feel that these modern developments endanger nation states by taking power away from state governments and ceding it to international bodies such as the U.N. and the World Bank. Some scholars and political leaders have recently argued that international law has evolved to a point where it exists separately from the mere consent of states.

There is a growing trend towards judging a state's domestic actions in the light of international law and standards. A number of states, notably the United States vehemently oppose this interpretation, maintaining that sovereignty is the only true international law and that states have free reign over their own affairs. Similarly, a number of scholars now discern a legislative and judicial process to international law that parallels such processes within domestic law. Opponents to this point of view maintain that states only commit to international law with express consent and have the right to make their own interpretations of its meaning; and that international courts only function with the consent of states.

Because international law is a relatively new area of law its development is uncertain and its relevance and propriety is hotly disputed.

SOURCES OF INTERNATIONAL LAW

International law has three primary sources: international treaties, custom, and general principles of law (cf. Art. 38 of the Statute of the International Court of Justice). International treaty law is comprised of obligations states expressly and voluntarily accept between themselves in treaties. Customary international law is derived from the consistent practice of States accompanied by opinio juris, *i.e.*, the conviction of States that the consistent practice is required by a legal obligation.

Judgments of international tribunals as well as scholarly works have traditionally been looked to as persuasive sources for custom in addition to direct evidence of state behaviour. Attempts to codify customary international law picked up momentum after the Second World War with the formation of the International Law Commission (ILC). Codified customary law is made the binding interpretation of the underlying custom by agreement through treaty.

For states not party to such treaties, the work of the ILC may still be accepted as custom applying to those states. General principles of law are those commonly recognized by the major legal systems of the world. Certain norms of international law achieve the binding force of peremptory norms (jus cogens) as to include all states with no permissible derogations. Legal principles common to major legal systems may also be invoked to supplement international law when necessary.

INTERPRETATION OF INTERNATIONAL LAW

Where there are disputes about the exact meaning and application of national laws, it is the responsibility of the courts to decide what the law means. In international law as a whole, there are no courts which have the authority to do this. It is generally the responsibility of states to interpret the law for themselves.

Unsurprisingly, this means that there is rarely agreement in cases of dispute. Insofar as treaties are concerned, the Vienna Convention on the Law of Treaties writes on the topic of interpretation that:: "A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose." (article 31(1) This is actually a compromise between three different theories of interpretation:

- The textual approach is a restrictive interpretation which bases itself on the "ordinary meaning" of the text, the actual text has considerable weight.
- A subjective approach considers the idea behind the treaty, treaties "in their context", what the writers intended when they wrote the text.
- A third approach bases itself on interpretation "in the light of its object and purpose", *i.e.*, the interpretation that best suits the goal of the treaty, also called "effective interpretation". These are general rules of interpretation; specific rules might exist in specific areas of international law.

Enforcement by States

Apart from a state's natural inclination to uphold certain norms, the force of international law has always come from the pressure that states put upon one another to behave consistently and to honor their obligations. As with any system of law, many violations of international law obligations are overlooked. If addressed, it is almost always purely through diplomacy and the consequences upon an offending state's reputation. Though violations may be common in fact, states try to avoid the appearance of having disregarded international obligations. States may also unilaterally adopt sanctions against one another such as the severance of economic or diplomatic ties, or through reciprocal action.

In some cases, domestic courts may render judgment against a foreign state (the realm of private international law) for an injury, though this is a complicated area of law where international law intersects with domestic law. States have the right to employ force in self-defense against an offending state that has used force to attack its territory or political independence. States may also use force in collective self-defense, where force is used against another state. The state that force is used against must authorize the participation of third-states in its self-defense. This right is recognized in the United Nations Charter.

Enforcement by International Bodies

Violations of the UN Charter by members of the United Nations may be raised by the aggrieved state in the General Assembly for debate. The General Assembly cannot make binding resolutions, but under the "Uniting for Peace" resolution (GA/RES/0377) it declared it could authorize the use of force if there had been Breaches of the Peace or Acts of Aggression, provided that the Security Council due to a negative vote of a permanent member failed to act. It could call for other collective measures (such as economic sanctions) given a situation constituted the milder "threat to the Peace". The legal significance of such a resolution is unclear, as the General Assembly cannot issue binding resolutions.

They can also be raised in the Security Council. The Security Council can pass resolutions of the UN Charter to recommend "Pacific Resolution of Disputes." Such resolutions are not binding under international law, though they usually are expressive of the council's convictions. In rare cases, the Security Council can pass resolutions of the UN Charter related to "threats to Peace, Breaches of the Peace and Acts of Aggression," and these are legally binding under international law, and can be followed up with economic sanctions, military action, and similar uses of force through the auspices of the United Nations.

It has been argued that resolutions passed outside can also be binding; the legal basis for that is the Council's broad powers under Article 24(2), which states that "in discharging these duties (exercise of primary responsibility in

international peace and security), it shall act in accordance with the Purposes and Principles of the United Nations". The mandatory nature of such resolutions was upheld by the International Court of Justice in its advisory opinion on Namibia. The binding nature of such resolutions can be deduced from an interpretation of their language and intent.

States can also, upon mutual consent, submit disputes for arbitration by the International Court of Justice (ICJ), located in The Hague, Netherlands. The judgments given by the Court in these cases are binding, although it possesses no means to enforce its rulings. The Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request. Some of the advisory cases brought before the court have been controversial with respect to the courts competence and jurisdiction.

Often enormously complicated matters, ICJ cases (of which there have been less than 150 since the court was created from the Permanent Court of International Justice in 1945) can stretch on for years and generally involve thousands of pages of pleadings, evidence, and the world's leading specialist public international lawyers. As of 2005, there are twelve cases pending at the ICJ. Decisions made through other means of arbitration may be binding or non-binding depending on the nature of the arbitration agreement, whereas decisions resulting from contentious cases argued before the ICJ are always binding on the involved states.

Though states (or increasingly, international organizations) are usually the only ones with standing to address a violation of international law, some treaties, such as the International Covenant on Civil and Political Rights have an optional protocol that allows individuals who have had their rights violated by member states to petition the international Human Rights Committee.

THE BACKDROP

Through the ages a code developed for the relations and conduct between nations. Even when nations were at war, envoys were often considered immune to violence. The first formal attempts in this direction, which over time have developed into the current international law, stem from the era of the Renaissance in Europe. In the Middle Ages, it had been considered the obligation of the Church to mediate in international disputes. During the Council of Constance (1414) Pawel Wlodkowic, rector of Jagiellonian University (Krakaw, Poland), theologian, lawyer and diplomat, presented the theory that all, including pagan, nations have right to self-govern and to live in peace and possess their land.

At the beginning of the 17th century, several generalizations could be made about the political situation. Self-governing, autonomous states existed. Almost all of them were governed by monarchs. The Peace of Westphalia is often cited as being the birth of the modern nation-states, establishing states as sovereigns answering to no-one within its own borders. Land, wealth, and trading rights were often the topics of wars between states. Some people assert that

international law developed to deal with the new states arising, others claim that the lack of influence of the Pope and the Catholic church gave rise to the need for new generally-accepted codes in Europe.

The French monk Emeric Cruce (1590-1648) came up with the idea of having representatives of all countries meeting in one place to discuss their conflicts so as to avoid war and create more peace. He suggested this in his The New Cyneas (1623), choosing Venice to be the selected city for all of the representatives to meet, and suggested that the Pope should preside over the meeting. Of course, during the Thirty Years' War (1618-1648), this was not acceptable to the Protestant nations.

He also said that armies should be abolished and called for a world court. Though his call to abolish armies was not taken seriously, Emeric Cruce does deserve his place in history through his foresight that international organizations are crucial to solve international disputes. The statesmen of the time believed no nation could escape war, so they prepared for it. King Henry IV's Chief Minister, the Duke of Sully, proposed the founding of an alliance of the European nations that was to meet to arbitrate issues and wage war not between themselves but collectively on the Ottoman Turks, and he called it the Grand Design, but was never established.

After World War I, the nations of the world decided to form an international body. U.S., President Woodrow Wilson came up with the idea of a "League of Nations". However, due to political wrangling in the U.S., Congress, the United States did not join the League of Nations, which was one of the causes of its demise. When World War II broke out, the League of Nations was finished. Yet at the same time, the United Nations was being formed.

On January 1, 1942, US President Franklin D. Roosevelt issued the "Declaration by United Nations" on behalf of 26 nations who had pledged to fight against the Axis powers. Even before the end of the war, representatives of 50 nations met in San Francisco to draw up the charter for an international body to replace the League of Nations. On October 24, 1945, the United Nations officially came into existence, setting a basis for much international law to follow. Modern international law is often affirmed as the product of modern European civilization. The seafaring principalities of India established legal rules for ocean navigation and regional commerce.

The Greek system of independent city-states bore a close resemblance to contemporary nation-state system. The Aetolian and Achaean leagues of the 3rd century BC represented early organisational efforts at international cooperation and facilitated the development of arbitration as a dispute settlement technique.

3

International Human Rights Mechanisms

A number of conventional mechanisms and extra-conventional mechanisms are in place to monitor the implementation of international human rights standards and to deal with complaints of human rights violations.

A *Conventional Mechanisms*: Treaty–Monitoring Bodies
- Committee on economic, socil and culture right (monitors the implementation of the international covenant on economic, social and culture right)
- Human right committee (monitors the implementation of the international covernant on civil and political right)
- Committee of the international conventional for the elimination of all forms racial discrimination)
- Committee against torture (monitors the implementation of the convention against torture and otber cruel, inbuman or degrading treatment or punishment)
- Committee on the elimination of discrimination against women monitors the implemention of the convention on the elimination of all forms or discrimination against women
- Committee on the right of the child (monitors the implementation of the convention on the rights of the child)

B. *Extra–Conventional Mechanisms*: Special Procedures
- Special rapporteurs, special representatives, special envoys and lndependent experts, working groups–thematic or country (urgent actions)
- Complaints procedure 1503.

"Conventional mechanisms" refer to committees of independent experts established to monitor the implementation of international human rights treaties by States parties. By ratifying a treaty, States parties willingly submit their domestic legal system, administrative procedures and other national practices to periodic review by the committees. These committees are often referred to as treaty-monitoring bodies (or "treaty bodies").

In contrast, "extra-conventional mechanisms" refer to those mechanisms established by mandates emanating, not from treaties, but from resolutions of relevant United Nations legislative organs, such as the Commission on Human Rights or the General Assembly. Extra-conventional mechanisms may also be established by expert bodies, such as the Sub-Commission on the Promotion and Protection of Human Rights (formerly the Sub-Commission on Prevention of Discrimination and Protection of Minorities).

They normally take the form of an independent expert or a working group and are often referred to as "special procedures".

INTERNATIONAL CRIMINAL COURTS

The International Criminal Court (French: Cour Penale Internationale; commonly referred to as the ICC or ICCt) is a permanent tribunal Tribunal in the general sense is any person or institution with the authority to judge, adjudicate on, or determine claims or disputes—whether or not it is called a tribunal in its title.For example, an advocate appearing before a Court on which a single Judge was sitting could describe that judge as 'their tribunal'. Many governmental bodies that are titled 'tribunals' are so described to emphasize the fact that they are not courts of normal jurisdiction.

For example the International Criminal Tribunal for Rwanda is a body specially constituted under international law; in Great Britain, Employment Tribunals are bodies set up to hear specific employment disputes. Private judicial bodies are also often styled 'tribunals'. The word 'tribunal' is not conclusive of a body's function.

For example, in Great Britain, the Employment Appeal Tribunal is a superior court of record.) to prosecute individuals for genocide(Genocide is defined as "the deliberate and systematic destruction, in whole or in part, of an ethnic, racial, religious, or national group", though what constitutes enough of a "part" to qualify as genocide has been subject to much debate by legal scholars.While a precise definition varies among genocide scholars, a legal definition is found in the 1948 United Nations Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG).

Article 2 of this convention defines genocide as "any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life, calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; and

forcibly transferring children of the group to another group." The preamble to the CPPCG states that instances of genocide have taken place throughout history,but it was not until Raphael Lemkin coined the term and the prosecution of perpetrators of the Holocaust at the Nuremberg trials that the United Nations agreed to the CPPCG which defined the crime of genocide under international law. During a video interview with Raphael Lemkin, the interviewer asked him about how he came to be interested in this genocide. He replied; "I became interested in genocide because it happened so many times. First to the Armenians, then after the Armenians, Hitler took action."

There was a gap of more than forty years between the CPPCG coming into force and the first prosecution under the provisions of the treaty. To date all international prosecutions of genocide, the Rwandan Genocide and the Srebrenica Genocide, have been by ad hoc international tribunals. The International Criminal Court came into existence in 2002 and it has the authority to try people from the states that have signed the treaty, but to date it has not tried anyone.

Since the CPPCG came into effect in January 1951 about 80 member states of the United Nations have passed legislation that incorporates the provisions of the CPPCG into their domestic law, and some perpetrators of genocide have been found guilty under such municipal laws, such as Nikola Jorgic, who was found guilty of genocide in Bosnia by a German court (Jorgic v. Germany).

Critics of the CPPCG point to the narrow definition of the groups that are protected under the treaty, particularly the lack of protection for political groups for what has been termed politicide (politicide is included as genocide under some municipal jurisdictions).One of the problems was that until there was a body of case law from prosecutions, the precise definition of what the treaty meant had not been tested in court, for example, what precisely does the term "in part" mean? As more perpetrators are tried under international tribunals and municipal court cases, a body of legal arguments and legal interpretations are helping to address these issues.

The exclusion of political groups and politically motivated violence from the international definition of genocide is particularly controversial. The reason for this exclusion is because a number of UN member nations insisted on it when the Genocide Convention was being drafted in 1948. They argued that political groups are too vaguely defined, as well as temporary and unstable.

They further held that international law should not seek to regulate or limit political conflicts, since that would give the UN too much power to interfere in the internal affairs of sovereign nations.In the years since then, critics have argued that the exclusion of political groups from the definition, as well as the lack of a specific reference to the destruction of a social group through the forcible removal of a population, was designed to protect the Soviet Union and the Western Allies from possible accusations of genocide in the wake of World War II.

Another criticism of the CPPCG is that when its provisions have been invoked by the United Nations Security Council, they have only been invoked to punish

those who have already committed genocide and been foolish enough to leave a paper trail. It was this criticism that led to the adoption of UN Security Council Resolution 1674 by the United Nations Security Council on 28 April 2006 commits the Council to action to protect civilians in armed conflict and to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity.

Genocide scholars such as Gregory Stanton have postulated that conditions and acts that often occur before, during, and after genocide—such as dehumanization of victim groups, strong organization of genocidal groups, and denial of genocide by its perpetrators—can be identified and actions taken to stop genocides before they happen. Critics of this approach such as Dirk Moses assert that this is unrealistic and that, for example, "Darfur will end when it suits the great powers that have a stake in the region")., crimes against humanity Crimes against humanity, as defined by the Rome Statute of the International Criminal Court Explanatory Memorandum, "are particularly odious offences in that they constitute a serious attack on human dignity or grave humiliation or a degradation of one or more human beings. They are not isolated or sporadic events, but are part either of a government policy (although the perpetrators need not identify themselves with this policy) or of a wide practice of atrocities tolerated or condoned by a government or a de facto authority.

Murder; extermination; torture; rape; political, racial, or religious persecution and other inhumane acts reach the threshold of crimes against humanity only if they are part of a widespread or systematic practice. Isolated inhumane acts of this nature may constitute grave infringements of human rights, or depending on the circumstances, war crimes, but may fall short of falling into the category of crimes under discussion."), war crimes(War crimes are serious violations of the laws applicable in armed conflict (Also known as International humanitarian law) giving rise to individual criminal responsibility.

Examples of such conduct includes "murder, the ill-treatment or deportation of civilian residents of an occupied territory to slave labour camps", "the murder or ill-treatment of prisoners of war", the killing of prisoners, "the wanton destruction of cities, towns and villages, and any devastation not justified by military, or civilian necessity". Similar concepts, such as perfidy, have existed for many centuries as customs between civilized countries, but these customs were first codified as international law in the Hague Conventions of 1899 and 1907. The modern concept of a war crime was further developed under the auspices of the Nuremberg Trials based on the definition in the London Charter that was published on August 8, 1945. (Also see Nuremberg Principles.) Along with war crimes the charter also defined crimes against peace and crimes against humanity, which are often committed during wars and in concert with war crimes.

Article 22 of the Hague IV ("Laws of War: Laws and Customs of War on Land (Hague IV); October 18, 1907") states that "The right of belligerents to adopt means of injuring the enemy is not unlimited" and over the last century many other treaties have introduced positive laws that place constraints on

belligerents. Some of the provisions, such as those in the Hague, the Geneva, and Genocide Conventions, are considered to be part of customary international law, and are binding on all. Others are only binding on individuals if the belligerent power to which they belong is a party to the treaty which introduced the constraint.), and the crime of aggression A war of aggression, sometimes also war of conquest, is a military conflict waged without the justification of self-defence usually for territorial gain and subjugation. The phrase is distinctly modern and diametrically opposed to the prior legal international standard of "might makes right", under the medieval and pre-historic beliefs of right of conquest.

Since the Korean War of the early 1950s, waging such a war of aggression is a crime under the customary international law. It is generally agreed by scholars in international law that the military actions of the Nazi regime in World War II in its search for so-called "Lebensraum" are characteristic of a war of aggression, the waging of which was called the supreme crime by Justice Robert H. Jackson, chief prosecutor for the United States at the Nuremberg Trials.

Wars without international legality (*e.g.*, not out of self-defence nor sanctioned by the United Nations Security Council) can be considered wars of aggression; however, this alone usually does not constitute the definition of a war of aggression; certain wars may be unlawful but not aggressive (a war to settle a boundary dispute where the initiator has a reasonable claim, and limited aims, is one example).

The International Military Tribunal at Nuremberg, which followed World War II, called the waging of aggressive war "essentially an evil thing...to initiate a war of aggression...is not only an international crime; it is the supreme international crime, differing only from other war crimes in that it contains within itself the accumulated evil of the whole." Article 39 of the United Nations Charter provides that the UN Security Council shall determine the existence of any act of aggression and "shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security".

The Rome Statute of the International Criminal Court refers to the crime of aggression as one of the "most serious crimes of concern to the international community", and provides that the crime falls within the jurisdiction of the International Criminal Court (ICC). However, the Rome Statute stipulates that the ICC may not exercise its jurisdiction over the crime of aggression until such time as the states parties agree on a definition of the crime and set out the conditions under which it may be prosecuted.) (although it cannot currently exercise jurisdiction over the crime of aggression). The Court, created with the philosophy of ending impunity, has specific relevance to issues of justice and accountability within India.

The court's creation perhaps constitutes the most significant reform of international law since 1945. It gives authority to the two bodies of international law that deal with treatment of individuals: human rights and humanitarian

law. It came into being on 1 July 2002—the date its founding treaty, the Rome Statute of the International Criminal Court,(The Rome Statute of the International Criminal Court (often referred to as the International Criminal Court Statute or the Rome Statute) is the treaty that established the International Criminal Court (ICC). It was adopted at a diplomatic conference in Rome on 17 July 1998 and it entered into force on 1 July 2002.

As of March 2011, 114 states are party to the statute, and a further 34 states have signed but not ratified the treaty. Among other things, the statute establishes the court's functions, jurisdiction and structure.) entered into force—and it can only prosecute crimes committed on or after that date. The court's official seat is in The Hague, Netherlands, but its proceedings may take place anywhere.

As of April 2011, 114 states are members of the court The States Parties to the Rome Statute of the International Criminal Court are those countries that have ratified or acceded to the Rome Statute, the treaty that established the International Criminal Court. As of April 2011, 114 states are members of the court, including nearly all of Europe and Latin America and roughly half the countries in Africa. A further 34 countries, including Russia, have signed but not ratified the Rome Statute while one of them, Côte d'Ivoire, has accepted the Court's jurisdiction. The law of treaties obliges these states to refrain from "acts which would defeat the object and purpose" of the treaty. Three of these states—Israel, Sudan and the United States—have "unsigned" the Rome Statute, indicating that they no longer intend to become states parties and, as such, they have no legal obligations arising from their former representatives' signature of the statute. 45 United Nations member states have neither signed nor ratified the Rome Statute; some of them, including China and India, are considered by some to be critical to the success of the court. The Court can automatically exercise jurisdiction over crimes committed on the territory of a State Party or by a national of a State Party. States Parties must co-operate with the Court, including surrendering suspects when requested to do so by the Court.

States Parties are entitled to participate and vote in proceedings of the Assembly of States Parties, which is the Court's governing body.), including nearly all of Europe and Latin America and roughly half the countries in Africa. A further 34 countries, including Russia, have signed but not ratified the Rome Statute while one of them, Côte d'Ivoire, has accepted the Court's jurisdiction. The law of treaties obliges these states to refrain from "acts which would defeat the object and purpose" of the treaty. Three of these states—Israel, Sudan and the United States—have "unsigned" the Rome Statute, indicating that they no longer intend to become states parties and, as such, they have no legal obligations arising from their former representatives' signature of the statute.45 United Nations member states have neither signed nor ratified the Rome Statute; some of them, including China and India, are considered by some to be critical to the success of the court.

The court can generally exercise jurisdiction only in cases where the accused is a national of a state party, the alleged crime took place on the territory of a

state party, or a situation is referred to the court by the United Nations Security Council The United Nations Security Council (UNSC) is one of the principal organs of the United Nations and is charged with the maintenance of international peace and security. Its powers, outlined in the United Nations Charter, include the establishment of peacekeeping operations, the establishment of international sanctions, and the authorization of military action. Its powers are exercised through United Nations Security Council resolutions. The Security Council held its first session on 17 January 1946 at Church House, London. Since its first meeting, the Council, which exists in continuous session, has travelled widely, holding meetings in many cities, such as Paris and Addis Ababa, as well as at its current permanent home at the United Nations Headquarters in New York City. There are 15 members of the Security Council, consisting of five veto-wielding permanent members (China, France, Russia, the United Kingdom, and the United States) and 10 elected non-permanent members with two-year terms.

This basic structure is set out in Chapter V of the UN Charter. Security Council members must always be present at UN headquarters in New York so that the Security Council can meet at any time. This requirement of the United Nations Charter was adopted to address a weakness of the League of Nations since that organization was often unable to respond quickly to a crisis.)

It is designed to complement existing national judicial systems: it can exercise its jurisdiction only when national courts are unwilling or unable to investigate or prosecute such crimes. Primary responsibility to investigate and punish crimes is therefore left to individual states.

To date, the Court has opened investigations into six situations. So far, the International Criminal Court the Court has opened investigations into six situations, all of them in Africa: Northern Uganda, the Democratic Republic of the Congo, the Central African Republic, Darfur (Sudan), the Republic of Kenya and Libya. Of these six, three were referred to the Court by the states parties (Uganda, Democratic Republic of the Congo and Central African Republic), two were referred by the United Nations Security Council (Darfur and Libya) and only one was begun proprio motu by the Prosecutor (Kenya).

The Court has publicly indicted twenty-three people; proceedings against twenty-one people are ongoing. Of those twenty-one, eight remain fugitives (one is presumed dead), five are in custody and eight have appeared voluntarily before the court. Proceedings against two people are finished as one indicted is dead while the charges against another one were dismissed.

As of end September 2010, the Office of the Prosecutor had received 8,874 communications about alleged crimes. After initial review, 4,002 of these communications were dismissed as "manifestly outside the jurisdiction of the Court".), all of them in Africa: Northern Uganda(officially the Republic of Uganda, is a landlocked country in East Africa. Uganda is also known as the "Pearl of Africa". It is bordered on the east by Kenya, on the north by Sudan, on the west by the Democratic Republic of the Congo, on the southwest by Rwanda, and on the south by Tanzania. The southern part of the country includes a

substantial portion of Lake Victoria, which is also bordered by Kenya and Tanzania. Uganda takes its name from the Buganda kingdom, which encompassed a portion of the south of the country including the capital Kampala. The people of Uganda were hunter-gatherers until 1,700 to 2,300 years ago, when Bantu-speaking populations migrated to the southern parts of the country. Uganda gained independence from Britain on 9 October 1962.

The official languages are English and Swahili, although multiple other languages are spoken in the country. It is a member of the African Union, the Commonwealth of Nations, Organisation of the Islamic Conference and East African Community), the Democratic Republic of the Congo(The Democratic Republic of the Congo (French: Republique democratique du Congo), formerly Zaire, is a state located in Central Africa, with a short Atlantic coastline (37 km). It is the third largest country in Africa by area after Sudan and Algeria and the twelfth largest in the world. With a population of nearly 71 million, the Democratic Republic of the Congo is the eighteenth most populous nation in the world, and the fourth most populous nation in Africa, as well as the most populous officially Francophone country.

In order to distinguish it from the neighbouring Republic of the Congo to the west, the Democratic Republic of the Congo is often referred to as DR Congo, DROC, DRC, or RDC (from its French abbreviation), or is called Congo-Kinshasa after the capital of Kinshasa (in contrast to Congo-Brazzaville for its neighbour). It also borders the Central African Republic and Sudan to the north; Uganda, Rwanda, and Burundi in the east; Zambia and Angola to the south; the Atlantic Ocean to the west; and is separated from Tanzania by Lake Tanganyika in the east. The country has access to the ocean through a 40-kilometre (25 mi) stretch of Atlantic coastline at Muanda and the roughly 9 km wide mouth of the Congo River which opens into the Gulf of Guinea.

The Democratic Republic of the Congo was formerly, in chronological order, the Congo Free State, Belgian Congo, Congo-Leopoldville, Congo-Kinshasa, and Zaire (Zaïre in French). Though it is located in the Central African UN subregion, the nation is economically and regionally affiliated with Southern Africa as a member of the Southern African Development Community (SADC).

The Second Congo War, beginning in 1998, devastated the country, involved seven foreign armies and is sometimes referred to as the "African World War". Despite the signing of peace accords in 2003, fighting continues in the east of the country. In eastern Congo, the prevalence of rape and other sexual violence is described as the worst in the world. The war is the world's deadliest conflict since World War II, killing 5.4 million people. Although citizens of the DRC are among the poorest in the world, having the second lowest nominal GDP per capita, the Democratic Republic of Congo is widely considered to be the richest country in the world regarding natural resources; its untapped deposits of raw minerals are estimated to be worth in excess of US$ 24 trillion. This is the equivalent of the gross domestic product of the United States of America and Europe combined.), the Central African Republic The Central African Republic

(CAR) is a landlocked country in Central Africa. It borders Chad in the north, Sudan in the east, the Democratic Republic of the Congo and the Republic of the Congo in the south, and Cameroon in the west. The CAR covers a land area of about 240,000 square miles (623,000 km²), and has an estimated population of about 4.4 million as of 2008. Bangui is the capital city. Most of the CAR consists of Sudano-Guinean savannas but it also includes a Sahelo-Sudanian zone in the north and an equatorial forest zone in the south. Two thirds of the country lies in the basins of the Ubangi River, which flows south into the Congo River, while the remaining third lies in the basin of the Chari River, which flows north into Lake Chad.

Since most of the territory is located in the Ubangi and Shari river basins, France called the colony it carved out in this region Ubangi-Chari, or Oubangui-Chari in French. It became a semi-autonomous territory of the French Community in 1958 and then an independent nation on 13 August 1960. For over three decades after independence, the CAR was ruled by presidents who were not chosen in multi-party democratic elections or took power by force. Local discontent with this system was eventually reinforced by international pressure, following the end of the Cold War.

The first multi-party democratic elections were held in 1993 with resources provided by the country's donors and help from the UN Office for Electoral Affairs, and brought Ange-Felix Patasse to power. He lost popular support during his presidency and was overthrown in 2003 by French-backed General François Bozize, who went on to win a democratic election in May 2005. Inability to pay workers in the public sector led to strikes in 2007, forcing the resignation of the government in early 2008. A new Prime Minister, Faustin-Archange Touadera, was named on 22 January 2008. The Central African Republic is one of the poorest countries in the world and among the ten poorest countries in Africa. The Human Development Index for the Central African Republic is 0.369, which gives the country a rank of 179 out of 182 countries with data.)

Darfur (Sudan), the Republic of Kenya officially the Republic of Kenya, is a country in East Africa. Lying along the Indian Ocean to its southeast and at the equator, it is bordered by Somalia to the northeast, Ethiopia to the north, Sudan to the northwest, Uganda to the west and Tanzania to the south. Lake Victoria is situated to the southwest, and is shared with Uganda and Tanzania. With its capital city in Nairobi, Kenya has numerous wildlife reserves containing thousands of animal species. It has a land area of 580,000 km^2 and a population of nearly 39 million residents, representing many different peoples and cultures. The country is named after Mount Kenya, a significant landmark and second among Africa's highest mountain peaks.

Kenya is a country of 47 counties each with its own government semi-autonomous to the central government in the capital, Nairobi. The country's geography is as diverse as its people. It has a long coastline along the Indian Ocean and as you advance inland the landscape changes to savannah grasslands, arid and semi-arid bushes. The central regions and the western parts have forests

and mountains while the northern regions are near desert landscapes. Archaeological research indicates modern man first appeared in Kenya and as a result, the country with its East African neighbours is almost certainly considered the cradle of mankind. Due to the varied geography and weather, people performing varied economic activities and thus developing varied cultures have been living in Kenya since the dawn of mankind. The first and successful attempt to merge these diverse and rich cultures under a nation was done by the arrival of Europeans around 19th century. Initially, peoples of then Kenya interacted through trade, intermarriages and frequent wars though each remained politically independent of the other.

A major African nation, Kenya is classified as a developing and sometimes an emerging African nation. Its economy is the largest by GDP in East and Central Africa and Kenya's capital, Nairobi is a major commercial hub. The country traditionally produces world renowned tea and coffee. Recently, it has developed a formidable horticultural industry thereby becoming a major exporter of fresh flowers to Europe. The service industry is driven by the telecommunications sector which is one of the most successful and innovative in Africa.

Kenya is also a major and world-renowned athletics powerhouse producing such world champions as Paul Tergat and most recently David Rudisha.) and Libya. Of these six, three were referred to the Court by the states parties (Uganda, Democratic Republic of the Congo and Central African Republic), two were referred by the United Nations Security Council (Darfur and Libya) and only one was begun proprio motu by the Prosecutor (Kenya). It has publicly indicted twenty-three people. The list of people who have been indicted in the International Criminal Court includes all individuals who have been indicted on any counts of genocide, crimes against humanity, war crimes, or crimes of aggression by the Prosecutor of the International Criminal Court (ICC) pursuant to the Rome Statute.

An individual is indicted when a Pre-Trial Chamber issues either an arrest warrant or a summons after it finds that "there are reasonable grounds to believe that the person has committed a crime within the jurisdiction of the Court". An arrest warrant is issued where it appears necessary "to ensure the person's appearance at trial, to ensure that the person does not obstruct or endanger the investigation or the court proceedings, or, where applicable, to prevent the person from continuing with the commission of that crime or a related crime which is within the jurisdiction of the Court and which arises out of the same circumstances". The Pre-Trial Chamber issues a summons if it is satisfied that a summons is sufficient to ensure the person's appearance. Individuals can only be charged with genocide, crimes against humanity, or war crimes.

The Court cannot currently prosecute individuals for the "crime of aggression".); proceedings against twenty-one people are ongoing. Of those twenty-one, eight remain fugitives (one is presumed dead), five are in custody and eight have appeared voluntarily before the court. Proceedings against two

people are finished as one indicted is dead while the charges against another one were dismissed. As of April 2011, three trials against four people are underway: two trials regarding the situation in the Democratic Republic of the Congo (with one of them scheduled to be closed in August 2011) and one trial regarding the Central African Republic. Another two people have been committed to a fourth trial in the situation of Darfur, Sudan. One confirmation of charges hearing(against one person in the situation of the DR Congo) is to start in July 2011 while two others (against a total of six persons in the situation of Kenya) will begin in September 2011.

THE SECRETARIAT OF THE UNITED NATIONS

The United Nations Charter provided for the creation of a Secretariat which comprises the Secretary-General as the chief administrative officer of the Organization, and such staff as the Organization may require. More than 25,000 men and women from some 160 countries make up the Secretariat staff.

As international civil servants, they and the Secretary-General answer solely to the United Nations for their activities, and take an oath not to seek or receive instructions from any Government or outside authority. The Secretariat is located at the headquarters of the United Nations in New York and has major duty stations in Addis Ababa, Bangkok, Beirut, Geneva, Nairobi, Santiago and Vienna.

Organization

The Secretariat consists of a number of major organizational units, each headed by an official accountable to the Secretary-General. These include, inter alia, the Executive Office of the Secretary-General; Office for the Coordination of Humanitarian Affairs; Department for General Assembly Affairs and Conference Services; Department of Peacekeeping Operations; Department of Economic and Social Affairs; Department of Political Affairs, Department for Disarmament and Arms Regulation; Office of Legal Affairs; Department of Management.

Subsequent to the Secretary-General's reform package presented in document available, the work of the Organization falls into four substantive categories: peace and security, development cooperation, international economic and social affairs; and humanitarian affairs.

Human rights is designated as a cross-cutting issue in all four categories. Each area is co-ordinate by an Executive Committee which manages common, cross-cutting and overlapping policy concerns. In order to integrate the work of the Executive Committees and address matters affecting the Organization as a whole, a cabinet-style Senior Management Group, comprising the heads of department under the chairmanship of the Secretary-General, has been established.

It meets weekly with members in Geneva, Vienna, Nairobi and Rome participating through tele-conferencing. A Strategic Planning Unit has also been established to enable the Group to consider individual questions on its agenda within broader and longer-term frames of reference. The Office of the High

Commissioner for Human Rights forms part of the Secretariat and is responsible for the overall promotion and protection of human rights. The High Commissioner, entrusted by General Assembly resolution of 20 December 1993 with principal responsibility for United Nations human rights activities, comes under the direction and authority of the Secretary-General and within the framework of the overall competence, authority and decisions of the General Assembly, the Economic and Social Council and the Commission on Human Rights. The High Commissioner is appointed by the Secretary-General with the approval of the General Assembly and is a member of all four Executive Committees.

Powers and Functions

According to the United Nations Charter, the Secretary-General is required to: participate in all meetings and to perform all functions entrusted to him by the General Assembly, the Security Council, the Economic and Social Council, and the Trusteeship Council; report annually to the General Assembly on the work of the Organization; and to bring to the attention of the Security Council any matter which, in his opinion, threatens international peace and security. The Secretary-General therefore functions as both the conscience of the international community and the servant of Member States.

The work carried out by the Secretariat is as varied as the problems dealt with by the United Nations. These range from mediating international disputes to issuing international stamps. The Secretariat's functions are, inter alia, to: provide support to the Secretary-General in fulfilling the functions entrusted to him or her under the Charter; promote the principles of the Charter and build understanding and public support for the objectives of the United Nations; promote economic and social development, development cooperation, human rights and international law; conduct studies, promote standards and provide information in various fields responding to the priority needs of Member States; and organize international conferences and other meetings. The work of the Secretary-General entails routine daily consultations with world leaders and other individuals, attendance at sessions of various United Nations bodies, and worldwide travel as part of the overall effort to improve the state of international affairs. The Secretary-General issues an annual report in which he appraises the work of the Organization and presents his views on future priorities.

Good Offices (Article 99 of the Charter)

The Secretary-General may be best known to the general public for using his impartiality to engage and intervene in matters of international concern. This is commonly referred to as his.good offices. and is indicative of the steps taken by the Secretary-General or his senior staff, publicly and in private, to prevent international disputes from arising, escalating or spreading. The Secretary-General can use his good offices to raise sensitive human rights matters with Governments. His intervention may be at his own discretion or at the request of Member States.

CRIMES WITHIN THE JURISDICTION OF THE COURT

Article 5 of the Rome Statute grants the court jurisdiction over four groups of crimes, which it refers to as the "most serious crimes of concern to the international community as a whole": the crime of genocide, crimes against humanity, war crimes, and the crime of aggression. The statute defines each of these crimes except for aggression: it provides that the court will not exercise its jurisdiction over the crime of aggression until such time as the states parties agree on a definition of the crime and set out the conditions under which it may be prosecuted. In June 2010, the ICC's first review conference in Kampala, Uganda adopted amendments defining "crimes of aggression" and expanding the ICC's jurisdiction over them. The ICC will not be allowed to prosecute for this crime until at least 2017. Furthermore, it expanded the term of war crimes for the use of certain weapons in an armed conflict not of an international character.

Many states wanted to add terrorism There is no universally agreed, legally binding, criminal law definition of terrorism.Common definitions of terrorism refer only to those violent acts which are intended to create fear (terror), are perpetrated for a religious, political or ideological goal, deliberately target or disregard the safety of non-combatants (civilians), and are committed by non-government agencies. Some definitions also include acts of unlawful violence and war. The use of similar tactics by criminal organizations for protection rackets or to enforce a code of silence is usually not labeled terrorism though these same actions may be labeled terrorism when done by a politically motivated group.

The word "terrorism" is politically and emotionally charged,and this greatly compounds the difficulty of providing a precise definition. Studies have found over 100 definitions of "terrorism". The concept of terrorism may itself be controversial as it is often used by state authorities to delegitimize political or other opponents, and potentially legitimize the state's own use of armed force against opponents (such use of force may itself be described as "terror" by opponents of the state). Terrorism has been practiced by a broad array of political organizations for furthering their objectives. It has been practiced by both right-wing and left-wing political parties, nationalistic groups, religious groups, revolutionaries, and ruling governments.An abiding characteristic is the indiscriminate use of violence against noncombatants for the purpose of gaining publicity for a group, cause, or individual.) and drug trafficking to the list of crimes covered by the Rome Statute; however, the states were unable to agree on a definition for terrorism and it was decided not to include drug trafficking as this might overwhelm the court's limited resources.

India lobbied to have the use of nuclear weapons A nuclear weapon is an explosive device that derives its destructive force from nuclear reactions, either fission or a combination of fission and fusion. Both reactions release vast quantities of energy from relatively small amounts of matter. The first fission

("atomic") bomb test released the same amount of energy as approximately 20,000 tons of TNT. The first thermonuclear ("hydrogen") bomb test released the same amount of energy as approximately 10,000,000 tons of TNT.

A modern thermonuclear weapon weighing little more than 2,400 pounds (1,100 kg) can produce an explosive force comparable to the detonation of more than 1.2 million tons (1.1 million metric tons) of TNT. Thus, even a small nuclear device no larger than traditional bombs can devastate an entire city by blast, fire and radiation. Nuclear weapons are considered weapons of mass destruction, and their use and control has been a major focus of international relations policy since their debut.

Only two nuclear weapons have been used in the course of warfare, both by the United States near the end of World War II. On 6 August 1945, a uranium gun-type device code-named "Little Boy" was detonated over the Japanese city of Hiroshima. Three days later, on 9 August, a plutonium implosion-type device code-named "Fat Man" was exploded over Nagasaki, Japan. These two bombings resulted in the deaths of approximately 200,000 Japanese people—mostly civilians—from acute injuries sustained from the explosions. The role of the bombings in Japan's surrender, and their ethical status, remain the subject of scholarly and popular debate. Since the bombings of Hiroshima and Nagasaki, nuclear weapons have been detonated on over two thousand occasions for testing purposes and demonstrations.

Only a few nations possess such weapons or are suspected of seeking them. The only countries known to have detonated nuclear weapons—and that acknowledge possessing such weapons—are (chronologically by date of first test) the United States, the Soviet Union (succeeded as a nuclear power by Russia), the United Kingdom, France, the People's Republic of China, India, Pakistan, and North Korea. In addition, Israel is also widely believed to possess nuclear weapons, though it does not acknowledge having them.

One state, South Africa, has admitted to having previous fabricated nuclear weapons in the past, but has since disassembled their arsenal and submitted to international safeguards.) and other weapons of mass destruction(A weapon of mass destruction (WMD) is a weapon that can kill and bring significant harm to a large number of humans (and other life forms) and/or cause great damage to man-made structures (*e.g.*, buildings), natural structures (*e.g.*, mountains), or the biosphere in general. The scope and application of the term has evolved and been disputed, often signifying more politically than technically.

Coined in reference to aerial bombing with chemical explosives, it has come to distinguish large-scale weaponry of other technologies, such as chemical, biological, radiological, or nuclear.

This differentiates the term from more technical ones such as chemical, biological, radiological, and nuclear weapons (CBRN).) included as war crimes but this move was also defeated. India has expressed concern that "the Statute of the ICC lays down, by clear implication, that the use of weapons of mass destruction is not a war crime.

This is an extraordinary message to send to the international community." Some commentators have argued that the Rome Statute defines crimes too broadly or too vaguely.

For example, China has argued that the definition of 'war crimes' goes beyond that accepted under customary international law. Customary international law are those aspects of international law that derive from custom. Along with general principles of law and treaties, custom is considered by the International Court of Justice, jurists, the United Nations, and its member states to be among the primary sources of international law.

For example, laws of war were long a matter of customary law before they were codified in the Hague Conventions of 1899 and 1907, Geneva Conventions, and other treaties. The vast majority of the world's governments accept in principle the existence of customary international law, although there are many differing opinions as to what rules are contained in it.

The Statute of the International Court of Justice acknowledges the existence of customary international law in Article 38(1)(b), incorporated into the United Nations Charter by Article 92: "The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply...international custom, as evidence of a general practice accepted as law." Customary international law "... consists of rules of law derived from the consistent conduct of States acting out of the belief that the law required them to act that way." It follows that customary international law can be discerned by a "widespread repetition by States of similar international acts over time (State practice); Acts must occur out of sense of obligation (opinio juris); Acts must be taken by a significant number of States and not be rejected by a significant number of States." A marker of customary international law is consensus among states exhibited both by widespread conduct and a discernible sense of obligation.

A peremptory norm (also called jus cogens, Latin for "compelling law") is a fundamental principle of international law which is accepted by the international community of states as a norm from which no derogation is ever permitted.

Examples include various international crimes; a state which carries out or permits slavery, torture, genocide, war of aggression, or crimes against humanity is always violating customary international law. Other examples accepted or claimed as customary international law include the principle of non-refoulement, immunity of visiting foreign heads of state, and the right to humanitarian intervention.)

TERRITORIAL JURISDICTION

During the negotiations that led to the Rome Statute, a large number of states argued that the court should be allowed to exercise universal jurisdiction Universal jurisdiction or universality principle is a principle in public international law (as opposed to private international law) whereby states claim criminal jurisdiction over persons whose alleged crimes were committed outside the boundaries of the prosecuting state, regardless of nationality, country of

residence, or any other relation with the prosecuting country. The state backs its claim on the grounds that the crime committed is considered a crime against all, which any state is authorized to punish, as it is too serious to tolerate jurisdictional arbitrage.

The concept of universal jurisdiction is therefore closely linked to the idea that certain international norms are erga omnes, or owed to the entire world community, as well as the concept of jus cogens–that certain international law obligations are binding on all states and cannot be modified by treaty. According to critics, the principle justifies a unilateral act of wanton disregard of the sovereignty of a nation or the freedom of an individual concomitant to the pursuit of a vendetta or other ulterior motives, with the obvious assumption that the person or state thus disenfranchised is not in a position to bring retaliation to the state applying this principle.

The concept received a great deal of prominence with Belgium's 1993 "law of universal jurisdiction", which was amended in 2003 in order to reduce its scope following a case before the International Court of Justice regarding an arrest warrant issued under the law, entitled Case Concerning the Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium). The creation of the International Criminal Court (ICC) in 2002 reduced the perceived need to create universal jurisdiction laws, although the ICC is not entitled to judge crimes committed before 2002.

According to Amnesty International, a proponent of universal jurisdiction, certain crimes pose so serious a threat to the international community as a whole, that states have a logical and moral duty to prosecute an individual responsible for it; no place should be a safe haven for those who have committed genocide, crimes against humanity, extrajudicial executions, war crimes, torture and forced disappearances.

Opponents, such as Henry Kissinger, argue that universal jurisdiction is a breach on each state's sovereignty: all states being equal in sovereignty, as affirmed by the United Nations Charter, "Widespread agreement that human rights violations and crimes against humanity must be prosecuted has hindered active consideration of the proper role of international courts. Universal jurisdiction risks creating universal tyranny—that of judges." According to Kissinger, as a practical matter, since any number of states could set up such universal jurisdiction tribunals, the process could quickly degenerate into politically-driven show trials to attempt to place a quasi-judicial stamp on a state's enemies or opponents.

The United Nations Security Council Resolution 1674, adopted by the United Nations Security Council on April 28, 2006, "Reaffirmed the provisions of paragraphs 138 and 139 of the 2005 World Summit Outcome Document regarding the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity" and commits the Security Council to action to protect civilians in armed conflict.) However, this proposal was defeated due in large part to opposition from the United States.

A compromise was reached, allowing the court to exercise jurisdiction only under the following limited circumstances:

- Where the person accused of committing a crime is a national of a state party (or where the person's state has accepted the jurisdiction of the court);
- Where the alleged crime was committed on the territory of a state party (or where the state on whose territory the crime was committed has accepted the jurisdiction of the court); or
- Where a situation is referred to the court by the UN Security Council.

TEMPORAL JURISDICTION

The court's jurisdiction does not apply retroactively: it can only prosecute crimes committed on or after 1 July 2002 (the date on which the Rome Statute entered into force).

Where a state becomes party to the Rome Statute after that date, the court can exercise jurisdiction automatically with respect to crimes committed after the statute enters into force for that state.

COMPLEMENTARITY

The ICC is intended as a court of last resort, investigating and prosecuting only where national courts have failed.

Article 17 of the Statute provides that a case is inadmissible if:

- The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution;
- The case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute;
- The person concerned has already been tried for conduct which is the subject of the complaint, and a trial by the Court is not permitted under article 20, paragraph 3;
- The case is not of sufficient gravity to justify further action by the Court."

Article 20, paragraph 3, specifies that, if a person has already been tried by another court, the ICC cannot try them again for the same conduct unless the proceedings in the other court:

- Were for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court; or
- Otherwise were not conducted independently or impartially in accordance with the norms of due process recognized by international law and were conducted in a manner which, in the circumstances, was inconsistent with an intent to bring the person concerned to justice."

THE INTERNATIONAL BILL OF HUMAN RIGHTS

At its first meeting in 1946, the General Assembly transmitted a draft Declaration of Fundamental Human Rights and Freedoms to the Commission on Human Rights, through the Economic and Social Council, relative to the preparation of an international bill of human rights. In 1947, the Commission authorized its officers to formulate a draft bill of human rights which was later taken over by a formal Drafting Committee consisting of 8 members of the Commission. The Drafting Committee decided to prepare two documents: one in the form of a declaration which would set forth general principles or standards of human rights; and the other in the form of a convention which would define specific rights and their limitations.

Accordingly, the Committee transmitted to the Commission draft articles of an international declaration and an international convention on human rights. The Commission decided to apply the term.International Bill of Human Rights. to the entire series of documents in late 1947. In 1948, the draft declaration was revised and submitted through the Economic and Social Council to the General Assembly. On 10 December 1948, the Universal Declaration of Human Rights was adopted. a day celebrated each year as -Human Rights Day.. The Commission on Human Rights then continued working on a draft covenant on human rights.

By 1950, the General Assembly passed a resolution declaring that the "enjoyment of civil and political freedoms and of economic, social and cultural rights are interconnected and interdependent" After lengthy debate, the General Assembly requested that the Commission draft two covenants on human rights; one to set forth civil and political rights and the other embodying economic, social and cultural rights. Before finalizing the draft covenants, the General Assembly decided to give the drafts the widest possible publicity in order that Governments might study them thoroughly and public opinion might express itself freely.

In 1966, two International Covenants on Human Rights were completed (instead of the one originally envisaged): the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), which effectively translated the principles of the Universal Declaration into treaty law. In conjunction with the Universal Declaration of Human Rights, the two Covenants are referred to as the.International Bill of Human Rights.

THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

The Universal Declaration of Human Rights consists of a Preamble and 30 articles, setting out the human rights and fundamental freedoms to which all men and women are entitled, without distinction of any kind.

The Universal Declaration recognizes that the inherent dignity of all members of the human family is the foundation of freedom, justice and peace in the

world. It recognizes fundamental rights which are the inherent rights of every human being including, inter alia, the right to life, liberty and security of person; the right to an adequate standard of living; the right to seek and enjoy asylum from persecution in other countries; the right to freedom of opinion and expression; the right to education, freedom of thought, conscience and religion; and the right to freedom from torture and degrading treatment.

These inherent rights are to be enjoyed by every man, woman and child throughout the world, as well as by all groups in society. Today, the Universal Declaration of Human Rights is widely regarded as forming part of customary international law.

1998 -the Fiftieth Anniversary of the Universal Declaration of Human Rights

1998 highlighted the global commitment to these fundamental and inalienable human rights as the world commemorated the fiftieth anniversary of the Universal Declaration of Human Rights. The Universal Declaration was one of the first major achievements of the United Nations and after 50 years remains a powerful instrument affecting people's lives throughout the world. Since 1948, the Universal Declaration has been translated into more than 250 languages and remains one of the best known and most cited human rights documents in the world.

The commemoration of the fiftieth anniversary provided the opportunity to reflect on the achievements of the past fifty years and chart a course for the next century. Under the theme All Human Rights for All, the fiftieth anniversary highlighted the universality, indivisibility and interrelationship of all human rights. It reinforced the idea that human rights. civil, cultural, economic, political and social. should be taken in their totality and not dissociated.

THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

After 20 years of drafting debates, the ICESCR was adopted by the General Assembly in 1966 and entered into force in January 1976. In many respects, greater international attention has been given to the promotion and protection of civil and political rights rather than to social, economic and cultural rights, leading to the erroneous presumption that violations of economic, social and cultural rights were not subject to the same degree of legal scrutiny and measures of redress.

This view neglected the underlying principles of human rights- that rights are indivisible and interdependent and therefore the violation of one right may well lead to the violation of another.

Economic, social and cultural rights are fully recognized by the international community and in international law and are progressively gaining attention. These rights are designed to ensure the protection of people, based on the expectation that people can enjoy rights, freedoms and social justice simultaneously.

The Covenant embodies some of the most significant international legal provisions establishing economic, social and cultural rights, including, inter alia, rights relating to work in just and favourable conditions; to social protection; to an adequate standard of living including clothing, food and housing; to the highest attainable standards of physical and mental health; to education and to the enjoyment of the benefits of cultural freedom and scientific progress.

Significantly, article 2 outlines the legal obligations which are incumbent upon States parties under the Covenant. States are required to take positive steps to implement these rights, to the maximum of their resources, in order to achieve the progressive realization of the rights recognized in the Covenant, particularly through the adoption of domestic legislation. Monitoring the implementation of the Covenant by States parties was the responsibility of the Economic and Social Council, which delegated this responsibility to a committee of independent experts established for this purpose, namely the Committee on Economic, Social and Cultural Rights. As at March 2000, 142 States were parties to the Covenant.

THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

The International Covenant on Civil and Political Rights addresses the State's traditional responsibilities for administering justice and maintaining the rule of law. Many of the provisions in the Covenant address the relationship between the individual and the State. In discharging these responsibilities, States must ensure that human rights are respected, not only those of the victim but also those of the accused. The civil and political rights defined in the Covenant include, inter alia, the right to self-determination; the right to life, liberty and security; freedom of movement, including freedom to choose a place of residence and the right to leave the country; freedom of thought, conscience, religion, peaceful assembly and association; freedom from torture and other cruel and degrading treatment or punishment; freedom from slavery, forced labour, and arbitrary arrest or detention; the right to a fair and prompt trial; and the right to privacy.

There are also other provisions which protect members of ethnic, religious or linguistic minorities. Under Article 2, all States Parties undertake to respect and take the necessary steps to ensure the rights recognized in the Covenant without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The Covenant has two Optional Protocols. The first establishes the procedure for dealing with communications (or complaints) from individuals claiming to be victims of violations of any of the rights set out in the Covenant. The second envisages the abolition of the death penalty.

Unlike the Universal Declaration and the Covenant on Economic, Social and Cultural Rights, the Covenant on Civil and Political Rights authorizes a State to derogate from, or in other words restrict, the enjoyment of certain rights

in times of an official public emergency which threatens the life of a nation. Such limitations are permitted only to the extent strictly required under the circumstances and must be reported to the United Nations. Even so, some provisions such as the right to life and freedom from torture and slavery may never e suspended.

The Covenant provides for the establishment of a Human Rights Committee to monitor implementation of the Covenant's provisions by States parties. As at March 2000, 144 States were parties to the Covenant, 95 States were parties to the Optional Protocol and 39 States were parties to the Second Optional Protocol.

TECHNICAL COOPERATION IN THE FIELD OF HUMAN RIGHTS

The United Nations human rights technical cooperation programme assists countries, at their request, in building and strengthening national capacities and infrastructure which have a direct impact on the overall promotion and protection of human rights, democracy and the rule of law. This is done through technical advice and assistance to Governments and civil society. The objective is to assist in promoting and protecting all human rights at national and regional level, through the incorporation of international human rights standards into domestic legislation, policies and practices. In addition, it facilitates the building of sustainable national infrastructure for implementing these standards and ensuring respect for human rights.

While these activities are carried out throughout the United Nations Organization, OHCHR is the focal point for the technical cooperation programme in the field of human rights. Technical cooperation activities can be a complement to, but never a substitute for the monitoring and investigation activities of the United Nations human rights programme.

HOW TO ACCESS ASSISTANCE

In order to benefit from the United Nations Programme of Technical Cooperation in the field of human rights, a Government must submit a request for assistance to the Secretariat. In response, the Secretariat will conduct an assessment of that country.s particular human rights needs, taking into consideration,

Among other factors, the following:

- Specific recommendations made by the United Nations human rights treaty bodies;
- Recommendations by the Commission on Human Rights and its mechanisms, including the representatives of the Secretary-General, the Special Rapporteurs on thematic or country situations and the various working groups;
- The recommendations adopted by the Board of Trustees of the Voluntary Fund for Technical Cooperation in the Field of Human Rights; and

- The views and concerns expressed by a wide range of national and international actors including government officials, civil society, national human rights institutions, and national and international NGOs.

The assessment is normally conducted through an international mission to the State concerned. Based on that assessment, an assistance programme is developed to address the needs identified in a comprehensive and coordinated manner. Periodic evaluations of the country programme during its implementation are normally followed by a post- implementation evaluation, with a view to measuring the effect of the assistance provided and developing follow-up plans. Countries or regions in transition to democracy are the primary target of the Technical Cooperation Programme. Priority is also given to technical cooperation projects responding to the needs of less developed countries.

VARIOUS TECHNICAL COOPERATION ACTIVITIES

The programme offers a wide range of human rights assistance projects, some of which are summarized below. It must be stressed, however, that the types of interventions described are merely indicative and not exhaustive. The results of needs assessments determine the type of technical cooperation project to be implemented.

- *National Human Rights Institutions (The Paris Principles)*: A central objective of the Technical Cooperation Programme is to consolidate and strengthen the role which national human rights institutions can play in the promotion and protection of human rights. In this context, the term national human rights institutions refers to bodies whose functions are specifically defined in terms of the promotion and protection of human rights, namely national human rights commissions and ombudsman offices, in accordance with the Paris Principles. OHCHR offers its services to Governments that are considering or in the process of establishing a national human rights institution. The activities relating to national human rights institutions under the programme are aimed at promoting the concept of national human rights institutions and encouraging their development.

  To this end, information material and a practical manual have been developed for those involved in the establishment and administration of national institutions. In addition, a number of seminars and workshops have been conducted to provide government officials, politicians, NGOs and others with information and expertise in the structure and functioning of such bodies. These events have also served as useful forums for the exchange of information and experience concerning the establishment and operation of national human rights institutions.

Administration of Justice

With respect to human rights in the administration of justice, the Technical Cooperation Programme provides training courses for judges, lawyers,

prosecutors and penal institutions, as well as law enforcement officers. Such courses are intended to familiarize participants with international standards for human rights in the administration of justice; to facilitate examination of humane and effective techniques for the performance of penal and judicial functions in a democratic society; and to teach trainer participants to include this information in their own training activities.

Topics offered in courses for judges, lawyers, magistrates and prosecutors include: international sources, systems and standards for human rights in the administration of justice; human rights during criminal investigations, arrest and pre-trial detention; the independence of judges and lawyers; elements of a fair trial; juvenile justice; protection of the rights of women in the administration of justice; and human rights in a declared state of emergency.

Similarly, the training courses for law enforcement officials cover a broad range of topics, including the following: international sources, systems and standards for human rights in the administration of criminal justice; the duties and guiding principles of ethical police conduct in democracies; the use of force and firearms in law enforcement; the crime of torture; effective methods of legal and ethical interviewing; human rights during arrest and pretrial detention; and the legal status and rights of the accused.

A Manual on Human Rights and Law Enforcement is available. Course topics for prison officials include: minimum standards for facilities for prisoners and detainees; prison health issues, including AIDS and the HIV virus; and special categories of prisoners and detainees, including juveniles and women. A Handbook on Human Rights and Pre-trial Detention is available. This approach to professional training for human rights in the administration of justice is subject to in-field testing by OHCHR in its technical cooperation activities in a number of countries, and has undergone a series of revisions on the basis of such experience.

Other forms of assistance in the area of the administration of justice include assistance in the development of guidelines, procedures and regulations consistent with international standards.

Assistance in Drafting Legislation

The United Nations makes the services of international experts and specialized staff available to assist Governments in the reform of their domestic legislation which has a clear impact on the situation of human rights and fundamental freedoms. The goal is to bring such laws into conformity with international standards, as identified in United Nations and regional human rights instruments. Drafts provided by a Government requesting such assistance are reviewed and recommendations are subsequently made.

This programme component also includes assistance with respect to penal codes, codes of criminal procedure, prison regulations, laws regarding minority protection, laws affecting freedom of expression, association and assembly, immigration and nationality laws, laws on the judiciary and legal practice,

security legislation, and, in general, any law which might have an impact directly, or indirectly, on the realization of internationally protected human rights. Constitutional assistance Under this programme component, OHCHR provides assistance for the incorporation of international human rights norms into national constitutions.

In this regard, the Office can play a facilitating role in encouraging national consensus on those elements to be incorporated into the constitutional reform process utilizing the services of legal exerts. OHCHR assistance may also extend to the provision of human rights information and documentation, or support for public information campaigns to ensure the involvement of all sectors of society. Their task includes legislative drafting as well as the drafting of bills of rights; the provision of justiciable remedies under the law; options for the allocation and separation of governmental powers; the independence of the judiciary; and the role of the judiciary in overseeing the police and prison systems.

National Parliaments

Under the Technical Cooperation Programme, national parliaments may receive direct training and other support to assist them in undertaking their human rights function. This programme component addresses a variety of crucial issues, including the provision of information on national human rights legislation, parliamentary human rights committees, ratifications of and accessions to international human rights instruments, and, in general, the role of parliament in promoting and protecting human rights. The armed forces It is essential for the good functioning of the rule of law that the armed forces be bound by the Constitution and other laws of the land, that they answer to democratic Government and that they are trained in and committed to the principles of human rights and humanitarian law. The United Nations has carried out a number of training activities for armed forces.

Electoral Assistance

The Technical Cooperation Programme has been providing electoral assistance for more than five years. Specific activities which the OHCHR has undertaken in this regard include the preparation of guidelines for analysis of electoral laws and procedures, publication of a handbook on human rights and elections, development of draft guidelines for human rights assessment of requests for electoral assistance and various public information activities relating to human rights and elections.

Treaty Reporting and Training of Government Officials

The OHCHR organizes training courses at regular intervals to enable government officials to draft reports in keeping with the guidelines establishing the various international human rights treaties to which their State is a party. Courses on reporting obligations may be provided at national or at regional level. Alternatively, training courses may be organized under the human rights fellowship programme: participants

take part in workshops with experts from the various treaty-monitoring committees, as well as with staff from the Office. They are provided with a copy of OHCHR.s Manual on Human Rights Reporting and, whenever possible, are given the opportunity to observe meetings of treaty bodies.

Non-Governmental Organizations and Civil Society

Civil society constitutes an increasingly important factor in the international community. In recent years, the United Nations has found that much of its work, particularly at national level, calls for the involvement of various nongovernmental organizations and groups -whether in economic and social development, humanitarian affairs, public health, or the promotion of human rights. National and international non-governmental human rights organizations are key actors in the Technical Cooperation Programme, both in the delivery of assistance and as recipients of that assistance. In relation to the programme's aims to strengthen civil society, the United Nations is increasingly being called upon by Governments and others to provide assistance to national NGOs, in the context of its country activities, by soliciting their input, utilizing their services in seminars and training courses, and supporting appropriate projects which have been developed.

Information and Documentation Projects

The Technical Cooperation Programme also provides human rights information and documentation and contributes to building capacity for the effective utilization and management of such material. Activities in this area include direct provision of documentation, translated where necessary into local languages; training in human rights information; and assistance in computerization of national and regional human rights offices.

Assistance is also provided to national libraries in acquiring human rights books and documentation, and support can be lent for the establishment and functioning of national or regional human rights documentation centers. Several manuals, handbooks and modules are being produced to support training and other technical cooperation activities. Existing or planned material targets specific audiences, such as the police, judges and lawyers, prison personnel, national human rights action plans, the armed forces, teachers and human rights monitors involved in United Nations field operations. The material is adapted specifically to the recipient country in order to facilitate the integration of human rights into existing training programmes and curricula.

Peacekeeping and the Training of International Civil Servants

In accordance with the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in June 1993, the Technical Cooperation Programme has recently expanded the scope of its activities to include human rights support within the United Nations system. In the area of peacekeeping, for example, the programme has provided various forms of assistance to major United Nations missions in Cambodia, Eritrea, Mozambique,

Haiti, South Africa, the countries of the former Yugoslavia, and Angola. Such assistance has included, variously, the provision of human rights information, legislative analysis, training and advisory services.

Human Rights Fellowships

The human rights fellowships scheme was initiated in keeping with General Assembly resolution 926 of 14 December 1955 which officially established the advisory services programme.

Under the programme, fellowships are awarded only to candidates nominated by their Governments and are financed under the regular budget for advisory services. Each year, the Secretary-General invites Member States to submit nominations for fellowships. Governments are requested to nominate persons directly engaged in functions affecting human rights, particularly in the administration of justice.

The Secretary-General draws their attention to concerns expressed by the General Assembly, in many of its resolutions, with regard to the rights of women, and encourages the nomination of women candidates. The principle of equitable geographical distribution is taken into account and priority is given to candidates from States which have never benefitted from the fellowship programme, or which have not done so in recent years. Participants receive intensive training in a variety of human rights issues. They are encouraged to exchange their experiences and are requested to evaluate the fellowship programme, to present individual oral reports, and to prepare recommendations for their superiors on the basis of knowledge acquired under the programme. In accordance with the policy and procedure governing the administration of United Nations fellowships, each participant is required to submit a comprehensive final report to OHCHR on subjects directly related to their field of activity.

INTEGRATING HUMAN RIGHTS INTO THE WORK OF THE UNITED NATIONS

Since the Secretary-General launched the Programme of Reform in July 1997, there have been on-going efforts to promote and protect human rights by integrating human rights into all activities and programmes of the United Nations.

This strategy reflects the holistic approach to human rights. It recognizes that human rights are inextricably linked to the work of all United Nations agencies and bodies, including programmes and activities relating to housing, food, education, health, trade, development, security, labour, women, children, indigenous people, refugees, migration, the environment, science and humanitarian aid.

The objectives of the process of integrating human rights are to:

- Increase cooperation and collaboration across the entire United Nations system for human rights programmes;
- Ensure that human rights issues are incorporated into untapped sectors of the United Nations work;

- Ensure that United Nations activities make respect for human rights a routine, rather than a separate, component of United Nations activities and programmes.

The issue of human rights was, therefore, designated by the Secretary-General as cutting across the four substantive areas of the Secretariat.s work programme (peace and security; economic and social affairs; development cooperation and humanitarian affairs).

Mainstreaming human rights primarily takes the following forms:

- Adoption of a.human rights-based approach. to activities carried out in terms of the respective mandates of components of the United Nations system;
- Development of programmes or projects addressing specific human rights issues;
- Reorientation of existing programmes as a means of focusing adequate attention on human rights concerns;
- Inclusion of human rights components in field operations of the United Nations;
- The presence of human rights programmes in all structural units of the Secretariat responsible for policy development and coordination. The Office of the High Commissioner for Human Rights plays a lead role in the integration of human rights throughout the United Nations system.

PREVENTIVE ACTION AND EARLY WARNING

Violations of human rights are very often the root cause of humanitarian disasters, mass exoduses or refugee flows. Therefore, at the first signs of conflict, it is vital to deter the parties involved from committing human rights violations thus defusing situations which may lead to humanitarian disasters. The United Nations has already developed early warning systems to detect potential conflicts. Incorporating human rights into this system by addressing the root causes of potential conflict will contribute to prevention of humanitarian and human rights tragedies and the search for comprehensive solutions.

United Nations human rights procedures and mechanisms such as the special rapporteurs and special representatives, treaty-based bodies, working groups of the Commission on Human Rights and its Sub-Commission and United Nations human rights field officers (experts, including special rapporteurs, special representatives, treaty-body experts and United Nations human rights field offices) constitute a valuable contribution to the early warning mechanisms for impending humanitarian and human rights crises.

When information gathered is shared with other branches of the United Nations, such as the Office of the Coordinator for Humanitarian Affairs (OCHA), the Executive Committee on Peace and Security and Humanitarian Affairs, the Department of Political Affairs (DPA), the Department of Peace-keeping Operations (DPKO)and other conflict assessments are better informed. Based

on the results from situation analysis, measures are considered to prevent the occurrence of crises. A human rights analysis contributes to more effective plans for tailoring prevention to the needs of imminent disasters. The integration of human rights into preventive action and early warning systems is designed to bolster the accuracy of the early warning capacity of the United Nations in the humanitarian field by integrating human rights concerns before crises arise. This prepares the ground for effective cooperation before, during and after crises.

HUMAN RIGHTS AND HUMANITARIAN OPERATIONS

The link between humanitarian law and human rights law was discussed in the introduction. There is increasing consensus that humanitarian operations must integrate human rights into conflict situations.

Humanitarian operations are established in conflict or complex emergency situations where priorities have traditionally focused on addressing the most immediate needs–the delivery of humanitarian assistance. It is now understood that needs-based operations should also incorporate a human rights-based approach which serves to address both immediate needs and longer-term security.

In conflict and complex emergency situations, identification of human rights violations and efforts to protect those rights are essential, particularly as States may be unwilling or unable to protect human rights. Human rights issues are being integrated into humanitarian operations in various ways. The Executive Committee on Humanitarian Affairs brings together relevant departments of the United Nations thus ensuring a co-ordinated and integrated approach to humanitarian issues. The Office of the High Commissioner for Human Rights is involved in the work of the Committee: this ensures the incorporation of a human rights dimension into the work and policy development in this field.

Steps are being taken to guarantee that humanitarian field staff are trained in methods of basic human rights intervention, standards and procedures; to secure close field cooperation between human rights and humanitarian bodies; to ensure that a human rights dimension is included when developing strategies for major humanitarian efforts; and to encourage human rights monitoring in humanitarian operations.

HUMAN RIGHTS AND PEACE-KEEPING

The maintenance of international peace and security is one of the prime functions of the United Nations Organization. The importance of human rights in sustainable conflict resolution and prevention is gaining ground. Armed civilian conflicts are characterized by large-scale human rights violations which can often be traced to structural inequalities and the resulting imbalances in the accessibility of power and resources. The need for peacekeeping efforts to address human rights issues is apparent.

The guarantee of a comprehensive approach to United Nations strategies for peace and security is conditional on the integration of human rights issues into all peace-keeping operations at the planning and preparatory stage of needs

assessments. To date, human rights mandates have been incorporated into the duties of several peace-keeping operations and predictably, in the years to come, the cooperation between DPA, DPKO and OHCHR will increase. Co-operation has in large part taken the shape of human rights training for peace-keeping personnel, including the military, civilian police and civilian affairs officers.

In some cases, OHCHR has been called upon to ensure the continuation of peace-keeping operations by establishing a human rights presence on conclusion of the peace-keepers' mandate. With recent developments, cooperation has extended to the creation of joint DPKO/OHCHR human rights components in peace-keeping operations. Under the authority of the Representative/Special Representative of the Secretary-General in charge of the operation, the peace-keeping operation receives substantive human rights guidance from OHCHR.

INTEGRATION OF HUMAN RIGHTS INTO DEVELOPMENT

As early as 1957, the General Assembly expressed the view that a balanced and integrated economic and social development programme would contribute towards the promotion and maintenance of peace and security, social progress, better standards of living and the observance of and respect for human rights and fundamental freedoms. This approach was given increased prominence by the Teheran World Conference on Human Rights and later recognized as a paramount concern by the second World Conference on Human Rights held in Vienna in June 1993. that genuine and sustainable development requires the protection and promotion of human rights. Development is not restricted to meeting basic human needs; it is, indeed, a right. With a rights-based approach, effective action for development moves from the optional realm of charity, into the mandatory realm of law, with identifiable rights, obligations, claim-holders, and duty-holders.

When development is conceived as a right, the implication is that someone holds a claim, or legal entitlement and a corresponding duty or legal obligation. The obligation which devolves upon Governments (individually by States vis-a-vis their own people, and collectively by the international community of States) is, in some cases, a positive obligation (to do, or provide something) and, in others, a negative obligation (to refrain from taking action).What is more, embracing the rights framework opens the door to the use of a growing pool of information, analysis and jurisprudence developed in recent years by treaty bodies and other human rights specialists on the requirements of adequate housing, health, food, childhood development, the rule of law, and virtually all other elements of sustainable human development.

The obligation to respond to the inalienable human rights of individuals, and not only in terms of fulfilling human needs, empowers the people to demand justice as a right, and it gives the community a sound moral basis on which to claim international assistance and a world economic order respectful of human rights. The adoption of a rights-based approach enables United Nations organs to draw up their policies and programmes in accordance with internationally

recognized human rights norms and standards. The United Nations Development Assistance Framework (UNDAF) was established as part of the Secretary-General;s Programme of Reform. UNDAF is a common programme and resources framework for all members of the United Nations Development Groups (UNDG) and, wherever possible, for the United Nations system as a whole. The objective of the programme is to maximize the collective and individual development impact of participating entities and programmes of assistance; intensify collaboration in response to national development priorities; and ensure coherence and mutual reinforcement among individual programmes of assistance. The ad hoc Working Group of the Executive Committee of the UNDG is mandated to develop a common UNDG approach for enhancing the human rights dimension in development activities.

In order to facilitate the process of integrating human rights into development, the Administrator of the United Nations Development Programme and OHCHR have signed a memorandum of understanding seeking to increase the efficiency and effectiveness of the activities carried out within their respective mandates through cooperation and coordination. OHCHR will facilitate close cooperation between UNDP and the United Nations human rights organs, bodies and procedures, and will examine, with UNDP, the possibilities of joint initiatives aimed at implementing the human right to development, placing particular emphasis on defining indicators in the area of economic and social rights and devising other relevant methods and tools for their implementation.

STATE-CENTRIC VIEW OF INTERNATIONAL POLITICS

There is no doubt that the state-centric view of international politics has not faded away completely, but it is also obvious that this view is unsustainable in its traditional form. The traditional view of state sovereignty and the principle of non-intervention have been challenged by economic inter-dependencies, transnational organisations and movements, and legal obligations undertaken by states that raise the individual as a subject of international politics and law.

In the face of emerging awareness for transnational protection of the rights of individuals in global politics, the rights of states are not as central to international politics and law as they used to be. While liberal-democratic states respond and contribute to the internationalisation of human rights through their foreign policy, the illiberal states try to resist to the activities of transnational civil society and liberal states by invoking an absolutist notion of national sovereignty and the principle of non-intervention. Yet, the process of globalisation in the realms of politics, economics and communication technology weakens the ability of both liberal and illiberal states to control the national space, thus eroding the conventional sovereign power of the state. The sovereign realm of the state has come to be shared both by global actors and regional-local centres of power at national level. Along these lines, demands for human rights, with their cross-national characteristics, forces the conventional notion

of sovereignty to transform itself so as to allow some degree of economic and political intervention. Growing global awareness for protecting the rights of individuals through transnational norms, institutions and processes, limits the sovereign rights of states at national and international levels.

State Responsibility for Human Rights

The obligation to protect, promote and ensure the enjoyment of human rights is the prime responsibility of States, thereby conferring on States responsibility for the human rights of individuals. Many human rights are owed by States to all people within their territories, while certain human rights are owed by a State to particular groups of people: for example, the right to vote in elections is only owed to citizens of a State. State responsibilities include the obligation to take pro-active measures to ensure that human rights are protected by providing effective remedies for persons whose rights are violated, as well as measures against violating the rights of persons within its territory.

Under international law, the enjoyment of certain rights can be restricted in specific circumstances. For example, if an individual is found guilty of a crime after a fair trial, the State may lawfully restrict a person's freedom of movement by imprisonment. Restrictions on civil and political rights may only be imposed if the limitation is determined by law but only for the purposes of securing due recognition of the rights of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

Economic, social and cultural rights may be limited by law, but only insofar as the limitation is compatible with the nature of the rights and solely to promote the general welfare in a democratic society. In a legitimate and declared state of emergency, States can take measures which limit or suspend (or.derogate. from) the enjoyment of certain rights. Such derogations are permitted only to the extent necessary for the situation and may never involve discrimination based on race, colour, sex, language, religion or social origin. Any derogation must be reported to the Secretary- General of the United Nations.

However, in accordance with article 4, of the International Covenant on Civil and Political Rights (ICCPR), certain human rights. non-derogable rights. may never be suspended or restricted even in situations of war and armed conflict. These include the right to life, freedom from torture, freedom from enslavement or servitude and freedom of thought, conscience and religion. In addition, in times of armed conflict where humanitarian law applies, human rights law continues to afford protection.

PRIMACY OF INTERNATIONAL ORDER AND SECURITY

Another group of arguments against the inclusion of human rights in foreign policy is based on the idea of the primacy of international order. Once the maintenance of international order is set as a priority in international relations, international promotion of human rights is believed to lead to some consequences that are not

compatible with this priority. International order is defined as "a pattern of activity that sustains the elementary or primary goals of the international society". The two elementary or primary goals of international society are to preserve both the society of states itself and the external sovereignty of its constituent units. Here human rights emerge as a challenge to international society with its emphasis on the rights of individuals, not that of the state, and its prescription for a recognition and protection of the rights of man on a transnational base.

If human rights assume not only a moral but also a legal form that justifies interference in the domestic jurisdiction of a sovereign state to protect the human rights of its citizens, "the basic rules of the society may be undermined". Thus, the priority of order in the international system overrides demands for universal human rights. Order and justice, like foreign policy and universal human rights are taken as contending paradigms. Referring to the formative years of the modern international system, Bull asserts, "In an international society of this sort, which treats the maintenance of order among states as the highest value, the very idea of human or natural rights...is potentially disruptive."

Against the argument for the international order, it may simply be asserted that a concern for human rights in foreign policy does not necessarily lead to an interventionist policy and endanger peace and stability. The order of interstate relations depends on many other variables. There is a chain of interdependence with regard to political, economic and defence issues that can not be broken easily because of resentment caused by an expressed concern for human rights from another country. There has also developed an understanding among states that the human rights issue has become an international concern. Therefore, many states are increasingly getting prepared for compromise on their human rights policies at home in the face of external criticism or pressure.

Furthermore, international peace and order are sustained better in an international system that consists of countries respectful of human rights. Therefore, it is not convincing that in the long run all cases of humanitarian concern via foreign policy are likely to create international instability and unlikely to result in positive domestic changes. One can also argue that the universal acceptance of the legitimacy of intervention, within a UN mandate for example, may deter states from engaging in consistent massive violation of human rights and raise standards of observation of human rights world wide.

There is also a correlative relationship between peace at home and peace in the world. Global stability and peace cannot be separated from stability and peace within the states that comprise the international system. In other words, there is an undeniable connection between domestic political structure and the attitudes of the state vis-a-vis the external world. The behaviour of a state in the international arena cannot be separated from the way in which it treats its own citizens at home. This is to say that the kind of political regime prevalent domestically strongly influences its policy towards the outside world.

A government that does not respect its own people's basic human rights may well also be a source of tension and conflict in world politics. Therefore, threats

to world order do not come from the internationalisation of human rights, but in the long term, from tyrannical sovereign states. As a result, the inclusion of human rights issues in foreign-policy making would not necessarily increase tension in world politics, on the contrary it may stabilise and standardise the behaviour of states at home and abroad.

Furthermore, an international human rights regime with mechanisms to uphold human rights globally and a genuine interest in the fate of human rights in interstate relations may also contribute to international peace and stability through the formation of a politically homogeneous international system composed of states respectful to human rights. As Aron puts it, a homogeneous international system based on the society of states sharing common principles, *i.e.*, democratic international society, is more conducive to security, peace and order.

From a Kantian standpoint, it has also been argued that "perpetual peace" can only be achieved in an international system consisted of "republics". Such a moral proposition can be supported by empirical data confirming that "democracies are unlikely to go to war against each other". Lastly, violations of human rights do not only harm individuals, groups or the people in the country concerned but may well endanger others, particularly regional countries, for repercussions of human rights violations cannot be confined within national borders. For instance, the flow of refugees that is one of the most tragic outcomes of human rights violations may reach a massive scale in some cases, with grave security implications for the sending and receiving countries, damaging both regional and international security. In fact, in recent years, the Security Council of the United Nations in its resolutions has come to make a linkage between international peace and security and humanitarian crises.

Therefore, the search for global peace and security starts with improving human rights conditions at a domestic level since there exists a clear-cut linkage between national and international security. Therefore, while the respect for human rights enhances national security the state that is involved in systematic violations of human rights endangers not only national but also international peace and security.

LANDMARK HUMAN RIGHTS CONFERENCES

Declarations and proclamations adopted during world conferences on human rights are also a significant contribution to international human rights standards. Instruments adopted by such conferences are drafted with the participation of international agencies and non-governmental organizations, reflecting common agreement within the international community and are adopted by State consensus. The Teheran and Vienna World Conferences on human rights were particularly significant for strengthening human rights standards. Both involved an unprecedented number of participants from States, agencies and nongovernmental organizations who contributed to the adoption of the Proclamation of Teheran and the Vienna Declaration and Programme of Action respectively.

TEHERAN WORLD CONFERENCE ON HUMAN RIGHTS–1968

The International Conference on Human Rights held in Teheran from April 22 to May 13 1968 was the first world meeting on human rights to review the progress made in the twenty years that had elapsed since the adoption of the UDHR. Significantly, the Conference reaffirmed world commitment to the rights and fundamental freedoms enshrined in the UDHR and urged members of the international community to.fulfil their solemn obligations to promote and encourage respect. for those rights.

The Conference adopted the Proclamation of Teheran which, inter alia, encouraged respect for human rights and fundamental freedoms for all without distinctions of any kind; reaffirmed that the UDHR is a common standard of achievement for all people and that it constitutes an obligation for the members of the international community; invited States to conform to new standards and obligations set up in international instruments; condemned apartheid and racial discrimination; invited States to take measures to implement the Declaration on the Granting of Independence to Colonial Countries; invited the international community to co-operate in eradicating massive denials of human rights; invited States to make an effort to bridge the gap between the economically developed and developing countries; recognized the indivisibility of civil, political, economic, social and cultural rights; invited States to increase efforts to eradicate illiteracy, to eliminate discrimination against women, and to protect and guarantee children's rights.

By reaffirming the principles set out in the International Bill of Human Rights, the Proclamation of Teheran paved the way for the creation of a number of international human rights instruments.

VIENNA WORLD CONFERENCE ON HUMAN RIGHTS–1993

On 14 June 1993, representatives of the international community gathered in unprecedented numbers for two weeks in Vienna to discuss human rights. The World Conference reviewed the development of human rights standards, the structure of human rights frameworks and examined ways to further advance respect for human rights. Members from 171 States, with the participation of some 7,000 delegates including academics, treaty bodies, national institutions and representatives of more than 800 non-governmental organizations, adopted by consensus the Vienna Declaration and Programme of Action. In light of the high degree of support for and consensus from the Conference, the Vienna Declaration and Programme of Action can be perceived as a forceful common plan for strengthening human rights work throughout the world. The contents of the Declaration

The Vienna Declaration and Programme of Action marked the culmination of a long process of review of and debate on the status of the human rights machinery worldwide. It also marked the beginning of a renewed effort to strengthen and further implement the body of human rights instruments that had been painstakingly constructed on the foundation of the Universal Declaration of Human Rights since 1948.

Significantly, the Vienna Declaration and Programme of Action:

- Reaffirmed the human rights principles that had evolved over the past 45 years and called for the further strengthening of the foundation for ensuring continued progress in the area of human rights;
- Reaffirmed the universality of human rights and the international commitment to the implementation of human rights;
- Proclaimed that democracy, development and respect for human rights and fundamental freedoms as interdependent and mutually reinforcing.

The Conference agenda also included examination of the link between development, democracy and economic, social, cultural, civil and political rights, and an evaluation of the effectiveness of United Nations methods and mechanisms for protecting human rights as a means of recommending actions likely to ensure adequate financial and other resources for United Nations human rights activities. The final document agreed to in Vienna was endorsed by the forty-eighth session of the General Assembly (resolution 48/121, of 1993). 1998: Five-Year Review of the Vienna Declaration and

Programme of Action

The 1993 World Conference on Human Rights requested through its final document, the Vienna Declaration and Programme of Action (VDPA), that the Secretary-General of the United Nations invite on the occasion of the fiftieth anniversary of the Universal Declaration of Human Rights all States, all organs and agencies of the United Nations system related to human rights, to report to him on the progress made in the implementation of the present Declaration and to submit a report to the General Assembly at its fifty-third session, through the Commission on Human Rights and the Economic and Social Council. (VDPA, Part II, paragraph 100). Regional bodies, national human rights institutions, as well as non-governmental organizations, were also invited to present their views to the Secretary-General on the progress made in the implementation of the VDPA five years later.

In 1998, the General Assembly concluded the review process which had begun in the Commission on Human Rights and the Economic and Social Council earlier in the year. A number of positive developments in the five years since the World Conference were noted, such as progress achieved in human rights on national and international agendas; human rights-oriented changes in national legislation; enhancement of national human rights capacities, including the establishment or strengthening of national human rights institutions and special protection extended to women, children, and vulnerable groups among others and further strengthening of the human rights movement worldwide. The General Assembly reiterated its commitment to the fulfilment of the VDPA and reaffirmed its value as a guide for national and international human rights efforts and its central role as an international policy document in the field of human rights.

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Evolution of International Law

A particular advantage of the liberal accounts of the substance, form, and enforcement of international law is that they can be extended to particularly detailed and plausible accounts of the long-term evolution of international legal norms. International law can evolve through liberal mechanisms of either exogenous or endogenous change.

Exogenous change takes place when autonomous changes in underlying ideational, commercial, and republican factors drive the elaboration, expansion, and deepening of international legal norms over time. Since exogenous trends in core liberal factors such as industrialization, competitiveness, democratization, globalization, and public ideologies often continue for decades and centuries, and vary widely geographically and functionally, such theories can support explanations for "big-picture" regularities in the scope and evolution of international law over the long term, among countries and across issues. This offers a particularly powerful means of explaining trends in substantive content.

For example, nineteenth- and twentieth-century waves of democracy and industrialization have driven a steady shift away from treaties governing military, territorial, and diplomatic practice to treaties governing economic affairs, which now dominate international law making and the activity of international tribunals, and in recent years towards human rights and human security, although the latter still remain only 15 percent of the total.

Also consistent with factors such as democratization, industrialization, and education is the fact that the development of international law has been geographically focused in developed countries, notably Europe, and has emanated outward from there. *Endogenous* evolution occurs when initial

international legal commitments trigger feedback, in the form of a shift in domestic and transnational state–society relations that alters support for the legal norms.

In liberal theory, such feedback can influence material interests (commercial liberalism), prevailing conceptions of the public good (ideational liberalism), or the composition of the "selectorate" (republican liberalism), thereby changing state preferences about the management of interdependence. Each of these three liberal feedback loops creates opportunities for "increasing returns" and internalization, but they do not assure that it will take place. It takes place, on the liberal account, only if the net preferences of groups mobilized by cooperation are positively inclined towards cooperation, and if those groups are powerful enough to have a net impact in domestic political systems. Isolating examples and conditions under which this takes place is an ongoing liberal research programme.

Exogenous and endogenous effects are often found together. There is, for example, broad agreement that exogenous shifts in technology, underlying market position, and a desire to expand permanently the size, wealth, and efficiency of the tradable sector of the economy explains the general direction of postwar changes in trade policies. Bailey, Goldstein, and Weingast (1997) argue that postwar, multilateral trade liberalization generated domestic economic liberalization, thereby increasing the underlying social support for further rounds of trade liberalization in a continuing virtuous circle of deepening international obligations. A strategy like EU enlargement is expressly designed to use this sort of incentive not just to induce a shift in trade policy, but also to engineer broader economic and political reform, as well as more cooperative international policies in the future.

In the EU and elsewhere, vertical and horizontal judicial networking can encourage deeper forms of tacit cooperation, such as "judicial comity," in which judges mutually recognize that "courts in different nations are entitled to their fair share of disputes…as co-equals in the global task of judging". As a result, domestic courts no longer act as mere recipients of international law, but instead shape its evolution. Moreover, as we saw in the area of multilateral trade, legal cooperation may have broader effects on political and economic systems, both intended and unintended.

Even French President Charles de Gaulle, in many ways an archetypical defender of traditional sovereignty, committed France to firm legal developments with the deliberate goal of fundamentally reforming and modernizing the French economy – adaptations that altered French attitudes over the long term and facilitated more cooperation. More recently, EU enlargement has been employed as a means to encourage broad reforms in domestic politics, economics, and societies. Even the distant prospect of enlargement, as was the case in Turkey, encouraged movements towards Islamist democracy that are now irreversible.

What is the relative impact of exogenous and endogenous effects on international law? Here, research still progresses and, obviously, the answer

depends on the specific case. Nonetheless, the available evidence suggests that, in general, exogenous factors seem to have a more significant effect than endogenous ones on substantive state policies.

The broad constraints on compliance and elaboration tend to be set by patterns of interdependence among countries with underlying national preferences – even if endogenous effects can dominate on the margin and in particular cases. Consider two examples. One is European integration. "Neo-functionalists," such as Ernst Haas, long stressed the essential importance of endogenous processes ("spillovers") in explaining integration. Recently, Alec Stone Sweet and Wayne Sandholtz (1997) have sought to revive the argument for endogenous effects, presenting legal integration as the primary cause of economic integration. Yet, it is now widely accepted that Europe has responded primarily to exogenous economic and security shocks.

Nearly all basic economic analyses, which leave little doubt that exogenous liberal processes (factors such as size, proximity, level of development, common borders, common language) explain the bulk (around 80 percent) of postwar economic integration in Europe, leaving about 20 percent for other factors, such as endogenous legal development. Similarly, in the area of human rights, the consensus in the literature is that the effect of international human rights norms on state behaviour is marginal. Even those scholars who claim the most for legal norms concede that their impact is uneven and secondary to underlying exogenous factors.

Yet, the focus on substantive outcomes may underestimate some endogenous effects. In the same case of the EEC, Weiler, Slaughter, Alter, and others have persuasively demonstrated that initial legal delegation and intervening feedback processes (sometimes unforeseen and even, in part, unwanted by national governments) can decisively influence the form of legal cooperation – even if they are not the primary cause of substantive cooperation. European Court of Justice jurisprudence embedded itself in domestic legal systems and helped establish "supremacy," "direct effect," and other doctrines. Explaining this process requires close attention to the liberal micro-incentives of litigants, domestic judges, and international courts under supranational tribunals – to which we now turn.

LIBERAL ANALYSIS OF TRIBUNALS

Liberal theorists such as Helfer and Slaughter contend that international legal regimes more deeply internalized in society often generate more effective compliance and more dynamism over time than do conventional state-to-state legal arrangements. This argument is sometimes stated as a liberal ideal type and, perhaps as a result, the Helfer-Slaughter view of international tribunals has often been criticized for positing an unrealistically linear relationship between "democracy" and the effectiveness and dynamism of international law. The resulting debates have received much scholarly attention, but the underlying critique seems misplaced.

As we have seen, liberal theory in fact predicts considerable variation in the effectiveness and dynamism of international law, both among democracies and among autocracies, based on variation in domestic and transnational ideas, interests, and institutions – a finding that may coexist with the observation that democracies are, as a whole, more law-abiding. This liberal claim (properly understood) has been accepted by its critics, and their queries are best viewed as friendly amendments or extensions to liberal theory. Neo-conservative critics, such as Eric Posner and John Yoo, allege that liberal theory overestimates the extent of vertical internalization. Yet, in fact, Posner and Yoo accept most of the liberal empirical argument.

They concede that interest group pressures shape state interests in the promulgation and enforcement of international law. They acknowledge that vertical enforcement and evolutionary dynamics sometimes occur – notably in the significant areas of WTO enforcement and in promoting democratic peace.

They also accept that the EU and the ECHR exhibit more dynamism than other legal systems, though they seek to exclude Europe from consideration as an exceptional "political union". Yet, excluding Europe paints an arbitrary and misleading picture of international law, not simply because it eliminates over a quarter of the global economy and a much greater proportion of global trade, investment, and law making, but also because EU scholars do not view the institutions as an exceptional "federation," but rather, as do Helfer and Slaughter, as the most interdependent and uniformly democratic of continents.

Posner does insist, rightly, that dominant interest group coalitions lack "a commitment to international law" per se and thus may oppose the promulgation and enforcement of international norms if they are inconsistent with social interests. He and liberals agree that liberal analysis of international law requires underlying theories to explain variation in social and state preferences across issues, countries, and time. Mills and Stephens make a similar point, from an "English school" perspective, when they argue that, it is difficult to disagree with Slaughter's argument that vertical (through domestic courts) rather than horizontal (through international bodies) enforcement of rules of international law offers the greatest potential at present for an international rule of law.

However, Slaughter must confront the reality of domestic politics when it comes to the actual use of domestic courts or highly integrated international courts. Nowhere is this more apparent than from an analysis of the failings of the United States and many other liberal states to accept or internalize international human rights standards by allowing their enforcement in domestic courts…[A]t least part of the explanation for the failure of vertical enforcement in this context must derive from the actions of individuals and groups as political actors within democratic states.

Perhaps early formulations of liberal theory were too dichotomous, but the theory, properly understood, is based on precisely the need to theorize the state-society foundations of the variation in the response of liberal states to international law. The fact that compliance requires such an analysis seems an

argument for, not against, the centrality of liberal theory. Harold Koh similarly criticizes liberals for exaggerating the link between democracy and the dynamic success of international law. He presents himself as a "constructivist" and seeks to argue the contrary of the conservative case, namely that Helfer and Slaughter underestimate the extent to which internalization may occur in non-European and especially nondemocratic settings. Yet, Koh's most important conclusions, too, dovetail with those of liberal theory.

First, his claim that some vertical enforcement can take place in non-democracies is consistent with liberal theory. To present this fact as a critique creates disagreement where none exists. Helfer and Slaughter do maintain that democratic states are more likely to establish dynamic and successful vertical "supranational" adjudication systems, yet, as we have seen, they do not view this relationship as dichotomous: "Non-democracies may have democratic impulses, embodied in specific institutions; illiberal states may have strong liberal leanings". For example, international economic law can be developed with a nondemocratic China, while even the most advanced democracies, such as the United States in human rights, have incentives to resist compliance with international norms, which is why courts always need be jurisprudentially incremental and politically cautious.

Second, although Koh superficially rejects the importance of regime-type for domestic internalization, his view that internalization is promoted by stable, repeated interactions, the "legal" quality of norms, open transnational legal interaction, and a rich field of NGOs puts him on a slippery slope to recognizing its importance. As Joel Trachtman observes, Koh's simple claim that "repeated participation in the international legal process" leads to norm acceptance "is hardly theoretically satisfying" on its own because "repeated interaction with duplicity or hostility would not necessarily change anyone's ideas, or their incentives to comply" or "necessarily overcome strong incentives to defect".

In fact, this mechanism is likely to function in the way constructivists imagine only under certain (liberal) preconditions, as Koh himself concedes: "the structural attributes of liberal systems undeniably make them more open to some kinds of internalization". Indeed, the qualities Koh stresses—stable interaction, legality, open interaction, and civil society—all depend on democratic institutions. Without transparency, accountability, issue-advocacy networks, and professional status, legal processes are unlikely to have a consistently positive effect. As Keohane observes, "[i]nstead of downplaying the point, it would seem wiser to elaborate it" – something Slaughter and other liberals have done in work on transnational networks and democratic institutions.

Third, while Koh's approving references to Thomas Franck, suggestive use of the term "internalization," and self-identification as a "constructivist" seem to suggest that he holds a non-rationalist or "non-liberal" theory of international law, he does not in fact commit to the distinctive causal mechanisms of these theories, but rather to liberal ones. Unlike Franck, Goodman, or others, he does not portray states as governed by "logics of appropriateness" drawn from habit,

cognitive framing, psychology, deontological morality, or standard operating procedures – and he avoids Frank's view that law-abiding states will necessarily be more law-abiding abroad simply because they transfer legalistic habits of mind.

Instead, like Helfer and Slaughter, Koh believes that dynamic legal cooperation is possible with semi-democratic or nondemocratic states in selected areas primarily because states pragmatically seek to realize interests and ideals. Legal agreements are possible between China and the United States, for example, because a measure of largely self-interested institutional autonomy has been granted to economic law, even when fundamental disagreement remains in other areas. These are quintessentially liberal processes of instrumental pursuit of specific material interests and ideals channeled through representative institutions. Overall, Koh's specific use of theoretical language from IR theory seems misplaced—a case of paradigms hindering understanding.

INTERNATIONAL LEGAL THEORY

The intellectual seeds of modern international law germinated in the 16th and 17th centuries, when the influence of the Roman Catholic Church in international affairs gradually weakened. Many early international legal theorists were concerned with axiomatic truths thought to be reposed in natural law. Among the early natural law writers, Francisco de Victoria, Dominican professor of theology at the University of Salamanca, examined the question of just war and Spanish authority in the Americas. He did so while Spain was at the height of its power, after the violent Spanish conquest of Peru in 1536.

ECLECTIC SCHOOL

Central in the development of modern international law was Hugo Grotius a Dutch theologian, humanist and jurist. In his principal work De jure Belli ac Pacis Libri Tres ("Three Books on the Law of War and Peace"; 1625), Grotius claimed that nations as well as persons ought to be governed by universal principle based on morality and divine justice. Much of Grotius's content drew from the Bible and from classical history (just war theory of Augustine of Hippo). Drawing also from domestic contract law, he also noted that relations between polities were governed by jus gentium, the law of peoples, which had been established by the consent of the community of nations.

The fundamental facets of the Grotian or eclectic school, especially the doctrines of legal equality, territorial sovereignty, and independence of states, became definitive to international law in Europe. These principals were recognised in the Peace of Westphalia and became the foundation for the treaties of Osnabrack and Manster. Another eclectic thinker, German philosopher Christian von Wolff, contended that the foundation for international community should come as a world superstate (civitas maxima), having authority over the component member states. This view was rejected by the Swiss diplomat Emmerich de Vattel, who favoured a rationale of equality of states as articulated

by 18th century natural law. Vattel suggested in his major work Le droit des gens that the law of nations was comprised of custom and law on the one hand, and natural law on the other.

Legal Positivism

The early positive school emphasized the importance of custom and treaties as sources of international law. Among the early positivists was Alberico Gentilis, a professor of civil law at Oxford who used historical examples to posit that positive law (jus voluntarium) was determined by general consent. Another professor at Oxford, Richard Zouche, published the first manual of international law in 1650.

In the 18th century legal positivism became popular and found its way into international legal philosophy. The principal figure among 18th century positivists was Cornelius van Bynkershoek, a celebrated Dutch jurist who asserted that the bases of international law were customs and treaties commonly consented to by various states. A second positivist, John Jacob Moser was a prolific German scholar who emphasized the importance of state practice in international law. A contemporary German scholar, Georg Friedrich von Martens, published the first systematic manual on positive international law, Precis du droit des gens moderne de l'Europe. The growth of nationalism and Hegelian philosophy in the 19th century pushed natural law farther from the legal realm. Commercial law became nationalized into private international law, distinct from public international law. Positivism narrowed the range of international practice that might qualify as law, favouring rationality to morality and ethics. The Congress of Vienna in 1815 marked formal recognition of the political and international legal system based on the conditions of Europe.

BRANCHES OF INTERNATIONAL LAW

- International criminal law
- The law pertaining to use of force
- International human rights law
- International humanitarian law
- Law of the sea
- Diplomatic law
- Consular law
- Law of State Responsibility
- International environmental law
- International trade law.

The Bretton Woods Conference of 1944 proposed the creation of an International Trade Organization (ITO) to establish rules and regulations for trade between countries. The ITO would have complemented the other two Bretton Woods Institutions: The International Monetary Fund (IMF) and the World Bank. The ITO charter was agreed at the UN Conference on Trade and Employment in Havana in March 1948, but was blocked by the U.S., Senate.

As a result, the ITO never came into existence. It has been suggested that the failure may have resulted from fears within the American business community that the International Trade Organization could be used to regulate European cartels rather than to break them up.

Only one element of the ITO survived: The General Agreement on Tariffs and Trade (GATT). Seven rounds of negotiations occurred under GATT before the eighth round-the Uruguay Round-concluded in 1995 with the establishment of the World Trade Organisation (WTO) as the GATT's replacement. The GATT principles and agreements were adopted by the WTO, which was charged with administering and extending them.

NEW TRADE THEORY

New Trade Theory (NTT) is the economic critique of international free trade from the perspective of increasing returns to scale and the network effect. Beginning in the 1970s some economists asked whether it might be effective for a nation to shelter infant industries until they had grown to sufficient size to compete internationally.

The Theory

New Trade theorists challenge the assumption of diminishing returns to scale, and some argue that using protectionist measures to build up a huge industrial base in certain industries will then allow those sectors to dominate the world market (via a Network effect). They wondered whether free trade would have prevented the development of the Japanese auto industries in the 1950s, when quotas and regulations prevented import competition. Japanese companies were encouraged to import foreign production technology but were required to produce 90 per cent of parts domestically within five years. It is said that the short-term hardship of Japanese consumers (who were unable to buy the superior vehicles produced by the world market) was more than compensated for by the long-term benefits to producers, who gained time to out-compete their international rivals.

Less quantitative forms of this "infant industry" argument against totally free trade have been advanced by trade theorists since at least 1848.

Impact of the Theory

Although there was nothing particularly 'new' about the idea of protecting 'infant industries' (an idea offered in theory since the 18th century, and in trade policy since the 1880s) what was new in "New Trade Theory" was the rigour of the mathematical economics used to model the increasing returns to scale, and especially the use of the network effect to argue that the formation of important industries was path dependent in a way which industrial planning and judicious tariffs might control. The model they developed was highly technical, and predicted the possibilities of national specialization-by-industry observed in the industrial world (movies in Hollywood, watches in Switzerland, etc). The story of path-dependent industrial concentrations sometimes leads to monopolistic competition.

Econometric Testing

The econometric evidence for NTT was mixed, and again; highly technical. Due to the time-scales required and the particular nature of production in each 'monopolizable' sector, statistical judgements have been hard to make. In many ways, there is too limited a data-set to produce a reliable test of the hypothesis which doesn't require arbitrary judgements from the researchers.

Japan is cited as evidence of the benefits of "intelligent" protectionism, but critics of NTT have argued that the empirical support post-war Japan offers for beneficial protectionism is unusual, and that the NTT argument is based on a selective sample of historical cases. Although many examples (like Japanese cars) can be cited where a 'protected' industry subsequently grew to world status, regressions on the outcomes of such "industrial policies" (including the failures) have been less conclusive.

History of the Theory's Development

The theory was initially associated with Paul Krugman and the MIT economists of the early 1970s. Looking back in 1996 Krugman wrote that International economics a generation earlier had completely ignored returns to scale::"The idea that trade might reflect an overlay of increasing-returns specialization on comparative advantage was not there at all: instead, the ruling idea was that increasing returns would simply alter the pattern of comparative advantage."

OPEC

The Organization of the Petroleum Exporting Countries (OPEC) is made up of Algeria, Indonesia, Iran, Iraq, Kuwait, Libya, Nigeria, Qatar, Saudi Arabia, the United Arab Emirates, and Venezuela; since 1965 its international headquarters have been in Vienna, Austria.

The principal aim of the Organization, according to its Statute, is "the coordination and unification of the petroleum policies of its member countries and the determination of the best means for safeguarding their interests, individually and collectively; devising ways and means of ensuring the stabilization of prices in international oil markets with a view to eliminating harmful and unnecessary fluctuations; giving due regard at all times to the interests of the producing nations and to the necessity of securing a steady income to the producing countries; an efficient, economic and regular supply of petroleum to consuming nations, and a fair return on their capital to those investing in the petroleum industry." OPEC's influence on the market has not always been a stabilizing one, however. It alarmed the world and triggered high inflation across both the developing and developed world through its use of the oil weapon in the 1973 oil crisis.

Its ability to control the price of oil has diminished greatly since its heyday, following the much-expanded development of the Gulf of Mexico, the North

Sea, and the growing fluidity of the market. However, OPEC still has considerable impact on the price of oil. It is still commonly used as a textbook example of a cartel.

MEMBERSHIP

The Organization now has 11 member states. They are listed below with their affiliation dates.

Africa:

- (July 1969)
- (December 1962)
- (July 1971)

Middle East:

- (September 1960)
- (September 1960)
- (September, 1960)
- (December 1961)
- (September 1960)
- (November 1967)

South America:

- (September 1960)

Southeast Asia:

- (December 1962. Membership currently under review as Indonesia is no longer considered by OPEC as a net oil exporter. See also current acting OPEC secretaries general)

Former Members:

- (Full member from 1975 to 1995)
- (Full member from 1963 to 1993)

OPEC's official language is English, although the official language of a majority of OPEC member-states is Arabic, as seven current members are Arab states. Only one member nation (Nigeria) has English as an official language.

History

Venezuela was the first country to move towards the establishment of the Organization of the Petroleum Exporting Countries (OPEC) by approaching Iran, Iraq, Kuwait and Saudi Arabia, in 1949, and suggesting that they exchange views and explore avenues for regular and closer communications between them. In September 1960, government of Iraq invited Iran, Kuwait, Saudi Arabia and Venezuela to meet in Baghdad, to discuss the reduction in prices of crudes produced by their respective countries. As a result OPEC was founded to unify and coordinate members' petroleum policies.

Original OPEC members include Iran, Iraq, Kuwait, Saudi Arabia, and Venezuela. Between 1960 and 1975, the organization expanded to include Qatar (1961), Indonesia (1962), Libya (1962), the United Arab Emirates (1967), Algeria (1969), and Nigeria (1971). Ecuador and Gabon were members of OPEC, but

Ecuador withdrew in December 1992, and Gabon followed suit in January 1995. Although Iraq remains a member of OPEC, Iraqi production has not been a part of any OPEC quota agreements since March 1998. EIA estimates that the current eleven OPEC members account for about 40% of world oil production, and about 2/3 of the world's proven oil reserves.

The Yom Kippur War

The persistence of the Arab-Israeli conflict finally triggered a response that transformed OPEC from a mere cartel into a formidable political force. After the Six Day War of 1967, the Arab members of OPEC formed a separate, overlapping group, the Organization of Arab Petroleum Exporting Countries, for the purpose of centering policy and exerting pressure on the West over its support of Israel. Egypt and Syria, though not major oil-exporting countries, joined the latter grouping to help articulate its objectives. Later, the Yom Kippur War of 1973 galvanized Arab opinion. Furious at the emergency re-supply effort that had enabled Israel to withstand Egyptian and Syrian forces, the Arab world imposed the 1973 oil embargo against the United States and Western Europe. In the 1970s, the great Western oil conglomerates suddenly faced a unified block of producers.

This Arab-Israeli conflict triggered a crisis already in the making. They consistently drew the oil away from non-Arab nations. The West could not continue to increase its energy use 5% annually, pay low oil prices, yet sell inflation-priced goods to the petroleum producers in the Third World. This was stressed by the Shah of Iran, whose nation was the world's second-largest exporter of oil, and the closest ally of the United States in the Middle East at the time. "Of course [the world price of oil] is going to rise," the Shah told the New York Times in 1973. "Certainly! And how...; You [Western nations] increased the price of wheat you sell us by 300%, and the same for sugar and cement...; You buy our crude oil and sell it back to us, redefined as petrochemicals, at a hundred times the price you've paid to us...; It's only fair that, from now on, you should pay more for oil. Let's say 10 times more." Quoted in Walter LaFeber, Russia, America, and the Cold War (New York, 2002), p. 292.

Operations

OPEC's member countries hold about two-thirds of the world's oil reserves. They supply 40% of the world's oil production and half of the exports.

Since worldwide oil sales are denominated in U.S., dollars, changes in the value of the dollar against other world currencies affect OPEC's decisions on how much oil to produce. For example, when the dollar falls relative to the other currencies, OPEC-member states receive smaller revenues in other currencies for their oil, causing substantial cuts in their purchasing power, because they continue to sell oil in the U.S., dollar. After the introduction of the euro, Iraq decided it wanted to be paid for its oil in euros instead of US dollars.

OPEC decisions have considerable influence on international oil prices. For example, in the 1973 energy crisis OPEC refused to ship oil to western countries

that had supported Israel in the Yom Kippur War or October War, which they fought against Egypt and Syria. This refusal caused a fourfold increase in the price of oil, which lasted five months, starting on October 17, 1973, and ending on March 18, 1974. OPEC nations then agreed, on January 7, 1975, to raise crude oil prices by 10%. At that time, OPEC nations-including many who had recently nationalized their oil industries-joined the call for a new international economic order to be initiated by coalitions of primary producers. Concluding the First OPEC Summit in Algiers they called for stable and just commodity prices, an international food and agriculture programme, technology transfer from North to South, and the democratization of the economic system. The policy has been successful, causing the price of crude oil to rise to levels that had, at one time, been reached only by refined products. However, OPEC's ability to raise prices does have some limits. An increase in oil price decreases consumption, and could cause a net decrease in revenue. Furthermore, an extended rise in price could encourage systematic behaviour change, such as alternative energy utilization, or increased conservation.

Leading up to the 1990-91 Gulf War, Iraqi President Saddam Hussein advocated that OPEC push world oil prices up, thereby helping Iraq, and other member states, service debts. But the division of OPEC countries occasioned by the Iraq-Iran War and the Iraqi invasion of Kuwait marked a low point in the cohesion of OPEC. Once supply disruption fears that accompanied these conflicts dissipated, oil prices began to slide dramatically. After oil prices slumped at around $10 a barrel, concerted diplomacy, sometimes attributed to Venezuela's president Hugo Chajvez, achieved a coordinated scaling back of oil production beginning in 1998. In 2000, Chajvez hosted the first summit of heads of state of OPEC in 25 years. In August 2004, OPEC began communicating that its members had little excess pumping capacity, indicating that the cartel was losing influence over crude oil prices. Indonesia is reconsidering its membership having become a net importer and being unable to meet its production quota.

TRADITIONAL INTERNATIONAL LAW AND WARS OF NATIONAL LIBERATION

What recognition, if any, could wars of national liberation gain under these categories of conflicts of international law? Wars of national liberation take multifarious forms, from sporadic riots to sustained and concerted use of force against the established government.

Therefore, the merits of each individual war of national liberation would have to be examined in order to deduce whether the threshold for insurgency or belligerency has been passed, and deduce whether the application of international law should be triggered. Of course, as discussed above, one of the problems with this is the lack of clear and definite criteria for the recognition of insurgency.

Indeed, while belligerent status is more easily defined, some uncertainty still persists in this area also. The second major obstacle to the application of

the status of belligerency to wars of national liberation is the reluctance of all States to admit that they have a serious conflict occurring within their borders. Firstly, this would show that the situation was out of control and that the central government could no longer deal with it.

Secondly, an admission of this sort – that the groups of rebels actually were belligerents recognised by international law –would give legitimacy to their challenge to the established government. However, recognition of insurgency, or preferably, belligerency, was the only way in which those engaged in a war of national liberation were entitled to *jus in bello* under traditional international law. Recognition of belligerency would especially have been of great importance to such insurgents in order to offer some humanitarian protection to the 'freedom fighters' and to limit casualties of war. Moir points out that:

An examination of some major internal conflicts of the nineteenth and early twentieth centuries shows that, in those cases where the laws of war were accepted and applied by opposing forces, some form of recognition of belligerency had invariably taken place. In contrast, where recognition of belligerency was not afforded by the government, the laws of war tended not to be applied, leading to barbaric conduct by both sides. He goes on to state that '…recognition of belligerency tended to encourage the observance of the humanitarian rules of warfare, whereas an absence of recognition did the opposite.'

Some national liberation movements would have come very close to attaining, if not passing, the threshold required for belligerency by satisfying the necessary criteria as discussed by Schlindler and Higgins above. Yet the fact remains that a state of belligerency has never been recognised in a war of national liberation. Therefore, as Wilson comments, '…[d]iscussion of what rights and duties are applicable under traditional international law when belligerency of a national liberation movement is recognised is highly theoretical and devoid of practice in support of theory.'

Prior to 1949, 'rebels'/members of national liberation movements were mainly dealt with as criminals under municipal law. This was the common practice of States before international humanitarian law dealt with non-international conflicts in Common Article 3 to the 1949 Geneva Conventions. However, if the conflict/'rebellion' was in any way protracted, governments often softened or moderated their position in order to afford some protection or benefits to those engaged in combat against the established government. The first attempt to codify this approach is to be found in Francis Lieber's Instructions for the Government of Armies of the United States in the Field, which was formulated for use in the US civil war. This war has been called the first war of the 'modern era'. During the course of this non-international conflict, 'combatants' on both sides were generally treated as legitimate combatants and were also treated as prisoners-of-war if captured. The Boer War also saw captured Boers treated as prisoners-of-war by the British until the annexation of the Boer Republics. This behaviour by established governments was, however, a

matter of courtesy, not obligation and was not always afforded. An example of where an established government did not honour this commitment was the behaviour of the Greek government during the Greek Civil War of 1946 to 1949. As Wilson comments:

The record of State practice when confronting organized resistance movements or secessionist movements is not entirely Draconian. Governments may eventually treat captured persons in an internal armed conflict as prisoners of war, even if they do not recognize them as such. It was generally agreed that according to accepted principles of international law there was no obligation for them to do so, and no government granting analogous treatment to captured prisoners prior to the 1949 Geneva Conventions in an internal armed conflict where the rebels were not recognized as insurgents claimed to do so out of any legal duty. It was a matter of policy and expediency rather than legal obligation.

SOURCES OF INTERNATIONAL LAW

Treaties

Treaties are the major mechanism for international cooperation in international relations, and the main source of international law today. The starting point for determining what a treaty is, is to be found in a treaty itself, a treaty on treaty law, namely the Vienna Convention on the Law of Treaties, which was concluded in1969, and entered into force in 1980. (Herein after referred to as the 1969 Vienna Convention). Many provisions of the 1969 Vienna Convention are considered to be binding on all States. Vienna Convention 1969 defines a treaty as: "an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation." Accordingly, "whatever its particular designation", the designation employed in a document does not determine whether it is a treaty or not.

Irrespective of the designation, an international agreement falling under the above definition is considered to be a treaty. The term 'treaty' is the generic name, and there are very many terms used to indicate the same. The term 'treaty' encompasses, among others, the terms convention, agreement, pact, protocol, charter, statute, covenant, engagement, accord, exchange of notes, modus vivendi, and memorandum of understanding. As long as they fall under the above definition, they refer to international instruments that are binding under international law. International organizations are also recognized as capable of possessing the power to conclude treaties. Sometimes some of these terms may be employed by drafters and negotiators to suggest other meanings; that is, they can also be used to mean something other than treaties, which, on occasion, makes the terminology confusing. The various terms may be employed to indicate differing degrees of political or practical significance. For example, a simple bilateral agreement on technical or administrative cooperation will rarely be designed 'Covenant' or 'Charter', where as an agreement establishing an

international organization will usually not be given such labels as 'Agreed Minutes' or 'Memorandum of Understanding'. So, the nature of the labelling used to describe an international agreement may say something about its content, although this is not always the case. The two principal categories are the bilateral and the multilateral agreements, the former having only two parties and the latter at least two, and often up to global participation.

- *Treaty:* The term 'treaty' can be used as a common generic term or as a particular term which indicates an instrument with certain characteristics. There are no consistent rules to determine when State practice employs the terms 'treaty' as a title for an international instrument. Although in the practice of certain countries, the term treaty indicates an agreement of a more solemn nature. Usually the term 'treaty' is reserved for matters of some gravity. In the case of bilateral agreements, signatures affixed are usually sealed. Typical examples of international instruments designated as 'treaties' are Peace Treaties, Border Treaties, Delimitation Treaties, Extradition Treaties and Treaties of Friendship, Commerce and Cooperation. The designation 'convention' and 'agreement' appear to be more widely used today in the case of multilateral environmental instruments.
- *Agreement:* The term 'agreement' can also have a generic and a specific meaning. The term 'international agreement' in its generic sense consequently embraces the widest range of international instruments. In the practice of certain countries, the term 'agreement' invariably signifies a treaty. 'Agreement' as a particular term usually signifies an instrument less formal than a 'treaty' and deals with a narrower range of subject-matter. There is a general tendency to apply the term 'agreement' to bilateral or restricted multilateral treaties. It is employed especially for instruments of a technical or administrative character, which are signed by the representatives of government departments, and are not subject to ratification. Typical agreements deal with matters of economic, cultural, scientific and technical cooperation, and financial matters, such as avoidance of double taxation. Especially in international economic law, the term 'agreement' is also used to describe broad multilateral agreements (*e.g.*, the commodity agreements). Nowadays the majority of international instruments, and international environmental instruments, are designated as agreements.
- *Convention:* The term 'convention' can also have both a generic and a specific meaning. The generic term 'convention' is synonymous with the generic term 'treaty'. With regard to 'convention' as a specific term, in the last century it was regularly employed for bilateral agreements, but now it is generally used for formal multilateral treaties with a wide range of parties. Conventions are normally open for participation by the international community as a whole, or by a large number of States. Usually the instruments negotiated under the auspices of the United

Nations are entitled conventions (*e.g.*, the 1992 Convention on Biological Diversity, the 1982 United Nations Convention on the Law of the Sea). The same holds true for instruments adopted by an organ of an international organization (*e.g.*, the 1989 Convention on the Rights of the Child, adopted by the General Assembly of the UN). Because so many international instruments in the field of environment and sustainable development are negotiated under the auspices of the United Nations, many instruments in those areas are called 'conventions' such as the Desertification Convention, Convention on Biological Diversity, the Convention on Persistent Organic Pollutants, among others.

- *Charter:* The term 'charter' is used for particularly formal and solemn instruments, such as the constituent treaty of an international organization. The term itself has an emotive content that goes back to the Magna Carta of 1215. Well-known more recent examples are the 1945 Charter of the United Nations, the 1963 Charter of the Organization of African Unity and the 1981 Banjul Charter on Human and Peoples 'Rights. The 1982 World Charter for Nature is a resolution adopted by the General Assembly of the United Nations and not a treaty.
- *Protocol:* The term 'protocol' is used for agreements less formal than those entitled 'treaty' or 'convention'. A protocol signifies an instrument that creates legally binding obligations at international law. In most cases this term encompasses an instrument which is subsidiary to a treaty. The term is used to cover, among others, the following kinds of instruments
  - A Protocol of Signature is an instrument subsidiary to a treaty, and drawn up by the same parties. Such a protocol deals with additional matters such as the interpretation of particular clauses of the treaty. Ratification of the treaty will normally also involve ratification of such a protocol.
  - An Optional Protocol to a treaty is an instrument that establishes additional rights and obligations with regard to a treaty. It is sometimes adopted on the same day, but is of independent character and subject to independent ratification. Such protocols enable certain parties of the treaty to establish among themselves a framework of obligations which reach further than the general treaty and to which not all parties of the general treaty consent, creating a 'two-tier system'. An example is formed by the Optional Protocols to the 1966 International Covenant on Civil and Political Rights, which first Optional Protocol deals with direct access for individuals to international courts and tribunals.
  - A Protocol can be a supplementary treaty, it is in this case an instrument which contains supplementary provisions to a previous treaty, *e.g.*, the 1967 Protocol relating to the Status of Refugees to the 1951 Convention relating to the Status of Refugees.

- A Protocol can be based on and further elaborate a framework convention. This framework 'umbrella convention', which sets general objectives, contains the most fundamental rules of a more general character, both procedural as well as substantive. These objectives are subsequently elaborated and incorporated by a Protocol, with specific substantive obligations, according to rules agreed upon in the basic treaty. This structure is known as the so-called 'framework-protocol approach '.Examples are the 1985 Vienna Convention on the Ozone Layer and its 1987Montreal Protocol with its subsequent amendments; the 1992 United Nations Framework Convention on Climate Change with its 1997 Kyoto Protocol; and the1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes with its 1999 Protocol on Water and Health and its 2003 Protocol on Civil Liability and Compensation for Damage Caused by the Transboundary Effects of Industrial Accidents on Transboundary Waters.

• *Declaration:* The term 'declaration' is used to describe various international instruments. However, in most cases declarations are not legally binding. The term is often deliberately chosen to indicate that the parties do not intend to create binding obligations but merely want to declare certain aspirations. Examples are the 1992Rio Declaration on Environment and Development, the 2000 United Nations Millennium Declaration and the 2002 Johannesburg Declaration on Sustainable Development. Declarations can sometimes also be treaties in the generic sense intended to be binding at international law. An example is the 1984 Joint Declaration between the United Kingdom and China on the Question of Hong Kong, which was registered as a treaty by both parties with the UN Secretariat. It is therefore necessary to establish in each individual case whether the parties intended to create binding obligations, which can often be a difficult task. Some instruments entitled 'declarations' were not originally intended to have binding force, but their provisions may have reflected customary international law or may have gained binding character as customary law at a later stage, as is the case with the 1948 Universal Declaration of Human Rights.

Once the text of a treaty is agreed upon, States indicate their intention to undertake measures to express their consent to be bound by the treaty. Signing the treaty usually achieves this purpose, and a State that signs a treaty is a signatory to the treaty. Signature is a voluntary act. Often major treaties are opened for signature amidst much pomp and ceremony. Once a treaty is signed, customary law, as well as the 1969 Vienna Convention, state that a State must not act contrary to the object and purpose of the particular treaty, even if it has not entered into force yet.

The next step is the ratification of the treaty. Bilateral treaties, often dealing with more routine and less politicized matters, do not normally require ratification, and are brought into force by definitive signature, without recourse to the procedure of ratification. The signatory State will have to comply with its constitutional and other domestic legal requirements in order to ratify the treaty. This act of ratification, depending on domestic legal provisions, may have to be approved by the legislature, parliament, the head of State, or similar entity. It is important to distinguish between the act of domestic ratification and the act of international ratification.

Once the domestic requirements are satisfied, in order to undertake the international act of ratification the State concerned must formally inform the other parties to the treaty of its commitment to undertake the obligations under the treaty. In the case of a multilateral treaty, this constitutes submitting a formal instrument signed by the Head of State or Government or the Foreign Minister to the depositary who then informs the other parties. With ratification a signatory State expresses its consent to be bound by the treaty. Instead of ratification, it can also use the mechanism of acceptance or approval, depending on its national preference. A non-signatory State, which wishes to join the treaty at a later stage, usually does so by lodging an instrument of accession.

Accordingly, the adoption of the treaty text does not, by itself, create any international obligations. A State usually signs a treaty stipulating that it is subject to ratification, acceptance or approval. A treaty does not enter into force and create binding rights and obligations until the required number of States, as indicated by the treaty, express their consent to be bound by the treaty. The expression of such consent to be bound usually occurs with ratification, approval, acceptance or accession. Sometimes, depending on the treaty provisions, it is possible for treaty parties to agree to apply a treaty provisionally until its entry into force.

One of the mechanisms used in treaty law to facilitate agreement on the text is to leave the possibility open for a State to make a reservation on becoming party. A reservation modifies or excludes the application of a treaty provision. A reservation must be lodged at the time of signature or ratification (or acceptance, or approval, or accession). The 1969 Vienna Convention includes a section (arts. 19-23) on reservations.

In general, reservations are permissible except when:

- They are prohibited by the treaty,
- They are not included among expressly authorized reservations, and
- They are otherwise incompatible with the object and purpose of the treaty.

Recently, it has become more common for treaties, including most of the recently concluded environmental treaties, to include a provision that prohibits reservation to the treaty. Examples are the 1985 Vienna Convention for the Protection of the Ozone Layer (Art. 18) and its 1987 Montreal Protocol on Substances that Deplete the Ozone Layer (Art. 18), the 1992 Convention on Biological Diversity (Art. 37)and its 2000 Cartagena Protocol on Bio safety (Art. 38)

International Custom

The second most important source of international law, and thus of international environmental law, is international custom. International law can also be created through the customary practice of States.

Before treaties became as important as they are today, customary international law was the leading source of international law: the way things have always been done becomes the way things must be done. Once a rule of customary law is recognised, it is binding on all States, because it is then assumed to be a binding rule of conduct..

There are two criteria for determining if a rule of international customary law exists:

1. The State practice should be consistent with the so-called 'rule of constant and uniform usage', and
2. This State practice exists because of the belief that such practice is required by law (opinion juris)

Both elements are complementary and compulsory for the creation of customary international law. Since customary law requires this rather heavy burden of proof, and its existence is often surrounded by uncertainties, treaties have become increasingly important to regulate international diplomatic relat ons among States.

The provisions of the 1948 Universal Declaration on Human Rights, although not specifically intended to be a legally-binding instrument, are now generally accepted, as constituting customary international law. Customary international law is as legally binding as treaty law. On occasion, it is not possible to distinguish clearly between treaty law and customary law. For example, the UN Convention on the Law of the Sea comprises new international legal norms as well as codification of existing customary law.

Between the date of its adoption in 1982, and the date it entered into force in 1994, non-parties to the treaty followed in practice many of the obligations incorporated in 1982 UNCLOS. It can therefore now be said that UNCLOS largely represents customary law, binding on all States, even if it has at this time only 145 parties. Two specific terms related to the concept of customary international law require further attention. The first one is 'soft law'. This term does not have a fixed legal meaning, but it usually refers to any international instrument other than a treaty containing principles, norms, standards or other statements of expected behaviour.

Often, the term soft law is used as having the same meaning as a non-legally binding instrument, but this is not correct. An agreement is legally binding or is not-legally binding. A treaty that is legally binding can be considered as hard law; however, a non-legally binding instrument does not necessarily constitute soft law. The consequences of such a non-legally binding instrument are not clear. Sometimes it is said that they contain political or moral obligations, but this is not the same as soft law.

Non-legally binding agreements emerge when States agree on a specific issue, but they do not, or do not yet, wish to bind themselves legally; nevertheless they wish to adopt certain non-binding rules and principles before they become law. This approach often facilitates consensus, which is more difficult to achieve on binding instruments. There could also be an expectation that a rule or principle adopted by consensus, although not legally binding, will nevertheless be complied with. Often such will often fuel civil society activism to compel compliance. The second term is 'peremptory norm' (jus cogens). This concept refers to norms in international law that cannot be overruled: they are of the highest order. Jus cogens has even precedence above treaty law. Exactly which norms can be so designated as jus cogens is still subject to some controversy. Examples are the ban on slavery, the prohibition of genocide or torture, or the prohibition on the use of force.

General Principles of Law

The third sources of international law are general principles of law. There is no agreed selection of principles that are to be considered as universally agreed upon. They usually include both principles of the international legal system as well as those common to the major national legal systems of the world. Some treaties reflect, codify or create general principles of law. Also decisions of the Conference of the Parties to a MEA, and conference declarations or statements, may contribute to the development of international law.

5

International Law and Indian Constitutional Scheme

INTERNAL LAW AND THE DISTRIBUTION OF LEGISLATIVE POWER

Article 245 of the Constitution of India deals territorial Jurisdiction of the legislative power, confers the power to the parliament to make laws for the whole or any part of the territory of India. Article 246 deals with the subject matter of laws, empowers the parliament to have 'exclusive' power to make laws with respect to the Union list. The parliament has exclusive power to legislate on all conceivable international matters which have been enumerated under the Union List. Under this list main entries relating to international matters are: foreign affairs (entry 10), United Nations Organization (entry 12), participation in international conferences, associations and other bodies and implanting of decisions made thereat (entry 13), and entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries (entry 14), *etc.*

Under Article 253 the parliament has exclusive power to make any law for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body. These provisions suggest that the parliament has sweeping power to legislate on international matters. However, this power of the parliament, according to the Supreme Court, can not override the fundamental rights

enumerated under Part III of the constitution. Under the constitutional scheme the union government's executive power is co-extensive to the legislative power of the parliament (Article 73). According to the Supreme Court treaty making is regarded as an executive power rather than legislative activity.

International Law and Constitutional Duty

Though Part IV (Article 37 to 51) of the Indian Constitution, known as the Directive Principles of State Policy, is not enforceable by any court but principles contained therein are fundamental in the governance of the country and it "shall" be the duty of the State to apply these principles in making laws (Article 37). Article 51 specifically deals with international law and international relation, inter alia, provides that the 'state shall endeavor to foster respect for international law and treaty obligations.'

In *Telephone Tapping Case* the Supreme Court by invoking Article 51 developed right to privacy as a fundamental right under Article 21. Here, the court took inspiration from the privacy provision of the Covenant on Civil and Political Rights. However, in environmental matters, it appears, no such use of Article 51 has been done by the courts. Here, it may be recalled that the courts have invoked Article 48-A (duty of the state to protect environment) to develop a fundamental right to environment as part of the right to life under Article 21.

Statutes Enacted in India Pursuant to the International Environmental Law

In India many important environmental statutes have been enacted to ratify or to fulfill national obligations under the international environmental treaties, conventions and protocols, *etc.*

INTERNATIONAL LAW AND INDIAN COURTS

Role and Status of the Indian Judiciary

The role of judiciary depends on the very nature of political system adopted by a particular country. This is the reason that role of judiciary varies in liberal democracy, communist system and countries having dictatorship. The role of judiciary has been important in liberal democracies like India. Constitution of India in fact took inspiration from US Constitution and therefore adopted similar concept of judicial review.

In independent India, history of judiciary, judicial review and judicial activism has been a fertile area for legal researchers. It is now a well established fact that, in India, in view of legislative and executive indifferences or failures, the role of judiciary has been crucial in shaping the environmental laws and policies.

The role of the Indian Supreme Court may be explained quoting the views of Professor S.P. Sathe and Professor Upendra Baxi two leading academics who have extensively written on the role of judiciary in India. Professor Sathe has analyzed the transformation of the Indian Supreme Court "from a positivist

court into an activist court". Professor Upendra Baxi, who has often supported the judicial activism in India, has also said that the "Supreme Court *of* India" has often become "Supreme Court *for* Indians". Many observers of the Indian Supreme Court including Professor Sathe and Baxi have rightly opined that the Indian Supreme Court is one of the strongest courts of the world.

Power and judicial activism of the Indian courts have resulted into a strong and ever expanding regime of fundamental rights. Stockholm Conference on Human Environment, 1972, has generated a strong global international awareness and in India it facilitated the enactment of the 42nd Constitutional Amendment, 1976. This amendment has introduced certain environmental duties both on the part of the citizens [Article 51A (g)] and on the state (Article 48-A).

Under the constitutional scheme the legal status of Article 51(A)-(g) and 48-A is enabling in nature and not legally binding per se, however, such provisions have often been interpreted by the Indian courts as legally binding. Moreover, these provisions have been used by the courts to justify and develop a legally binding fundamental right to environment as part of right to life under Article 21. Hereinafter, an effort has been made to demonstrate that how both the 'soft' and 'hard' international environmental laws have been used by the Indian courts to develop a strong environmental jurisprudence in domestic law.

The judicial adoption of international environmental law into domestic law in India has not been done overnight rather it has been gradual. In order to understand the judicial process of such adoption the present discussion can be divided into the following three periods:

- First period of Judicial Adoption (1950-1984)
- Second period of Judicial Adoption (1985-1995)
- Third period of Judicial Adoption (1996 onwards)

First Period of Judicial Adoption (1950-1984): Traditional Dualist Approach

During the period of 1950 to 1984 the Indian courts have adopted a traditional dualist approach that treaties have no effect unless specifically incorporated into domestic law by legislation. In *Jolly George Verghese* v. *Bank of Cochin* the Supreme Court upheld the traditional dualist approach and gave overriding effect to the Civil Procedure Code over International Covenant on Civil and Political Rights. However, the court in this case, minimizes the conflict between the Covenant and domestic statue by narrowly interpreting the Civil Procedure Code. As for as the customary international law is concerned, during 1950-84, there was hardly any legislative exercise in the name of customary international law.

The Indian judicial approach relating to the legal status of the customary international law was clarified in *Gramophone Company of India Ltd.* v. *Birendra Bahadur Pandey*. In this case the court relied upon the English decisions and endorsed the doctrine of incorporation. According to this doctrine rules of international law are incorporated into national law and considered to be part of national law unless they are in conflict with an Act of the parliament.

GATT: ARTICLES I AND III: NON-DISCRIMINATION

Articles I and III establish the *most-favoured-nation* (MFN) and the *national-treatment* principles, which together create the *non-discrimination* obligation for *like* products.

Most-Favoured-Nation Principle

Article I requires members to treat products from any member country no less favourably than they treat like products from any other country: With respect to customs duties and charges of any kind imposed on or in connection with importation and exportation… any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties. For the purposes of assessing the interaction between WTO rules and environmental enforcement, three characteristics of the MFN principle, as it has been interpreted, are particularly important.

First, MFN is unconditional. Members may not apply conditions to MFN treatment other than WTO membership. For example, members may not discriminate among imports based on the economic or social policies pursued in their country of origin. In the 1952 *Belgium Family Allowances*, Belgium levied a charge on imports purchased by public bodies, and exempted from these charges goods originating in countries with family allowance systems similar to its own. The GATT dispute settlement panel found this practice could not be reconciled with Articles I and III. Second, MFN applies to individual products, and no balancing among products or countries is permitted. Hence a government cannot unilaterally choose to discriminate against product A from country X owing to an economic or environmental policy consideration, for example, and compensate with better-than-MFN treatment for product B from country X.

Third, the GATT and WTO have never adopted a definition of what constitutes a "like" product. It is particular to each situation and evaluated on a case-by-case basis. Generally, panels have confined tests of likeness to physical characteristics and have not permitted rules that base likeness on production processes and methods that are not reflected in the properties of the final product (unincorporated PPMs). Van Calster has argued that it may be possible to stretch the concept of physical characteristics to include some unincorporated PPMs: It is important to point out that whilst GATT Panels overall have indeed relied on physically incorporated characteristics only, the 1970 BTA [Border Tax Adjustment] Working Party Report in fact includes references to characteristics which may relate to unincorporated PPMs. This is the case, for instance, for "consumer's tastes and habits." In the context of the *Tuna-Dolphin* reports, for instance, one could argue that the US consumers do distinguish between tuna products, based on their dolphin-(un)friendliness. However, this opinion is not a widely embraced.

National-Treatment Principle

Article III establishes the *national-treatment* principle, which complements the MFN principle. It requires each member to treat other members' products no less favourably than it treats like domestic products, once they have been subjected to the appropriate WTO-consistent MFN tariffs and border measures and they enter domestic channels of commerce.

Article III.2 states: The products of the territory of any contracting party imported into the territory of any other contracting party shall not be subject, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products.

Article III.4 states: The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sales, offering for sale, purchase, transportation, distribution, or use.

Three characteristics of GATT national treatment are important:

- First, equal treatment for foreign goods is a minimum standard. Differential treatment – *i.e.*, according imports more favourable treatment – may be necessary to ensure treatment no less favourable than that received by domestic products.
- Second, national treatment is required for non-fiscal, as well as fiscal, measures. The terms "all laws, regulations and requirements" are quite comprehensive.
- Third, like Article I, the concept of a like product has been interpreted by panels to include the physical characteristics of products but not unincorporated PPMs.

Border Tax Adjustments

Closely related to the national treatment requirements are GATT rules regarding border tax adjustments (BTAs). Essentially, BTAs are refunds or forgiveness of taxes and other charges on exported products; as well as taxes and charges levied on imported products, in addition to tariffs and other entry fees, equal to similar taxes assessed on like domestic products. For example, the U.S., tax on distilled spirits is rebated on exported Kentucky Bourbon, and a comparable levy is assessed on imported Scotch.

The purpose of such adjustments is to ensure that like imported and domestic products compete on equal fiscal footing once WTO-consistent tariffs and customs fees have been paid on imported products and enter domestic channels of commerce. Inappropriately computing rebates on exports and levies on imports can result in subsides on exports and hidden tariffs on imports. How BTAs should be computed is addressed by GATT Article XVI, the Agreement on SCM for exports, and Article II.2(a) for imports. The latter states:

Nothing in this Article shall prevent any contracting party from imposing at any time on the importation of any product:

(a) A charge equivalent to an internal tax imposed consistently with the provisions of paragraph 2 of Article III in respect of the like domestic product or in respect of an article from which the imported product has been manufactured or produced in whole or in part.

As currently interpreted, these provisions permit BTAs for taxes and charges directly levied on products – for example, excise taxes and value-added taxes. They do not permit adjustments for taxes on factors of production – for example, payroll taxes and corporate income taxes. Generally, these provisions do not appear to permit members to impose BTAs on products based on unincorporated ingredients. For example, were the United States to impose a tax on carbon dioxide emissions in manufacturing, it could not impose a similar tax on imported manufactures based on carbon dioxide emissions.

By this interpretation, BTAs would not be permitted on a general energy or a carbon tax imposed, for example, to achieve emissions goals prescribed by the Kyoto Protocol. Even so, Van Calster believes that SCM may permit border tax adjustments on exports for an energy tax; however, many other analysts do not share this view. For example, Brack writes:

…It would appear that BTAs relating to production processes are only allowable if they are applied to inputs that are physically incorporated. They appear *not* to be allowable if the input is not present in the final product – which is the case for energy consumed and carbon emitted during the production process.

ARTICLE XI: QUANTITATIVE RESTRICTIONS

Article XI.1 prohibits quantitative restrictions: No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licenses or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party.

Apart from some exceptions enumerated in Article XI.2, this language establishes a fairly comprehensive restriction on quantitative measures, and does not leave much, if any, room to take into account the particular economic or social policies of an exporter or importer when establishing import or export measures.

ARTICLE XX: GENERAL EXCEPTIONS

Article XX lays out the general exceptions to GATT disciplines, with items (b) and (g) speaking directly to health, safety and the environment. Article XX reads: Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a

disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:

(b) Necessary to protect human, animal and plant life or health

(g) Relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production and consumption

The Appellate Body requires that three questions be answered affirmatively in order for a measure to qualify for an Article XX exception under paragraphs (b) and (g):

Does the measure(s) violate a specific provision of the GATT?

- If yes, does the measure meet the requirements of paragraph (b) or (g)? Is it *necessary* to protect health? Does it *relate* to the conservation of an *exhaustible natural resource*?
- If yes, for either (b) or (g), does the measure meet the requirements of the chapeau? In particular, does the measure constitute an *arbitrary discrimination*, an *unjustifiable discrimination* or a *disguised restriction* on international trade?

Four aspects of these tests are important for the purposes of this study. First, for the purposes of applying paragraph XX(g), dispute settlement panels and the Appellate Body have been fairly liberal in defining exhaustible resources to include renewable resources, such as clean air or the stock of salmon. For example, the Appellate Body found in *Shrimp-Turtle* that endangered species, such as sea turtles, are renewable resources.

Second, members may not exclude a foreign product that domestic or other foreign firms are free to sell. For example, in *Thai Cigarettes*, Thailand excluded U.S., cigarettes from its market to reduce cigarette consumption for public health reasons, but Thai firms were permitted to continue selling cigarettes domestically and excise taxes were imposed on these cigarettes. The dispute settlement panel found that the import ban violated Article XI and was not justified under Article XX (b). If Thailand wanted to reduce cigarette consumption, it could have instituted policies that treated foreign and domestic manufacturers equally.

Similarly, members may not impose more difficult standards than are applied to domestic products. In *Reformulated Gasoline*, the Environmental Protection Agency permitted only gasoline of specified cleanliness (reformulated gasoline) to be sold in the most polluted areas of the country; in other areas, it permitted gasoline no dirtier than what was sold in 1990. It required domestic firms to establish individual baselines for each refinery in operation for at least six months in 1990. The Agency established a statutory baseline, representing the national average for 1990, and assigned it to gasoline made by domestic refineries not in operation in 1990, and all imported gasoline.

By assigning the national baseline to foreign refineries that exported to the United States in 1990, the regulation imposed a higher standard of cleanliness on foreign refiners than was applied to some competing domestic refineries.

The Appellate Body found that differential baseline treatment between domestic and foreign producers in operation in 1990 could not be justified on technical grounds and constituted "unjustifiable discrimination" and a "disguised restriction on international trade."

Third, Article XX(b) and (g) does not permit members an exception for a measure that discriminates among foreign suppliers or between domestic and foreign suppliers merely because it supports a domestic health or conservation objective. In laymen's terms, to qualify for an Article XX exception, discriminatory measures should do the least harm to trade – they should be the least inconsistent available for achieving their stated objective.

Paragraph (b) requires that discriminatory measures be "necessary." The presence of this word has caused dispute settlement panels to ask whether other measures are available that would be consistent, or less inconsistent, with GATT obligations than the measure in question. For example, in *Thai Cigarettes*, the panel suggested, for the purposes of reducing cigarette consumption, an advertising ban on all cigarettes would be less GATT-inconsistent. Although paragraph (g) does not require that the discriminatory measure be necessary, it does require that the measure "relate to" the conservation of exhaustible natural resources. The Appellate Body in *Shrimp-Turtle* found the U.S., measures at issue related to the conservation of sea turtles because of the "close and genuine relationship between ends and means."

Article XX(g) also requires that the discriminatory measure be "made effective in conjunction with restrictions on domestic production and consumption." This requires a certain "even handedness" in the treatment of foreign and domestic products. Identical treatment is not required, because, where treatment is identical, it is unlikely there would be discrimination in the first place or a need to invoke Article XX.

Taken together, requiring discriminatory measures to exhibit both a "close and genuine relationship between ends and means" and "even handedness" to qualify for an Article XX(g) exception comes very close in the layman's eye to the necessity requirement imposed by Article XX(b).

Fourth, members historically have been permitted to exclude foreign products whose physical or performance characteristics may threaten the domestic environment, but members have not been able to exclude foreign products made in ways that threaten the environment beyond their jurisdictions.

For example, the United States may ban imports of cars that do not meet U.S., emission standards, but it may not ban imports of steel made in foreign mills that do not meet emission standards for U.S., steel mills. Hence, members could restrict imports on the basis of their physical characteristics but not on the basis of unincorporated PPMs.

However, in *Shrimp-Turtle*, the Appellate Body, referencing the sustainable development language in the Preamble to the WTO Agreement, appears to have opened the door to restrictions on imports made in ways that harm the global commons beyond the jurisdiction of the importing country. It found that the

U.S., policy – banning imports of shrimp from countries that permit harvesting techniques that do not protect sea turtles as effectively as the methods required of U.S., fisherman – could fall within the scope of XX(g). However, the U.S., application of the policy violated the chapeau of Article XX by being more rigid than necessary to achieve the level of turtle protection required by U.S., regulations, and imposed arbitrary and unjustifiable discrimination.

The United States subsequently modified its application of the regulation without altering its most essential effect – excluding imports of shrimp caught in ways that do not protect sea turtles as effectively as U.S., techniques. In June 2001, responding to a petition filed by Malaysia, the original panel found that the United States had adequately addressed the objections of the Appellate Body and let the embargo stand. The United States now embargoes certain shrimp on the basis of how they are caught outside its territorial jurisdiction.

AGREEMENT ON SANITARY AND PHYTOSANITARY MEASURES

National governments impose regulatory measures to protect health, safety and the environment; improve public safety; safeguard businesses and consumers from deceptive practices; and achieve other public purposes. Even when these measures treat competing foreign and domestic products equally, they affect trade by, for example, barring products that do not meet national requirements and imposing compliance costs on foreign producers who must demonstrate that their products meet regulatory requirements.

Although some impact on trade is inevitable, regulators can unnecessarily raise costs and discourage trade by imposing differences in national requirements that are unnecessary for accomplishing their underlying policy goals; imposing opaque, non-transparent requirements, or onerous and costly compliance procedures; or artfully defining regulations in ways that favour characteristics unique to, or more prevalent in, domestic products but having little or nothing to do with underlying regulatory goals. SPS and TBT directly address these issues.

SPS applies to measures that:

- Protect human and animal health from risks arising from additives, contaminants, toxins, or disease-causing organisms;
- Protect human life from animal- or plant-carried diseases;
- Protect animal or plant life from pests, diseases, or disease-causing organisms; and
- Prevent or limit other damage from the entry, establishment or spread of pests.

TBT addresses measures not addressed by SPS that protect the environment, animals or plants, consumers and businesses, or that serve other public purposes by regulating or recommending the physical or performance characteristics of products.

Before SPS and TBT, measures protecting human, animal and plant life and health were subject to GATT Articles I, III, XI, and XX, and the 1979 Agreement

on Technical Barriers to Trade. Generally, regulations could not be challenged under these agreements if they treated foreign products no less favourably than like domestic or other foreign products.

SPS seeks to reduce the cost of producing for multiple markets by encouraging harmonization of measures across national markets and by discouraging governments from imposing measures and erecting certification regimes that intentionally or unintentionally pose unnecessary barriers to trade.

KEY PROVISIONS

SPS Article 2 affirms the right of WTO members to maintain "sanitary and phytosanitary measures necessary for the protection of human, animal or plant life or health." However, it requires that measures directly or indirectly affecting trade be based on scientific principles and sufficient scientific evidence, and that these measures not create disguised barriers to trade:

Members shall ensure that any sanitary or phytosanitary measure is applied only to the extent necessary to protect human, animal or plant life or health, is based on scientific principles, and is not maintained without sufficient scientific evidence…

Members shall ensure that their sanitary and phytosanitary measures do not arbitrarily or unjustifiably discriminate between Members where identical or similar conditions prevail, including between their territory and that of other Members. Sanitary and phytosanitary measures shall not be applied in a manner which constitutes a disguised restriction on international trade.

Article 5 requires members to: "ensure that measures are no more trade-restrictive than required to achieve their appropriate level of sanitary and phytosanitary protection, taking into account economic and technical feasibility." A measure is presumed to meet this requirement if it conforms with the appropriate international standard (discussed below), "unless there is another measure, reasonably available taking into account technical and economic feasibility, that achieves the appropriate level of sanitary and phytosanitary protection and is significantly less trade restrictive."

Article 5 requires that measures be based on risk assessment and that governments exhibit consistency in the levels of risk they tolerate in comparable situations: Members shall ensure that their sanitary and phytosanitary measures are based on an assessment, as appropriate to the circumstances, of the risks to human, animal or plant life or health, taking into account risk assessment techniques developed by the relevant risk assessment body.

With the objective of achieving consistency in the appropriate level of sanitary and phytosanitary protection against risks…each Member shall avoid arbitrary or unjustifiable distinctions in the levels it considers to be appropriate in different situations, if such distinctions result in discrimination or disguised restriction on international trade.

Similarly, Article 2 requires consistency in the treatment of products made in different countries: Members shall ensure that… measures do not arbitrarily or

unjustifiably discriminate between Members where identical or similar conditions prevail, including between their own territory and that of other members. In addition, when determining the appropriate level of protection, members should "take into account the objective of minimizing negative trade effects," and when assessing risks, they should take into account economic factors, including "the relative cost effectiveness of alternative approaches to limiting risk."

Annex B, which is integral to the agreement, imposes strong transparency requirements. It requires members to publish regulations promptly, allow adequate time and opportunity for foreign suppliers to comment on proposed regulations, and establish one point of enquiry "responsible for the provision of answers to all reasonable questions from interested Members as well as the provision of relevant documents..."

Article 3 fosters harmonization. In particular, measures that conform to the "standards, guidelines or recommendations [of the bodies listed below] shall be deemed to be necessary… and presumed to be consistent with the relevant provisions of this agreement and of GATT 1994."

- *Food*: The Food and Agriculture Organization (FAO) and the World Health Organization (WHO) Codex Alimentarius Commission
- *Animal health*: International Animal Health Organization (Office International des Epizooties)
- *Plant health*: The FAO's Secretariat for the International Plant Protection Convention

Members may apply higher or different requirements if there is a scientific justification. However, Annex B imposes special notification and consultation requirements and, therefore, higher standards of transparency for proposed regulations that are not substantially the same as international standards, guidelines or recommendations, or where an international norm does not exist.

The agreement further requires members to accept the equivalency of other members' different measures if they achieve the same objective: Members shall accept the sanitary and phytosanitary measures of other Members as equivalent, even if these measures differ from their own or from those used by other Members trading in the same product, if the exporting Member objectively demonstrates to the importing Member that its measures achieve the importing Member's appropriate level of sanitary and phytosanitary protection.

When scientific evidence is insufficient to support a measure, Article 5.7 permits members to apply *provisional* measures based on: pertinent information, including that from the relevant international organization as well as from sanitary and phytosanitary measures applied by other Members. In such circumstances, Members shall seek to obtain the additional information necessary for a more objective assessment of risk and review the sanitary or phytosanitary measure accordingly within a reasonable period of time.

The WTO dispute settlement panel in the 1998 EU beef hormones case found reflection of the precautionary principle in this provision. However, in *Hormones*, the EU ban was not a provisional regulation.

CONSEQUENCES FOR ENVIRONMENTAL PROTECTION

SPS has four sets of consequences for environmental protection. First, it imposes substantial requirements that member governments base sanitary and phytosanitary measures on scientific principles and evidence, undertake risk assessment, apply consistent levels of risk protection across comparable regulatory situations, adhere to norms of transparency, accept the equivalency of equally effective foreign measures, and adopt measures that are not more trade-restrictive than necessary to accomplish their objectives. Together, these place the WTO in the position of determining whether sanitary and phytosanitary measures, when not those prescribed by international standard-setting bodies, impose unnecessary burdens on trade.

Second, by presuming that the standards, guidelines and recommendations established by the Codex Alimentarius Commission, the Office International des Epizooties, and the framework of the International Plant Protection Convention meet the abovementioned requirements, SPS assigns considerable status to the norms established by these organizations, and imposes costs on governments that seek to exceed or differ from these norms. This may not be as alarming as it sounds. Most WTO members participate in these organizations, and the standards that are developed come from leading scientists and government experts in the appropriate fields, not the WTO or trade experts.

Third, the agreement appears to restrict the use of precautionary measures by requiring members, when faced with insufficient scientific evidence, to rely on provisional measures and to seek additional information for a more objective assessment of risk within a reasonable period.

Fourth, the coverage of the agreement may not extend to certain issues. As defined in Annex A, the Agreement on Sanitary and Phytosanitary Measures applies to pests (insects); diseases, disease-carrying organisms, and disease-causing organisms; and additives, contaminants, toxins or disease-causing organisms in human and animal food. As Charnovitz observes: "protection against insecticide in fruit is covered by SPS because that is a contaminant. But protection against bio-engineering in fruit might not be covered by SPS because genetic modification is not a risk listed in the above categories." If this view held up in dispute settlement, the United States would not be able to challenge certain European restrictions on imports of genetically modified organisms under SPS.

OTHER INTERNATIONAL ACTS

Other international acts include those adopted by international organisations (which may be binding or non-binding), and by states in the form of non-binding declarations or Action Plans. Non-binding acts are sometimes referred to as 'soft law'. Although not legally binding, they may contribute to the development of customary law or lead to the adoption of binding obligations by treaty or an act of an international organisation.

ACTS OF INTERNATIONAL ORGANISATIONS

Acts of international organisations, sometimes referred to as secondary legislation, provide an important source of international law: they may be legally binding*per se*, ortheymayamendtreaty obligations,or theymayauthoritatively interpret treaty obligations. Since binding acts of international organisations derive their legal authority from the treaty on which they were based, they can be considered as part of treaty law.

Many far-reachingdecisions affecting the useof natural resources resultfrom acts of international organisations. Examples include: the 1983 decision of the IWC to adopt a moratorium on commercial whaling; the 1985 resolution of the consultative meetingof theparties to the 1972 LondonConventionadopting a moratorium on the dumping of radioactive waste at sea; the 1989 decision by the CITES conference of the parties to ban the international trade in African elephant products; and the 1991 Security Council resolution reaffirming the liability of Iraq for the environmental damage caused by its unlawful invasion of Kuwait.

The legal effect of an act of an international organisation depends upon the treaty basis of the organisation, as the following examples illustrate. Usually, the treaty will specify the intended legal consequences. Under Article 25 of the UN Charter, UN General Assembly resolutions are 'only recommendatory', whereas resolutions of the Security Council are binding 'on all states'; Regulations, Directives and Decisions of the EU (the EC, ECSC and Euratom) are legally binding on member states and can create rights and obligations which are directly enforceable in the national legal systems of the member states.Acts of organisations established by environmental treaties may be binding or non-binding. Such institutions often have a choice.

Thus, the IWC can adopt regulations which are 'effective' for parties not presenting an objection, or it can adopt recommendations which are not legally binding. The consultative meetings of the parties to the 1972 London Convention can amend the Annexes to the Convention, which enter into force either upon notification by a party or after a stated period of time, unless a party declares that it is not able to accept an amendment. The CITES conference of the parties adopts amendments to Appendices I and II to the Convention which 'enter into force' for all parties except those making a reservation. And the meeting of the parties to the 1987 Montreal Protocol may adopt amendments and adjustments which can bind even parties not accepting them. In each case, a majority of the parties to a treaty may adopt binding acts, although the minority is usually free to opt out. In other cases, an international organisation may adopt an act (which might be called a resolution, recommendation or decision), without a clear provision in the treaty establishing the legal consequences of that act.

The legal effect of resolutions adopted under the 1972 London Convention is less clear (such as the resolution on the dumping of radioactive wastes at sea adopted by the ninth consultative meeting which agreed to a 'suspension of all

dumping at sea of radioactive wastes and other radioactive matter'). Such resolutions, addressing substantive matters, are not binding *per se*, although they may contribute to the development of customary international law, or may set forth an authoritative interpretation of the international agreement under which it was adopted.

Examples of such acts include the resolutions adopted by the Governing Council of UNEP which adopt or endorse principles, guidelines or recommended practices addressed to states and other members of the international community. The resolution or act could also bind those states supporting it through the operation of some general principle of law, such as the principle of estoppel. Where the act is an internal act of the organisation (adopting a budget or procedural rules, or establishing a subsidiary organ), the resolution may bind all members of the organisation as a matter of the internal law of the organisation.

A further issue is the legal effect, if any, of an act of one international organisation upon another, to the extent that it is arguable that there exists a 'common law of international organisations'. This would allow a measure, or interpretative act, adopted by one international organisation, to be relied upon by or have consequences for, another. The proliferation of international organisations addressing environmental issues increases the need for legal consistency and certainty.

In practice, organisations do take account of each other's activities, in relation to both procedural and substantive matters, and precedents may be followed on an informal basis. Examples include: the emerging rules and practices governing the participation of non-state actors in the activities of international organisations; the definition of 'best available technology' adopted by the meeting of the parties to the 1974 Paris LBS Convention; and the definition of the 'precautionary principle' adopted by the parties to the 1976 Barcelona Convention or the 1974 Paris LBS Convention. Conference declarations and other acts Many intergovernmental conferences are convened every year to address environmental issuesandissueslinking environmentand development. Manyadopt declarations, statements orother non-binding acts, which may contribute to the development of international environmental law even if they are not binding as treaties or as formal acts of international organisations. The most important international conferences have been the 1949 UNCCUR, the 1972 Stockholm Conference, the 1992 UNCED and the 2002 WSSD. Each adopted non-binding acts, of which the Stockholm Declaration, the Rio Declaration and Agenda 21 include important elements which now reflect, or are contributing to the development of, customary international law. They continue to provide a significant influence on the development of new treaties and acts of international organisations.

Other conferences have addressed specific, or sectoral, issues. These too can contribute to the development of binding international rules over time. Examples of declarations which have influenced international legislation include the 1990 Ministerial Declaration of the Second World Climate Conference, the Declaration adopted by the 1990 UNECE Bergen Conference on Sustainable

Development, and regional conferences on environment and development. These contributed to the consensus at UNCED and the negotiations of the Climate Change and Biodiversity Conventions. The 1992 Rio Declaration may be the single most significant such declaration, in terms of its contribution to the development of international environmental rules and jurisprudence. Other conference declarations have led to acts of international organisations which are then followed by the adoption of a new treaty rule incorporating in binding terms the original conference act or objective. One such example is the 1990 Third Ministerial Declaration on the North Sea, elements of which were incorporated into resolutions of the Commissions established under the 1972 Oslo and 1974 Paris Conventions, and are now reflected in the 1992 OSPAR Convention. A more recent example is the 1998 Sintra Ministerial Declaration on the prevention of pollution of the north-east Atlantic by radioactive substances.

Another act frequently adopted by international conferences (or by international organisations) is the 'Action Plan', which also frequently forms the basis or context for the subsequent adoption of treaty rules. Examples include: the Recommendations adopted by the 1972 Stockholm Conference; the various Regional Action Plans adopted under the UNEP Regional Seas Programme; Agenda 21; and the WSSD Plan of Implementation. Action Plans have also been adopted on a range of sectoral issues, such as water resources, drought and desertification, national parks, and the conservation of biodiversity.

CUSTOMARY INTERNATIONAL LAW

A. D'Amato, *The Concept of Custom in International Law* (1971); H. W. A. Thirlway, *International Customary Law and Codification* (1972); M. Akehurst, 'Custom as a Source of International Law', 47 BYIL 1 (1974–5); M. E. Villiger, *Customary International Law and Treaties* (1985); M. Mendelson, 'The Formation of Customary International Law', 272 RdC 155 (1998); International Law Association, *London Statement of Principles Relating to the Formation of General Customary International Law* (2000); I. Brownlie, 'A Survey of International Customary Rules of Environmental Protection', 13 *Natural Resources Journal* 179 (1973); P. M. Dupuy, 'Overview of Existing Customary Legal Regime Regarding International Pollution', in D. Magraw (ed.), *International Law and Pollution* (1991); D. Bodansky, 'Customary (and Not So Customary) International Environmental Law', 3 *Indiana Journal of Global Legal Studies* 105 (1995).

Customary law rules have played a secondary role in international environmental law, although they can establish binding obligations for states and other members of the international community and may be relied upon in the codification of obligations in treaties and other binding acts. The significance of custom lies in the fact that it creates obligations for all states (or all states within a particular region) except those which have persistently objected to a practice and its legal consequences. Moreover, a customary rule may exist alongside a conventional rule, can inform the content and effect of a conventional

rule, and can give rise to a distinct cause of action for dispute settlement purposes. However, the process of developing rules of customary law cannot really be considered as part of a formal legislative process, and the existence of a customary rule may be difficult to prove.

Proving customary international law requires evidence of consistent state practice, which practice will only rarely provide clear guidance as to the precise context or scope of any particular rule. Nevertheless, 'customary law can be somewhat shaped and directed, because the practices of states can be consciously affected by various international ac-tions', including the non-binding acts of international organisations and the intergovernmental statements and declarations discussed above. Article 38(1)(b) of the Statute of the International Court of Justice identifies the two elements of customary international law: state practice and *opinio juris*.

State Practice

State practice is notoriously difficult to prove, and little empirical research has been carried out on state practice relating to international environmental obligations. State practice can be discerned from several sources, including: ratification of treaties; participation in treaty negotiations and other international meetings; national legislation; the decisions of national courts; votes and other acts in the UN General Assembly and other international organisations; statements by ministers and other governmental and diplomatic representatives; formal diplomatic notes; and legal opinions by government lawyers.

Preparatory materials to these sources can also provide useful evidence of state practice. Other sources include the pleadings of states before national and international courts and tribunals, parliamentary debates, collections of diplomatic materials and the records and *travaux pr´eparatoires* of international conferences and treaty negotiations. Useful pleadings include those relating to the *Nuclear Tests* cases and the *Case Concerning Certain Phosphate Lands in Nauru*.

The pleadings in New Zealand's resumed *Nuclear Tests* case (1995), the ICJ's Advisory Opinion on the legality of the use of nuclear weapons and the *Gabcikovo-Nagymaros Project* case are also likely to repay careful consideration. It is important to bear in mind that the failure of a state to act can also provide evidence of state practice: mutual toleration of certain levels of pollution, or of activities which cause environmental degradation, can provide evidence that states accept such levels and activities as being compatible with international law.

For state practice to contribute to the development of a rule of law, the practice must be general, although this does not mean that it requires the participation of all states across the globe or in a particular region. The ICJ has stated that: it might bethat,evenwithout the passage of any considerable periodof time, a very widespread and representative participation in the convention might suffice of itself, provided it included states whose interests were specifically affected.

More recently, the ICJ deemed it sufficient that the conduct of states should, in general, be consistent with such rules, and that instances of state conduct inconsistent with a given rule should generally have been treated as breaches of that rule, not as indications of the recognition of a new rule. In both cases, the ICJ was concerned with customary law arising in the context of treaty rules. The relationship between treaty and custom is close, often based upon elements of mutual interdependence.

A treaty might codify or further develop a rule of customary law, as was the case in the 1982 UNCLOS. Alternatively, the conclusion and implementation of a treaty may reflect the existence of a rule of customary law. In the *North Sea Continental Shelf* cases, the ICJ found that state practice since the conclusion of the 1958 Geneva Convention on the Continental Shelf, including signature and ratification of the convention, could create a rule of customary law.

In the *Military and Paramilitary Activities* case, the ICJ again considered the relationship between treaties and custom, finding that multilateral conventions 'may have an important role to play in recording and defining rules deriving from custom. or indeed in developing them'. The frequent reference to, and incorporation of, Principle 21 of the Stockholm Declaration in the text of treaties is an example of treaties contributing to development of custom. In 1996, the

ICJ confirmed the customary status of the norm reflected in Principle 21,but without addressing the extent or uniformity of state practice. It appears to have taken a similarly flexible approach the following year, in its judgement in the *Gabcikovo-Nagymaros* case, where it cited with approval the principle of 'equitable utilisation' referred to in Article 5(2) of the 1997 Watercourses Convention.

This suggests that in the environmental field the ICJ may well be conscious of the 'Herculean task' of deducing rules of customary international law directly from state practice, and will divine the existence of such rules by more flexible and pragmatic means.

Opinio Juris

The second element of customary law, *opinio juris sive necessitatis*, requires evidence that a state has acted in a particular way because it believes that it is required to do so by law. The ICJ in the *North Sea Continental Shelf* cases identified the content and role of *opinio juris*:

Not only must the acts concerned amount to a settled practice, but they must also be such, or be carried out in such a way, as to be evidence of a belief that this practice is rendered obligatory by the existence of a rule of law requiring it. The need for such a belief, *i.e.*, the existence of a subjective element, is implicit in the very notion of the *opinio juris sive necessitatis.*

The states concerned must therefore feel that they are conforming to what amounts to a legal obligation. The frequency, or even habitual character of the acts is not in itself enough. There are many intentional acts, *e.g.*, in the field of

ceremonial and protocol, which are performed almost invariably, but which are motivated only by considerations of courtesy, convenience or tradition, and not by any sense of legal duty.

Proving the existence of *opinio juris* will always be a difficult task, since it requires consideration of the motives underlying state activity. It has been suggested that it can be found from a number of sources, including: expressions of beliefs regarding acts of international organisations and other international meetings; statements made by representatives of states; and the conclusion of treaties.

Given the difficulties of proving *opinio juris*, there is a certain attraction in the view of Sir HerschLauterpacht, who proposedthat the accurate principle consists in 'regarding all uniform conduct of Governments (or, in appropriate cases, abstention therefrom) as evidencing the *opinio necessitatis juris* except when it is shown that the conduct in question was not accompanied by any such intention'. Such an approach, which shifts the burden of proof but which is not universally shared, would make the acceptance of principles and rules set out in treaties more likely to contribute to the development of custom.

Treaties and Custom

State practice in treaty-making and in accordance with obligations under treaties can contribute to the development of customary law. Moreover, as the ICJ recognised in the *Military and Paramilitary Activities* case, customary rules may emerge which are identical to those of treaty law, and which exist simultaneously with treaty obligations. In the *North Sea Continental Shelf* cases, the ICJ had to decide whether the principle of equidistance for delimitation of the continental shelf found in Article 6 of the 1958 Convention on the Continental Shelf constituted a rule of customary international law. The ICJ found that it was necessary to examine the status of a principle as it stood when a treaty was drawn up, as it resulted from the effect of the treaty, and in the light of state practice subsequent to the treaty. The ICJ held that at the time of its conclusion the principle set out in Article 6 of the 1958 Convention was a treaty rule and not regarded as *lege lata* or as an emerging rule of customary international law. The ICJ then considered whether the principle found in Article 6 had passed into the general *corpus* of international law, and was accepted as such by *opinio juris*, so as to be binding even for countries which were not parties to the Convention: such a process was 'a perfectly possible one which does from time to time occur, although it could not be a result lightly regarded as having been attained'. The ICJ identified the conditions to be fulfilled for a new rule of customary international law to be formed as a result of a treaty:

It would in the first place be necessary that the provision concerned should, at all events potentially, be of a fundamentally norm-creating character such as could be regarded as forming the basis of a general rule... With respect to the other elements usually regarded as necessary before a conventional rule can be considered to have become a general rule of international law, it might be that,

even without the passage of any considerable period of time, a very widespread and representative participation in the convention might suffice of itself, provided it included that of states whose interests were specially affected.

In this case, the number of ratifications was respectable but insufficient. As to the time element:

[a]lthough the passage of only a short period of time is not necessarily, or of itself, a bar to the formation of a new rule of customary international law on the basis of what was originally a purely conventional rule, an indispensable requirement would be that within the period in question, short though it might be, state practice, including that of states whose interests are specially affected, should have been both extensive and virtually uniform in the sense of the provision invoked; and should moreover have occurred in such a way as to show a general recognition that a rule of law or legal obligation is involved.

The ICJ held on the facts of the case that state practice was insufficient to transform the treaty obligation under Article 6 of the 1958 Convention into a customary obligation.

However, it should not be assumed that the mere fact that a large number of states are party to a treaty establishes a customary norm for all. For example, the ICJ declined to indicate that the rule prohibiting widespread and significant environmental harm in armed conflict reflected a customary rule. For environmental treaties, provisions of a fundamentally norm-creating character which are capable of being considered as rules of customary law include those of a substantive nature, as well as principles which inform and guide decision-making.

Examples of substantive obligations reflected in many treaties include: Principle 21 of the Stockholm Declaration; the obligation to co-operate on environmental problems associated with shared natural resources; the obligation to adopt general measures to protect the marine environment from significant damage; and the obligation to take measures to ensure the conservation of, and prevention of harm to, endangered species of flora and fauna.

More specific examples of treaty rules which can be considered as having a 'fundamentally norm-creating character' arguably include: the obligation to use a shared international watercourse in an 'equitable and reasonable' manner; the obligation not to dump high-level radioactive waste in the marine environment; the obligation not to engage in commercial whaling; and the general obligation of developed states to limit emissions of gases such as sulphur dioxide. Guiding principles which may, through treaty practice, reflect existing or emerging norms of customary law might include the polluter-pays principle, the principle of precautionary action, and the principle of common but differentiated responsibilities of developed and developing countries. Procedural obligations which may be binding under customary law, at least within certain regions, include consultation, the provision of information on the environment and the obligation to carry out an environmental impact assessment for activities likely to cause significant environmental damage.

Persistent Objector

Since a rule of customary law may develop without the express or active support of all states in the international community, the silence or failure of a state to act will not necessarily prevent such a rule from becoming binding upon it, as is clear from the judgements of the ICJ in the *North Sea Continental Shelf* cases.

However, a state can avoid being bound by a rule if it persistently objects to that rule. This was one of the issues in the *Anglo-Norwegian Fisheries* case, where the United Kingdom argued the unlawfulness of the Norwegian practice of drawing straight base-lines across the mouths of bays to measure the width of the territorial sea, and where both states accepted the existence of the 'persistent objector' principle.

An example of persistent objection in the environmental field is provided by the clear and consistent objection of the United States to the view that the 'right to development' exists as a legal rule. Another example may perhaps be seen in the ICJ's 1996 opinion that environmental obligations under the 1977 Geneva Protocol I did not, at least at that time, reflect customary law in view of the unwillingness of certain states to recognise the application of the Protocol to nuclear weapons.

Closely related to the principle of the persistent objector is the operation of acquiescence, according to which the failure of a state to protest against the practice of other states over time will operate to limit or prevent a state from subsequently protesting against the fact that the practice is permitted as a matter of international law. The ICJ considered the principle of acquiescence in the *Anglo-Norwegian Fisheries* case, holding that the 'notoriety of the facts, the general toleration of the international community, Great Britain's position in the North Sea, her own interest in the question, and her prolonged abstention would in any case warrant Norway's enforcement of her system against the United Kingdom'. *Regional custom*

Rules of customary international law may also develop at the regional level. This was recognised by the ICJ in the *Asylum* case, holding that regional or local custom peculiar to Latin American states could be established where the rule invoked can be proved to be 'in accordance with a constant and uniform usage practised by the states in question'.

This is important in the field of environmental protection, where global regimes have been the exception rather than the rule, and in respect of which some regions (Europe and the Antarctic) are particularly well developed. A regional approach allows flexibility in encouraging groups of countries to develop rules which reflect their particular interests, needs and capacities. The Pacific region has been particularly active in developing international treaty rules prohibiting the presence of radioactive materials and the use of driftnet fishing practices in the region, both of which may now reflect rules of customary law for that region.

A similar conclusion may be drawn from state practice supporting efforts adopted by African states to limit and prohibit the import of hazardous and other waste onto the African continent, or in respect of certain mineral activities in the Antarctic.

SECOND PERIOD OF JUDICIAL ADOPTION (1985-1995)

GROWING INFLUENCE OF INTERNATIONAL ENVIRONMENTAL LAW

During this period international environmental law was used to interpret the character of state obligations with respect to the right to life (Article-21), which has been interpreted to include the right to a healthy and decent environment.

Treaties

Before 1996 there were very few references to international environmental treaties though by 1990 India was party to more than 70 multilateral treaties of environment significance. In *Asbestos Industries Case* the Supreme Court extensively quoted many international laws namely ILO Asbestos Convention, 1986, Universal Declaration of Human Rights, 1948, and International Convention of Economic, Social and Cultural Rights, 1966. In this case the court dealt the issues relating to occupational health hazards of the workers working in asbestos industries.

The court held that right to the health of such workers is a fundamental right under article 21 and issued detailed directions to the authorities. In *Calcutta Wetland Case* the Calcutta High Court stated that India being party to the Ramsar Convention on Wetland, 1971, is bound to promote conservation of wetlands.

Soft Law Standards

The Stockholm Declaration, 1972 and the Rio Declaration, 1992 have been considered milestones in the development of international environmental law. Though these two declarations have often been characterized as 'soft' law but their impacts both at international and domestic levels, have been profound. In India, the post Bhopal Mass Disaster (1984) era was a creative period for environmental jurisprudence. During this period, in landmark *Doon Valley case,* the Supreme Court dealt with the impact of mining in the Doon Valley region and through its orders impliedly generated a new fundamental "right of the people to live in healthy environment with minimal disturbance of ecological balance."

In this case there were series of orders and in one of its orders the court recognized the influence of the Stockholm Conference by accepting that this "conference and the follow-up action thereafter is spreading the awareness". Again, in *Kanpur Tanneries Case* the Supreme Court extensively quoted the Stockholm Declarations and strengthened the then nascent fundamental right

to environment in India. In this case the court gave preference to 'environment' over 'employment' and 'revenue generation'. During this period the Rio Declarations, 1992 was also cited in the *Law Society of India case*.

During this period of 1985-1995, according to Prof. Anderson, the said soft laws were invoked by the court simply to make the general point that environment should be protected. The use and role of soft laws was 'secondary' rather than 'substantive'. The courts were just using soft law standards to evolve and strengthening the fundamental right jurisprudence under Article 21. In fact, international environmental law played primary and substantive role in the next period starting from the year 1996.

THE THIRD PERIOD OF JUDICIAL ADOPTION (1996 ONWARDS)

A New Approach/Substantive use of International Environmental Law

Customary International Law and the Vellore Case *(1996)*

In contrast to its previous caution during 1985-1995 periods, the Supreme Court adopted a more robust attitude to customary international law in the year 1996. In the year 1996 the Supreme Court, led by an activist green judge- Justice Kuldip Singh, inaugurated a new environmental jurisprudence in historic *Vellore case* and invariably applied the ratio of this case in a series of other landmark environmental cases. In all such cases international environmental law was used 'substantively' and the Supreme Court developed a unique domestic environmental jurisprudence by blending the Indian environmental law with the international environmental law. Hereinafter, an effort has been made to discuss important cases of this period and their outcome.

In *Vellore case* the court considered a public interest litigation highlighting discharge of toxic waste and polluted water from the large number of tanneries in the State of Tamil Nadu. A three judges' bench led by Justice Kuldip Singh adopted a very strict stand against the polluting tanneries. In this case the court reviewed the history of the concept of sustainable development under international law. In this connection the court briefly referred important legal developments such as the Stockholm Conference 1972, Burndtland Commission Report, 1987, Caring of the Earth Report, 1991, Rio Conference, 1992, Convention on Climate Change, 1992, Convention on Biological Diversity, 1992 and Agenda -21 (A programme of Action for Twenty-first Century), *etc.*

The important legal findings of the Vellore case, relevant for this article, are summarized below:

(1) The court held that "Sustainable Development" as a balancing concept between ecology and development has been accepted as a part of customary international law though its salient features are yet to be finalized by the international law jurists. (p. 658, Para 10, *supra* note 25).

(2) The court was of the view that "The precautionary Principle" and "The Polluter Pays Principle" are essential features of "Sustainable Development." (*ibid.*, p. 658, Para 11).
(3) The Precautionary Principle and the Polluter Pays Principle have been accepted as part of the law of the land. (*ibid.*, pp. 659-660, Paras 13 and 14).
(4) According to the court, "once these principles are accepted as part of the customary International law there would be no difficulty in accepting them as part of the domestic law. It is almost an accepted proposition of law that the rules of Customary International Law which are not contrary to the municipal law shall be deemed to have been incorporated in the domestic law and shall be followed by the courts of law". (*ibid.*,p. 660, Para 15).

ROLE OF VELLORE CASE IN DEVELOPMENT OF ENVIRONMENTAL LAW IN INDIA

Vellore case has been proved a turning point of the growth of environmental law in India. Though the aforementioned outcome/ratio of the *Vellore case* has often been questioned by the critics but the Supreme Court itself has never cast a doubt on the ratio of this case. Conversely the courts in India have been enthusiastically applying the ratio of the *Vellore case* in majority of environmental cases. Hereinafter, an effort has been made to present an account of those cases in which *Vellore case* has been cited, approved and used. This discussion can be divided into two broader heads as below.

Application of Vellore Case by the other Judges in Post Kuldip Singh Era

Even after retirement of Justice Kuldip Singh in Dec. 1996 the entire ratio of *Vellore case* remained intact. In fact, this ratio of *Vellore* has been further strengthened when in many other important environmental cases the Supreme Court reiterated and upheld the same. But, in post Kuldip Singh era nature and extent of the application of *Vellor's* ratio has varied from case to case. In these cases, briefly mentioned below, the courts have made passing references or restrictive use or selective use of *Vellore's* ratio. However, there has been no dissent against the *Vellore's* ratio in these cases.

In *Samatha case* only meaning and importance of the term sustainable development as well as "the polluter pays principle as a facet thereof" have been briefly mentioned and affirmed by the Supreme Court. In *Nuyudu case* citing *Vellore case* the Supreme Court felt it necessary to further elaborate the meaning of precautionary principle in more detail'. (Para 32, p. 733). In *Sardar Sarovar Dam* majority judgement (Kirpal, J. for himself and Anand, CJI.) referred the *Nayudu and Vellore Cases* and approved the construction of a mega dam and found it compatible with the concept of sustainable development which requires that mitigative steps should be taken. The court refused to apply the precautionary principle in this matter by distinguishing the dam with the hazardous industries.

CONSTITUTIONAL AND LEGISLATIVE MEASURES

Stockholm Declaration of 1972 was perhaps the first major attempt to conserve and protect the human environment at the international level. As a consequence of this Declaration, the States were required to adopt legislative measures to protect and improve the environment. Accordingly, Indian Parliament inserted two Articles, *i.e.*,, 48A and 51A in the Constitution of India in 1976, Article 48A of the Constitution rightly directs that the State shall endeavour to protect and improve the environment and safeguard forests and wildlife of the country. Similarly, clause (g) of Article 51A imposes a duty on every citizen of India, to protect and improve the natural environment including forests, lakes, river, and wildlife and to have compassion for living creatures.

The cumulative effect of Articles 48A and 51A (g) seems to be that the 'State' as well as the 'citizens' both are now under constitutional obligation to conserve, perceive, protect and improve the environment. Every generation owes a duty to all succeeding generations to develop and conserve the natural resources of the nation in the best possible way. The phrase 'protect and improve' appearing in both the Articles 48A and 51A (g) seems to contemplate an affirmative government action to improve the quality of environment and not just to preserve the environment in its degraded form. Apart from the constitutional mandate to protect and improve the environment, there are a plenty of legislations on the subject but more relevant enactments for our purpose are the Water (Prevention and Control of Pollution) Act, 1974; the Water (Prevention and Control of Pollution) Cess Act, 1977; the Air (Prevention and Control of Pollution) Act, 1981; the Environment (Protection) Act, 1986; Public Liability Insurance Act, 1991; the National Environment Tribunal Act, 1995 and the National Environment Appellate Authority Act, 1997; the Wildlife (Protection) Act, 1972; the Forest (Conservation) Act, 1980. The Water Act provides for the prevention and control of water pollution and the maintaining or resorting of the wholesomeness of water.

The Act prohibits any poisonous, noxious or polluting matter from entering into any stream or well. The Act provides for the formation of Central Pollution Control Board and the State Pollution Control Board. The new industries are required to obtain prior approval of such Boards before discharging any trade effluent, sewages into water bodies. No person, without the previous consent of the Boards shall bring into use new or altered outlet for the discharge of sewage or trade effluent into a stream or well or sewer or on land. The consent of the Boards shall also be required for continuing an existing discharge of sewage or trade effluent into a stream or well or sewer or land.

In the Ganga Water Pollution case, the owners of some tanneries near Kanpur were discharging their effluents from their factories in Ganga without setting up primary treatment plants. The Supreme Court held that the financial capacity of the tanneries should be considered as irrelevant while requiring them to establish primary treatment plants. The Court directed to stop the running of

these tanneries and also not to let out trade effluents from the tanneries either directly or indirectly into the river Ganga without subjecting the trade effluents to a permanent process by setting up primary treatment plants as approved by the State Pollution Control Board.

The Water (Prevention and Control of Pollution) Cess Act, 1977 aims to provide levy and collection of a cess on water consumed by persons carrying certain industries and local authorities to augment the resources of the Central Board and the State Boards constituted for the prevention and control of water pollution. The object is to realise money from those whose activities lead to pollution and who must bear the expenses of the maintaining and running of such Boards. The industries may obtain a rebate as to the extent of 25 per cent if they set up treatment plant of sewage or trade effluent.

The Air Act has been designed to prevent, control and abatement of air pollution. The major sources of air pollution are industries, automobiles, domestic fires, *etc.* The air pollution adversely affects heart and lung and reacts with hemoglobin in the blood. According to Roggar Mustress, the American Scientist, air pollution causes mental tension which leads to increase in crimes in the society. The Air Act defines an air pollutant as any 'solid, liquid or gaseous substance including noise present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment.' The Act provides that no person shall without the previous consent of the State Board establish or operate any industrial plant in an air-pollution control area. The Central Pollution Control Board and the State Pollution Control Board constituted under the Water Act shall also perform the power and functions under the Air Act. The main function of the Boards under the Air Act is to improve the quality of air and to prevent, control and abate air pollution in the country. The permission granted by the Board may be conditional one wherein stipulations are made in respect of raising of stack height and to provide various control equipments and monitoring equipments.

It is expressly provided that persons carrying on industry shall not allow emission of air pollutant in excess of standards laid down by the Board. In Delhi, the public transport system including buses and taxies are operating on a single fuel CNG mode on the directions given by the Supreme Court. Initially, there was a lot of resistance from bus and taxi operators. But now they themselves realise that the use of CNG is not only environment friendly but also economical. Noise has been taken as air pollutant within the meaning of Air Act. Sound becomes noise when it causes annoyance or irritates. There are many sources of noise pollution like factories, vehicles, reckless use of loudspeakers in marriages, religious ceremonies, religious places, *etc.* Use of crackers on festivals, winning of teams in the games, and other such occasions causes not only noise pollution but also air pollution. The Air Act prevents and controls both these pollutions.

The Environment (Protection) Act, 1986 was enacted to provide for the protection and improvement of the quality of environment and preventing,

controlling and abating environmental pollution. The Act came into existence as a direct consequence of the Bhopal Gas Tragedy. The term 'environment' has been defined to include water, air and land, and the inter-relationship which exists among and between water, air and land and human beings, other living creatures, plants, micro-organism and property. The definition is wide enough to include within its purview all living creatures including plants and micro-organism and their relationship with water, air and land.

The Act has given vast powers to the Central Government to take measures with respect of planning and execution of a nation-wide programme for prevention, control and abatement of environmental pollution. It empowers the Government to lay down standards for the quality of environment, emission or discharge of environmental pollutants; to regulate industrial locations; to prescribe procedure for managing hazardous substances, to establish safeguards for preventing accidents; and to collect and disseminate information regarding environmental pollution. Any contravention of the provisions of the Act, rules, orders or directions made thereunder is punishable with imprisonment for a term which may extend to five years or with fine upto one lakh rupees or with both. The Act is an 'umbrella' legislation designed to provide a frame work for Central Government coordination of the activities of various Central and State authorities established under previous laws, such as the Water Act and the Air Act. The Parliament passed the Public Liability Insurance Act, 1991 to provide for public liability insurance for the purpose of providing immediate relief to the persons affected by accident occurring while handling any hazardous substance and for matters connected therewith.

The Act provides for mandatory public liability insurance for installations handling any hazardous substance to provide minimum relief to the victims (other than workers) through the mechanism of collector's decision. Such an insurance will be based on the principle of 'no fault' liability as it is limited to only relief on a limited scale. Such insurance apart from safeguarding the interests of the victims of accidents would also provide cover and enable the industry to discharge its liability to settle large claims arising out of major accidents. However, availability of immediate relief under this law would not prevent the victims to go to Courts for claiming large compensation. The National Environment Tribunal Act, 1995 was enacted to provide for strict liability for damages arising out of any accident occurring while handling any hazardous substance. The Act provides for establishment of a National Environment Tribunal for effective and expeditious disposal of cases arising from such accident. It imposes liability on the owner of an enterprise to pay compensation in case of death or. Injury to any person; or damage to any property or environment resulted from an accident. The accident must have occurred while handling any hazardous substance.

A claimant may also make an application before the Tribunal for such relief as is provided in the Public Liability Insurance Act, 1991. The National Environment Appellate Authority Act, 1997 has been enacted to provide for the

establishment of a National Environment Appellate Authority to hear appeals with respect to restriction of areas in which any industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguard under the Environment (Protection) Act, 1986. After the establishment of the Authority, no Civil Court or other authority shall have jurisdiction to entertain an appeal on matters on which the Authority is so empowered under the Act. It is evident that this Act has been made with objective to provide speedy justice on environmental issues.

The Wild Life (Protection) Act, 1972 was enacted with a view to provide for the protection of wild animals, birds and plants. The Act prohibits hunting of animals and birds as specified in the schedules. The Act also prohibits picking, uprooting, damaging, destroying, *etc.*, any specified plant from any forest. The Act provides for State Wildlife Advisory Board to advise the State Government in formulation of the policy for protection and conservation of the wildlife and specified plants; and in selection of areas to be declared as Sanctuaries, National parks, *etc.* The Act is administered by a Director of Wildlife Preservation with Assistant Directors; and a Chief Wildlife Warden with other Wardens and their staff. The Forest (Conservation) Act, 1986 was passed with a view to check deforestation of forests.

The Act provides that no destruction of forests or use of forestland for non-forest purposes can be permitted without the previous approval of the Central Government. The conservation of forests includes not only preservation and protection of existing forests but also re-afforestation. Reafforestation should go on to replace the vanishing forests. It is a continuous and integrated process. The Act is intended to save a laudable purpose and it must be enforced strictly for the benefit of the general public. It is evidently clear that there is no dearth of legislations on environment protection in India. But the enforcement of these legislations has been far from satisfactory. What is needed is the effective and efficient enforcement of the constitutional mandate and the other environmental legislations.

ENVIRONMENTAL MEASURES AND WTO RULES

Many provisions of WTO agreements potentially interact with environmental policies. Some agreements impose obligations on WTO members that may conflict with domestic environmental policies or with actions members are required to take in compliance with MEAs. In this regard, among the most significant are the Preamble; GATT articles establishing non-discrimination, regulating quantitative restrictions on exports and imports, and establishing general exceptions to GATT obligations; and SPS and TBT. Other important provisions may be found in the GATS, TRIPS, SCM, and the Agreement on Agriculture.

PREAMBLE TO THE AGREEMENT ESTABLISHING THE WTO

Historically, GATT members saw the GATT, and supporting agreements, solely as the establishment of reciprocal benefits in commercial relations among

sovereign states. Initially, the agreement addressed the treatment of imports at the border – *e.g.*, tariffs, customs administration, quotas, and emergency balance of payments measures – as well as export subsidies and national treatment of foreign goods in domestic markets.

Only in 1966 were articles added to the GATT that directly addressed trade and development. At the conclusion of the Tokyo Round (1973-1979), supplemental agreements were added to the GATT framework that more directly penetrated the management of domestic markets – *e.g.*, the agreements on technical barriers and product standards and on subsidies that were antecedents to SPS, TBT and SCM negotiated in the Uruguay Round.

In 1971, as a result of preparations for the Stockholm Conference, the GATT Secretariat prepared a study entitled *Industrial Pollution Control and International Trade*.

This study focused on the implications of environmental protection policies on international trade, and reflected concerns that these policies could create new barriers to trade. Following this study, the members formed the GATT Group on Environmental Measures and International Trade (EMIT). This group became active in the early 1990s, and at the 1994 Marrakesh Ministerial Meeting establishing the WTO, the members authorized the creation of the current CTE.

Prior to the founding of the WTO in 1995, dispute settlement panels were disinclined to give much weight to environmental and other social policy considerations in determining how trade and domestic policies should be crafted for members to comply with GATT non-discrimination obligations. However, reflecting the trend in international agreements, the Preamble makes specific reference to the need to balance the trade and economic objectives of the GATT, GATS, TRIPS and other WTO agreements on the one hand, and environmental policy considerations on the other. The opening paragraphs of the Preamble to the Agreement Establishing the World Trade Organization state:

The *Parties* to this Agreement, *Recognizing* that their relations in the field of trade and economic endeavor should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development.

By virtue of these references to sustainable development and environmental goals in the Preamble, the Appellate Body in the 1998 *Shrimp-Turtle* decision determined that the negotiators of the WTO Agreement were fully aware of the importance and legitimacy of environmental protection as a goal for national and international policy. They concluded that GATT and all other WTO agreements:

…Must be read by a treaty interpreter in the light of contemporary concerns of the community of nations about the protection and conservation of the

environment. As this preambular language reflects the intentions of negotiators of the *WTO Agreement,* we believe it must add colour, texture and shading to our interpretation of the agreements annexed to the *WTO Agreement*, in this case, the GATT 1994. These words have the potential fundamentally to change how WTO members may act to balance their obligations with regard to non-discrimination and environmental protection.

INTERNATIONAL LAW AND POSITION OF INDIA

In the world community of nations sovereign states conduct their relations on a body of norms, treaties and other standards of conduct that together from the foundation of modern international law. International law has been applied frequently to relatively routine relations between states. To understand the nature of international law an insight into the dynamic nature of law becomes essential.

Any law, national or international is a set of rules, combination of expectations and practices that help to govern human behaviour. According to Rourke (1993) certain features determine the dynamic nature of law. Firstly, all legal systems are dynamic, continually evolving systems. Second, no legal system is perfect. Even in law abiding societies, rules are broken and the guilty sometimes escape punishment.

Third, law both reflects and directs a society. In other words, law often mirror the norms of a society. We legalize what we do in practice. People began wearing clothes long before there were laws against public nudity. Law, however, can also lead a society to change its behaviour by enacting philosophical principles into required standards of conduct. In the United States, Laws and court decisions requiring the racial desegregation of schools and other public facilities preceded and facilitated the easing, although not the end, of racial bigotry. Fourth, law depends on a mixture of voluntary compliance and coercing to maintain order. Sometimes we may obey the law because we are afraid that if we do not we will be caught and punished. More often, people are law abiding because they agree with the law or recognize that laws are necessary to regulate society.

Thus, law is a process of evolution and growth. It evolves and advances from primitive nature to more sophisticated level in a political system.

MEANING OF INTERNATIONAL LAW

International law in its modern form is the result of the great political transformation that marked the transition from Middle Ages to the modern period of history. The development of a territorial state led to formation of the supreme authority, within the territory of the state.

When this transformations was consummated in the 16th century the political world consisted of a number of states that within their respective territories were legally speaking, completely independent of each other (Moregenthau, 1973).

For an atmosphere of peace and order, in relation, among such sovereign entities it was inevitable that certain rules of law should govern these relations, and if anarchy and violence are not the order of the day, legal rules must determine the mutual rights and obligations in such situations and these core of rules came to be known as international law. Oppenheim (1905) an authority spoke of it as the name for a treaty of customary and conventional rules which are considered legally binding by civilized state in their intercourse with each other.

Fennwich 1920 defines it as the body of rules accepted by the general community of nations as defining their rights and the means of procedure by which those rights may be protected or violations of them redressed.

Jessup (1948) wrote that International law is generally defined as law applicable to relations between states Ellery C. Stowell (1931) explained that International law embodies certain rules relating to human relations throughout the world, which are generally observed by mankind and enforced primarily though the agency of the government of the independent communities into which humanity is degraded.

Y. Korovin (1962) a communist thinker defines contemporary international law as the international code of peaceful existence.

How International Law is Made

In a domestic political system the law is made through a constitution, a legislative body, as well as judicial decisions which establish guidelines and precedents for later decisions by courts. At times customary or common law also forms part of the sources of law along with settlement of disputes sometimes on the basis of equity.

Modern international law differs from the domestic law in its sources.

Articles 38 of the Statute of the International Court of Justice indentifies the sources of international law as follows:

- International conventions (treaties), whether general or particular, establishing rules expressly recongnized states.
- International custom, as evidence of a general practice accepted as law.
- The general principles of law recognized by civilized nations.
- Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publications of the various nations, as subsidiary means for the determines of the rules of law (plamer and Perkins, 1976).

The treaties and decisions regulate relatins between states arising from variety of communications, exchange of goods and services and international organizations where nations cooperate for mutuality of interests. The general principle of law are those that are common to municipal legal systems of various nations. The judicial decisions were rendered by Permanent Court of Arbitration, permanent Court of International Justice, the International Court of Justice, and military tribunal such as Neuremberg and Tokyo trials. Juristic opinions of Grotius, Openheim, Briery have also contributed in the evolution of international

law. Some students of international law add a fifth course the pronouncements of international representative assemblies like the U.N. General Assembly.

These diverse sources imply that international law making is decentralized. There is no single institutional or intellectual source of law, besides, it remains uncodifed today which creates problems in its interpretations. Due to the unclear nature of the law, states try to interpret it in a manner so as to suit their national interest. Yet decentralization does not mean non existence of the law. Despite some inconsistencies the law exists.

Effectiveness of International Law

One of the charges leveled against the credibility of international law is that it exists only in theory and not in practice. In the first place the violation of law does not mean absence of law. International law is effective in many areas (Chiu 1987) Failure to flowed it does not disprove its existence, *e.g.*, every domestic political system has a code of law for discipline and orderly society yet crimes, thefts, robberies and other such cases are always reported. Does that mean there is no law.

International law is most effective in functional international relation. Which ideal with routine, procedural, communications and trade matters termed as low politics interaction. But international law is least effective in high politics interaction which involved government try to interpret international law in a manner so as to justify their actions rather than alter their actions to conform to the law.

In the ultimate analysis even in areas of high politics it is gradually becoming effective. The law does influence political decisions. It was Iraq's violation of international norms that triggered such as adverse reaction in the world and was demonstrated in the total solidarity in the U.N against Iraq. Virtually all countries condemned Iraq's invasion of Kuwait and disagreed with its declaration that Kuwait was a province of Iraq. Almost all states honoured the UN sanctions and a number of them sent military contingents too. In the end law had to be enforced. Iraq had detained hundreds of foreign hostage in violation of international law. This set off an intense reaction by the world community against Iraq and it eventually announced that all hostages were free to leave. However, the effectiveness of international law like all legal systems, will be most effective when people demand that everyone, citizens and leaders alike, abide by its principles (Falk, 1989).

Limitations of International Law

Popular hopes and political declarations of goals have created certain illusions about peace through world law. Generally considered, legal and constitutional law applied in the domestic society are also applicable to international relationship and a world state is envisaged. It has been assumed that international law emerged from primitive society to creation of a state to the final establishment of an international order.

This concept is considered invalid n the present context. While domestic law is imposed by the group that holds monopoly of organized force, international law owes its existence and operation to two factors, decentralized character of identical and complementary interests of individual states and the distribution of power among them. Where there is neither, there is no international law. International law is based on necessity and mutual consent.

International law is voluntary, Only those nations who obey are party to the agreement or treaty. Some nations conclude agreements among themselves and include it in the sphere of international law. Governments generally refrain from accepting the restraining influence that international law might have upon their foreign relations use it to promote their national interests and yet evade any legal obligation that might have upon their foreign relations, use it to promote their national interests and yet evade any legal obligation that might be detrimental to their interests. Thus, international law becomes a tool in their hands for furthering national interests. The basic reason for this is the decentralized nature of international law which accounts for lack of precision and continues to sap its strength.

India is an open country with a vidorous press and a strong judiciary which has delivered some highly creative judgement to protect fundamental rights. Yet even these and other Indian institutions with substantive powers to safeguard the rights of India's citizens have failed to provide effective protection to the hundreds, if not thousands, of Indian citizens who have died after torture and ill treatment. The victims have been ordinary men and women, even children, some of them picked up on the flimsiest of criminal charges, and have come from nearly every state during the past decade. At least 459 of them have, since 1985, been deprived, in custody, of the most basic human right of all the right to life.

One welcomes the Indian Government's reiteration in June 1992 that India firmly believes in human rights. However, time and again government official have refused to acknowledge that the problem of torture exists.

No administration has shown the political will to bring about change we believe the government must act urgently to create an effective institutional framework to prevent Human Rights and related abuses. Officials charges with carrying this out it is felt must be given full assistance at every level of government.

6

Global Legal Frameworks in Environmental Law

Significant International Legal Measure taken for the protection of environment and regulation and control of acid rain, greenhouse effect, ozone depletion, *etc.*

Some of the decision of the courts and international tribunals recognised the State liability in relation to trans-boundary environmentally harms. *Trail Smelter Arbitration52.* Between Canada and the United States concerned action brought by the United States for the pollution caused by a Canadian smelter in British Columbia. It was held by the Arbitral Tribunal that no Action State had the right to use or permit the use of its territory such that emissions cause injury in or to the territory of another State or to properties or persons therein. The tribunal also emphasised the importance of the States jointly working together to eliminate trans-frontier environmental problems.

The trail Smelter decision substantially advanced principles of State responsibility in regards to Tran frontier pollution but uncertainty existed as to how far these principles could extend.

The *Corfu Channel Case*53confirms the principles of State responsibility for injurious act which occur within territory under State control. As a result of this decision, the potential now existed for the principle of Trial Smelter to be extended beyond and air pollution to a wide variety of injurious acts. The 1957 Lake Lanoux Arbitration between France and Spain further developed some of these principles by making reference to the obligations State owned to advise their neighbours of activities which could result in Tran boundary harm.

In the 1950s, the international community legislate on International oil pollution in the oceans, and the conservation of living resources of the High Seas and the Antarctica region. In the 1960s, State liability for nuclear damage and the oil pollution damage was recognised. By the 1970s, the regional consequences of pollution and the destruction of flora and fauna were obvious. Some very significant conventions took place during this decade such as the *1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora*. Over 113 nations had signed the 1973 Convention on International Trade in Endangered Species (CITES).CITIES does not seal to directly protect endangered species or the development practices that destroy their habitats. Rather, it seeks to reduce the economic incentive to kill endangered species and destroyed their habitat by closing off the international market.

Cites regulates by means of an international permit system. For plant and animal species threaten with extinction, international import or export is strictly forbidden. For plant and animal species suffering decline but not yet facing extinction, international import/export permits must be secured. These CITES permits enable the trade to be controlled and monitored so that it does not lead species extinction or decline. By the late 1980s, global environment threats were part of the international community's agenda as scientific evidence identified the potential consequences of *ozone depletion, climate change and loss of bio-diversity*. Local issue were recognised to have Trans boundary, and then regional, and ultimately global consequences. The 1990s saw the crucial Rio Conference. The 1985 Vienna Convention can be cited as examples of international regulations being adopted in the face of scientific uncertainty and in the absence of an international consensus on the existence of environmental harm.

UNIFORM FIRE CODE—HAZARDOUS MATERIALS MANAGEMENT PLAN, HAZARDOUS MATERIALS INVENTORY STATEMENT

The Uniform Fire Code (UFC) is published by the Western Fire Chiefs Association. The UFC "prescribes regulations consistent with nationally recognized good practice for the safeguarding... of life and property from the hazards of fire and explosion arising from the storage, handling and use of hazardous substances, materials and devices, and from conditions hazardous to life or property in the use or occupancy of buildings or premises." The State Fire Marshal, part of the Department of Forestry and Fire Protection since 1996, has adopted the Uniform Fire Code, with amendments, as the California Fire Code. Local fire departments are required to adopt local fire codes that are no less stringent than the California Fire Code.

Section 8001.3 of Article 80 of the California Fire Code pertains to hazardous materials permits. Pursuant to section 8001.3.1, a permit is required "to store,

dispense, use or handle hazardous material in excess of" specified quantities. The actual issuance of these permits and compliance with their requirements are outside the scope of the Unified Programme. Permit applicants may be required by a fire chief to prepare a Hazardous

Materials Management Plan (HMMP) and Hazardous Materials Inventory Statement (HMIS); these two documents are included in the Unified Programme. The requirements of the HMMP and HMIS are now essentially the same as those of the business plan. The only enforcement mechanisms for Fire Code violations are those provided in local ordinance—usually infractions or misdemeanors. But see enforcement options under the discussion of business plans, above.

Underground Storage Tanks

The problem of hazardous substances leaking from underground tanks is not confined to California. Leakage from underground storage tanks containing hazardous material has contaminated groundwater and drinking water supplies throughout the nation. One gallon of gasoline can contaminate one million gallons of drinking water to an unsafe level of one part per million. High groundwater and sandy alluvial soil accelerate the corrosion of steel underground tanks and piping. As a result, leaks may occur in some tanks that are less than 10 years old.

More than half the reported leaks occur in the pressurized piping associated with the tanks rather than in the tanks themselves. Gasoline leaking from a hole in a pressure line will do so at a much faster rate than gasoline dripping from a hole in a tank's bottom. Moreover, because gasoline is so temperature sensitive and volatile, a 10,000-gallon tank can easily leak 100 gallons per month without being detected.

The requirements for the UST programme are found in Article 2, Chapter 6.7, Division 20 of the Health and Safety Code. The SWRCB has responsibility for developing regulations that establish statewide standards for the UST programme, which are found in Chapter 16 of Division 3 of Title 23, in the California Code of Regulations. The programme is implemented on the local level by CUPAs. The owner or operator of a UST must obtain a permit from the CUPA prior to commencing operation of a tank. The permit includes conditions regarding design, construction, and installation of new USTs, monitoring, repairs, upgrades, release response, closure, and notification or reporting.

The Role of the State Water Resources Control Board

The State Water Resources Control Board promulgates regulations to implement the standards for underground storage tanks outlined in Health and Safety Code section 25299.3. These regulations govern implementation of safety technologies, monitoring requirements, and reporting. The State Board is also required to develop standardized underground storage tank permit applications to be used by local authorities in monitoring the permit system and to keep

records of all permit applications filed with local authorities. The State Board has an underground tank enforcement unit that investigates violations related to USTs.

Tank Owners Requirements

Health and Safety Code sections 25280 et seq. lists the requirements for owners of tanks:

- Obtain a Permit to Operate and pay a fee to the local agency, *i.e.*, install a leak-detection system on all existing tanks.
- On new tank installations, obtain a Permit to Install and provide secondary containment of the tank and piping.
- Upon abandoning a tank, obtain a Permit to Abandon, clean out the tank, remove it from the ground, and check the ground beneath for evidence of contamination and past leakage.
- No permit is required for pits, ponds, lagoons.

Permits

The local CUPA issues permits and oversees activities pertaining to underground hazardous material storage tanks. Agriculture is exempt from local agency permit requirements.

The three kinds of permits and their requirements are as follows:

- *Permit to Operate:*
  - Installation of a leak-detection system.
  - Compliance schedule for installation of leak-detection system.
  - Inspection of the leak-detection system installation and proper use, monitoring, and maintenance of the system.
- *Permit to Install:*
  - Review of plans for secondary containment of tanks and piping.
  - Inspection of installation to ensure proper construction of the secondary containment system.
- *Permit to Close*: This permit requires the tank to be completely emptied and removed from the ground and the soil around and beneath the tank sampled for contamination.

Leak-Detection Programme

Applicants must file a plan and install a leak-detection system at their facilities. The plan must incorporate one of the monitoring alternatives contained in the regulations.

Requirements include:

- Description of proposed leak-detection system.
- Identification of monitoring alternatives.
- List of proposed equipment.
- Inventory schedule and procedures.
- Tank testing schedule.

- Monitoring of person responsible for leak-detection reporting procedures to be used if leak is detected.
- Name of the person responsible for leak detection reporting procedures to be used if leak is detected.
- Identification of duties to be performed by the owner of the tank and the operator of the facility.

ENFORCEMENT

Civil

Health and Safety Code section 25299 states that an owner or operator of an underground storage tank facility shall be liable for a civil penalty of from $500 to $5,000 per day for any of the following violations:

- Operating the facility's tanks without a Permit to Operate.
- Failing to monitor the tanks as required by the permit.
- Failing to maintain inventory and other records.
- Failing to report leaks.
- Improperly closing/abandoning a tank.
- Improperly repairing a leaking tank.

Criminal

Misdemeanors

Anyone falsifying any monitoring records or knowingly fails to report a leak may be fined from $5,000 to $10,000 per day and/or imprisoned in county jail for not more than one year. Anyone intentionally tampering with leak detection systems leak may be fined from $5,000 to $10,000 per day and/or imprisoned in county jail for not more than one year.

Felonies

Health and Safety Code Section 25284.4 (i): Perjury provision for fraud by underground tank testers

Alternative Penalties

In certain cases, an owner of a tank may be held liable for illegal disposal of hazardous waste under the Hazardous Waste Control Board Law with civil and criminal penalties similar to those described above.

HAZARDOUS WASTE

California's Hazardous Waste Control Act of 1972 was the first comprehensive hazardous waste control law in the United States. It has served as a model for other states as well as for the federal government. The Hazardous Waste Control Law, Health and Safety Code sections 25100 et seq., establishes standards for regulating the generation, handling, processing, storage, transportation, and

disposal of hazardous wastes—a "cradle to grave" scheme. The purpose of the regulations is the management of hazardous waste from the moment it is generated by an individual or a business until it is recycled or discarded. The hazardous waste control programme is administered by the state Department of Toxic Substances Control (DTSC) and by local CUPAs.

Hazardous Material vs. Hazardous Waste

The distinction between hazardous material and hazardous waste is important. Different regulatory schemes have different lists of what constitutes a hazardous material. For example, Health and Safety Code section 25501 provides its own particular definition of hazardous material. Hazardous materials become hazardous waste when the material has been used for its original purpose and is about to be discarded or recycled. California law subjects recyclable materials to many of the same restrictions as hazardous waste.

Hazardous waste is defined as a waste, or combination of wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may either:

- Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness.
- Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or
- Otherwise managed.

Criteria for specific types of hazardous waste are found in the California Code of Regulations at Title 22, sections 66261.10-66261.24. These regulations describe specific testing methods for toxicity, flammability, reactivity, and corrosiveness..

The Manifest System

DTSC is responsible for maintaining and regulating the manifest system mandated by the Hazardous Waste Control Law. The focus of the system is the requirement of a "manifest," a document that tracks the movement and disposal of hazardous waste. Manifest regulations are set forth at California Code of Regulations Title 22, sections 66262.20-66262.23 and 66262.40. The generator prepares the manifest that identifies the generator, the type and amount of waste to be shipped, the designated hauler, and the designated disposal site.

The generator prepares six copies of the manifest. When waste is offered for transportation, the transporter acknowledges receipt of the waste by signing the manifest. The generator retains one signed copy and sends another copy to DTSC within 30 days of shipping the waste. The hauler carries the remaining four copies with him or her at all times during the transportation of the waste. Upon delivery to the disposal site, the owner or operator of the disposal facility inspects the waste to assure that it is accurately described in the manifest and then acknowledges receipt of the waste by signing the manifest.

TREATMENT, STORAGE, AND DISPOSAL FACILITIES (TSDFS)

Facility Permits

The state issues permits only to facilities engaged in the treatment, storage, disposal, or transportation of hazardous wastes. Generators are not required to obtain a permit, but are required to have a U.S., EPA generator ID number and must report to the federal Environmental Protection Agency if they produce more than 1,000 kilograms (2,200 pounds) of hazardous waste within a calendar month. Exceptions are made for hazardous wastes generated onsite and stored for less than 90 days or where the total hazardous waste generated is less than 5,000 gallons or 45,000 pounds. Transfer facilities holding hazardous waste for more than 144 hours and all other off-site facilities holding hazardous waste for any period of time must also hold a valid TSDF permit.

Fees

Disposal fees are assessed on a per-ton basis. Fees are collected by the Board of Equalization, not the Department of Toxic Substances Control.

Generator Responsibilities

A generator is a person or business whose act or process produces a hazardous waste or whose act first causes a hazardous waste to become subject to regulation.

Responsibilities include:

- Filing a hazardous waste notification statement with DTSC prior to generating, treating, storing, or disposing of hazardous waste.
- The generator determines if its waste falls within the definition of "hazardous" and treats it accordingly. The generator must obtain a U.S., EPA Identification Number. Variance procedures are available if the generator believes the waste need not be handled as hazardous waste.
- A generator of extremely hazardous waste must notify DTSC of its intent to dispose it.
- A generator may store hazardous waste at an outside facility for up to 90 days or at an offsite transfer facility for 144 hours without obtaining a facility permit. Extensions of the 90-day rule are available on application to DTSC if unforeseen circumstances cause delay.
- Small generators, defined as generators of less than 100 kilograms (220 pounds) of hazardous waste or less than one kilogram (2.2 pounds) of extremely hazardous waste per month, may store up to 100 kilograms of hazardous waste or one kilogram of extremely hazardous waste indefinitely without a permit.
- Generators must dispose of all hazardous waste at a licensed facility using a registered hazardous-waste hauler for all transportation.
- Generators must use a manifest for all transportation of hazardous waste and:

  - Complete the generator portion (including a description of the waste) and sign the certification.
  - Insure that the transporter signs and dates the manifest upon receipt of the waste.
  - Keep two copies of the manifest (special rules apply regarding transport by ship, rail, *etc.*).
  - Contact the transporter and disposal facility if the copy signed by the disposer is not received within 35 days of shipment.
  - Submit an Exception Report to DTSC if a signed copy from the disposal facility is not received within 45 days of shipment. Maintain records.
- Generators must maintain copies of all manifests for three years, submit biennial reports, keep a copy of all biennial reports and exception reports for three years, and maintain copies of all chemical test reports for three years.
- Generators must insure that hazardous waste is properly packaged and labeled for transport.
- Generators must insure that storage conditions comply with regulations during storage prior to disposal.

Comply with storage and container regulations for Interim Status and Permitted Facilities, including providing for adequate security, containment of spills, alarm systems, *etc.* The date on which accumulation of waste began must be marked and visible on each container to assure compliance with the 90-day rule.

Containers must be marked as containing hazardous waste:

- Generators must comply with regulations regarding preparedness and prevention for fires, spills, accidents, *etc.*, and also with regulations regarding contingency plans for accidents, evacuations, emergency response, *etc.* This may be the same document as the Hazardous Materials Management Plan prepared pursuant to Health and Safety Code Chapter 6.95.
- Generators must comply with training requirements for personnel who handle hazardous waste.
- Generators must recycle all hazardous wastes for which DTSC determines recycling is economically and technologically feasible. A list of such wastes appears at California Code of Regulations Title 22, section 66266.2.
- Generators who produce more than five tons of hazardous waste per year must pay generator fees.

HAZARDOUS-WASTE TRANSPORTERS

Registration

DTSC has the responsibility for the registration of all transporters of hazardous waste in California. All transporters must hold a valid registration permit from DTSC before carrying any hazardous waste. DTSC reviews applications for registration to ensure that:

- All equipment to be used by the transporter for transporting hazardous wastes has passed inspection by the California Highway Patrol (CHP).
- All persons who will operate any hazardous waste transportation equipment have received adequate safety training.
- The transporter has established his or her financial responsibility.
- The hauler has agreed to allow authorized agents of DTSC or the CHP to inspect his or her vehicle, transportation equipment, and records.

Enforcement of Transportation Laws

DTSC shares responsibility for enforcing California's hazardous waste transportation laws and regulations with CHP. DTSC is authorized to inspect company records and, when accompanied by a uniformed police officer, to stop and inspect any vehicle reasonably suspected of transporting hazardous wastes. DTSC may suspend the transporter's registration absent proof of ability to respond to damage. When DTSC determines that a violation has occurred or is about to occur, it may request the city attorney, district attorney, or the attorney general to seek injunctive relief or civil penalties in the California courts.

- *California Highway Patrol*: Under Vehicle Code section 34501(b), CHP has broad authority to promulgate regulations to ensure safety in the transportation of hazardous substances. Pursuant to that authority, CHP has issued extensive regulations regarding:
  - Packaging and labeling of hazardous substances offered for transportation, the placarding of vehicles, the preparation of shipping papers, safety-equipment requirements, and routing restrictions.
  - CHP packaging and labeling requirements extensively reference federal Department of Transportation regulations.
  - *Licensing*: The CHP is responsible for licensing hazardous-waste haulers. No person may transport hazardous waste without first acquiring a license from CHP. The license is non-transferable and may be denied, suspended, or revoked if the hauler is found to be guilty of multiple violations of the hazardous waste transportation laws.
  - *Suspensions*: CHP is also authorized to suspend or revoke any license for the transportation of hazardous materials if it finds that the hauler has been found guilty of multiple violations of the Vehicle Code and that such suspension or revocation is in the public interest. The CHP commissioner is authorized to temporarily suspend any hauler's license when he or she deems such suspension necessary to prevent an imminent and substantial danger to the public health.
- Responsibilities of Transporters
  - Must be registered with DTSC and obtain CHP inspection/approval for all trucks and containers used in transport. There is an exception for small quantities (under five gallons/50 pounds).

- Must comply with all regulations regarding manifests.
- Must ensure that the generator signs, dates, and describes the waste.
- Must complete, sign, and date the transporter section and give a copy to the generator prior to the removal of the waste.
- Must have a copy of the manifest in his or her possession during transportation and must provide a copy to the facility to which the waste is delivered.
- Must obtain the signature and date of transfer of the waste to the licensed facility where it is disposed or to another registered waste hauler upon surrender of the waste.
- Must keep a copy of the manifest for three years.
- Must take immediate and appropriate action regarding spills during transport.

Cleanup Superfund

Pursuant to the Carpenter-Presley-Tanner Hazardous Substance Account Act (the State Superfund), DTSC is responsible for formulating criteria for the selection and priority ranking of hazardous-waste sites for remedial action. For this purpose, DTSC has adopted a modified version of U.S., EPA's hazard ranking system. DTSC has prepared a priority list of sites for cleanup that it updates monthly. In addition to this priority list, DTSC prepares site-specific plans of expenditures for removal and remedial actions to be paid for from the State Superfund.

Whenever DTSC determines that a release of a hazardous waste has occurred or is about to occur, it is authorized to investigate the nature of the release or potential release, to plan and direct appropriate remedial action, and, if no other party has undertaken the appropriate remedial action, to undertake that action itself. It is also authorized to require the property owner to secure the site.

If DTSC determines that a site or release presents an imminent and substantial danger to the public health or the environment, it may immediately order remedial action by the responsible parties, request the attorney general to seek judicial relief, and/or take or contract for necessary remedial actions. The attorney general has jurisdiction to recover all costs expended by the DTSC.

If the local district attorney has brought an action under the HWCL pursuant to Chapter 6.5 against any person for violating the provisions of that chapter or any rule, regulation, or order and the Department has spent money from the state account for immediate corrective action in response to a release or threatened release, the state account may be made a party to that action for the purpose of recovering such costs.

Enforcement

If DTSC finds any violation of the HWCL or its rules or regulations, or if it finds that the owner or operator of the facility has misrepresented or omitted

any significant fact in its permit application or in any other information submitted to the Department, it may suspend or revoke the facility's permit. Alternatively, if DTSC or the CUPA director finds a violation of HWCL or its regulations, he or she may issue an administrative order against the owner or operator of the facility specifying a schedule for compliance. If corrective action is not taken or if it is determined that immediate action is necessary to prevent an imminent and substantial danger to the public health or environment, DTSC is authorized to take action itself. If the director finds any violation of HWCL or its regulations, DTSC may request the local city attorney, district attorney, or the attorney general to file suit for injunctive relief or civil penalties. To the extent that criminal violations are involved, the inherent prosecutorial authority of the district attorney allows for independent criminal prosecution of any violations without regard to the above-listed requests from the DTSC. Legislation passed in 1990 creates dual criminal jurisdiction in both the district attorney and the city attorney. Coordination between district attorneys and city attorneys is critical to avoid double-jeopardy problems.

Violations

Criminal Violations: Health and Safety Code Section 25190: Any violation of Chapter 6.5 of the Health and Safety Code or any regulation adopted under Chapter 6.5 (including all registration, certification, and manifesting requirements identified above) is a misdemeanor. A second conviction is punishable by up to 24 months in state prison and a fine of $5,000 to $25,000.

Health and Safety Code Section 25191: Covers transporter registration, vehicle certification, and manifesting requirements. Any owner or lessee of a vehicle in which waste is transported, or any person authorizing transportation who knowingly violates specified provisions, shall be fined $2,000 to $50,000 for each day of violation and/or serve up to 24 months in prison.

Health and Safety Code Section 25191(c): Covers transporting or authorizing transportation in an uncertified vehicle and carrying or authorizing the carrying of hazardous waste without a manifest. Any person who knowingly violates specified provisions shall be fined up to $500 for each day of violation and/or serve six months to one year in prison.

Health and Safety Code Section 25191(d): Treatment or storage without a permit or at an unauthorized point. Any person who knowingly violates specified provisions shall be fined $2,000 to $50,000 and/or serve up to 24 months in prison. Second convictions shall be fined $5,000 to $50,000 and/or serve up to 24 months in prison—GBI enhancements.

Health and Safety Code Section 25189.5 (Felony): Where one knows or should have known of unlawful treatment, storage, transportation, or disposal, punishment is imprisonment for up to 36 months and a fine of between $5,000 and $100,000 for each day of violation—GBI enhancements. (*People v. Martin* (1989) 211 Cal.App.3d 699; *People v. Taylor* (1992) 7 Cal.App.4th 677 [lack of funds is not a defence to disposal].)

Note: Each day after an unreported illegal disposal is considered a separate offence until notice is given to DTSC. For a case upholding a similar statute against a Penal Code section 654 challenge, see *People v. Djekich* (1991) 229 Cal.App.3d 1213.

Health and Safety Code Section 25189.6 (Felony): Any person who knowingly or with reckless disregard of the risk treats, handles, transports, disposes, or stores hazardous waste in a manner that causes unreasonable risk of fire, explosion, *etc.*, may be punished by a fine of not less than $5,000 up to $250,000 per day and 16, 24, or 36 months in prison. There is an enhancement for knowingly placing another in imminent danger that is punishable by three, six, or nine years in prison. This section may be used in illegal drug laboratory situations.

This is one of the few areas where there is a lot of California law on criminal cases. See *People. v. Sangani* (1994) 22 Cal.App.4th 1120; *People v. Hale* (1994) 29 Cal.App.4th 730; *People v. Todd Shipyards Corp*. (1987) 192 Cal.App.3d Supp. 20; and *People v. Matthews* (1992) 7 Cal.App.4th 1052.

Health and Safety Code Section 25189.7 (Felony): This section provides that anyone who knew or should have known that he or she burned or caused the incineration of hazardous waste at an environmental facility may be fined up to $100,000 and imprisoned for one, two, or three years—GBI enhancement.

Civil Violations—Civil violations may be brought by the district attorney when referred by the DTSC.

Health and Safety Code Section 25189(a): Intentional or negligent false statements on an application, manifest, *etc.*, may be fined up to $25,000 for each day of each separate violation.

Health and Safety Code Section 25189(b): Intentional or negligent violation of any provision of Chapter 6.5 of the Health and Safety Code or any regulation adopted pursuant to it relating to registration, certification, and manifesting as described above may be fined up to $25,000 for each day of violation.

Health and Safety Code Section 25189(c): Intentional disposal or causing the disposal at an unauthorized point according to Chapter 6.5 of the Health and Safety Code may be fined from $1,000 to $25,000. Each day the waste remains deposited with the violator's knowledge constitutes a separate violation.

Health and Safety Code Section 25189.2(a)—Strict Liability: Any false statement on an application or manifest may be fined up to $25,000.

Health and Safety Code Section 25189.2(b)—Strict Liability: Any violation of Chapter 6.5 of the Health and Safety Code or any regulation promulgated under it may be fined up to $25,000.

Health and Safety Code Section 25189.2(c)—Strict Liability: Disposal or causing the disposal of hazardous waste at an unauthorized point may be fined up to $25,000.

STOCKHOLM CONFERENCE

THE United Nation Conference on Human Environment 1972, marked watershed in international relations and placed the issue of the protection of biosphere on the official agenda of international relations and placed the issue of the protection of biosphere on the official agenda of international policy and law. The States reveals apart the narrow issues of the sovereignty and jurisdiction to collectively resolve complex issues of environment and development.

The initial stages of the conference saw the emergence of two conflicting approaches. The first approach insisted that the primary concern of the conference was the human impact on the environment with the emphasis on control of pollution and conservation of natural resources. The second approach laid emphasis on social and economic development as the real issue. The conference was remarkable achievement as 114 participating nations agreed generally on a declaration of principles and an action plan. The principles contained in the Stockholm Declaration demonstrate that the world has just one environment.

Principle 21 of the Declaration confers responsibility on States to ensure that activities within their jurisdiction and control do not cause damage to environment of other States. Principle 22 requires the State to co-operate to develop international standards regarding liability and compensation for the victims of pollution and other ecological damage. Principle 25 of the Stockholm Declaration states: "State shall ensure that international organisations play a coordinated, efficient and dynamic role for the protection and improvement of the environment."

The Stockholm Conference is a major landmark in the effort of nations to collectively protect their life support base on earth. UNEP, an activator of the Stockholm Action Plan, has given the international environment movement universality, legitimacy, and acceptability in the developing countries. The United Nations Environment Programme (UNEP) born out of the common concern of mankind for the environment. The primary significant of UNEP lies in the fact that it provides a forum acceptable to the developing countries that emphasise on the development as a vehicle for raising the quality of the environment. UNEP has been responsible for the establishment and implementation to the Regional Seas Programme, including some thirty regional treaties, as well as important global treaties addressing ozone depletion, trade hazardous waste and biodiversity. It also established the Global Environment Monitoring System (GEMS) under its 'Earth Watch' programme.

THE MONTREAL PROTOCOL (OZONE TREATY)

In 1985, Vienna Convention established a framework for the adoption of measures 'to protect human health and the environment against adverse effects resulting or likely to result from human activities which modify or are likely to modify the ozone layer'. The Montréal Protocol, 1987, which cane into force from January 1, 1989, initially aimed at the elimination of ozone depleting substances at a uniform rate irrespective of the development status of a country.

The pact was signed by 48 nations, mostly developed countries. India and the other developing nation like Malaysia and china refuse to sign it because of pragmatic considerations and discriminatory clauses in Protocols, namely (i) Per Capita Consumption of CFCs. (ii) Patterns of consumption of CFCs. (iii) Massive switch over costs. (iv)Transfer of technology. All were either directed against developing nations or the onus of pollution to be beard by north countries.

PROTOCOL AFTER "LONDON/OTHER AMENDMENTS"

The amendments to the pact resulted because of a firm stand taken by the developing nations including India. The amendments provided for – a multilateral nations including India. The amendments provided fro – a multilateral fund with obligatory contributions from developed nation; equal voting rights for all the parties to the protocol;; a fund to cover all extra costs incurred by developing nations in meeting the obligations of protocol; and, to ensure transfer of technology to developing nations. India was the last major country to sign Protocol. The amendments became operational from august, 1992: developed countries will phase-out CFCs between 1995 and 2000, while developing nations will begin their elimination programme only in 2000 and end it in 2010.

As per the Montreal Protocol, the State parties should not only help prohibit trade in 'controlled-substances' (ozone depleting substances) between the parties and non-parties of Protocol.

Thus, parties to the Protocol are prohibited from improving such substances or exporting CFC production technology and equipment. This comprehensive trade ban places both economic and diplomatic pressure on al nations to join the Protocol.

The Protocol was further supplemented wit the amendment in Copenhagen on 25th November 1992, wherein time table for phasing out substance was enhanced. The list of controlled substances has been further expanded with the adoption of 1995 and 1997 amendments to the Protocol.

KUALA LUMPUR CONFERENCE

A ministerial level conference of developing nations in 1992at Kuala Lumpur, Malaysia, adopted certain far-reaching declarations. For example, setting up of an international "green fund" for greening the Earth (each country to cover at least 30 per cent of its area with forest by 2000 A.D.) with a higher share from the developed nations. However, US rejected the proposal as existing GEF was sufficient, and a country receiving funds may divert money for other purposes. Global Environment Facility (GEF) it's an U.N. mechanism (with World Bank's assistance) for funding the greening of the earth and promoting sustainable development; India and the other developing nations opposed it as it has a 'donor bias' and its not democratic. India, at this conference, also mooted the idea of "Environment Tax" on developed nations to pay for the global environment clean up. Also, India outlined a 'new global partnership' based on the sound principles- equal weight age to all nations,

with stronger U.N role; no condition in funding of trade on grounds of environment protection; no globalisation of national resources like genetic diversity, and, no enforcing of environmental standards at international level in place of national limits. Thus, India recognises the sovereign "right to development".

RIO CONFERENCE (EARTH SUBMMIT)

Rio de Janeiro, Brazil, was chosen as the venue for the earth summit to effectively highlight the consequences of man's recklessness and to device strategies to combat the ecological disaster. This UN Conference for Environment and Development UNCED), held in June 1992, was attended by representatives of 178 nations and 115 heads of government.

(A) Key Issues

Issues dividing the North and South were placed in the agenda for discussion at the summit. The issue were as follows:

(i) *Greenhouse gas emission:* North want a shift from the use of coal and wood for energy and to stabilise CO2 emission at 1990 levels by 2000 A.D.
South blames for excessive emission and wants them to reduce it; opposed to any cut in its own emission as it hinders development.

(ii) *Forests:* North wants a legally binding convention to restrict deforestation in tropical countries rich in bio-diversity. South asserted that such works would impinge on national sovereignty; rich must compensate for conservation and share profits for researches on species.

(iii) *Population:* North wants population control in South, and thus to check deforestation, population, *etc.*
South blames the rich for over consumption *i.e.*, 60 per cent of world's energy.

(iv) *Technology transfer:* North say that technology development is commercial and thus countries wanting to utilise it must pay. South says that" environment-friendly" technology to be transferred cheaply.

(v) *Finance ('who would pay for the clean up'?):* North say that existing UN mechanism of GEF is sufficient; want finance sharing from all countries with no mandatory contribution from North.

South favours "*polluter must pay*" principle, thus North to pay major part with firm commitments; a new institution, in place of GEF, is needs whose functioning is transparent and democratic.

(B) Outlook

(i) *Rio declaration:* A statement of principles which set out the rights and obligations of all nations in relation to the environment, however, not legally but morally hiding only.

(ii) *Climate convention:* A commitment to reduce CO2 emission, signed by 150 nations including USA, however, or does not fix any deadline for reducing or any immediate change in fuel consumption.

(iii) *Declaration on principles in forestry conservation:* Adopted, however, it is not legally binding convention.

(iv) *AGENDA 21:* A blue print for ecologically safe development up to year 2000 and beyond (21 century) adopted, covering issues like transfer of environment – friendly technology. Creating environmental awareness, an integral approach to land resource use, checking deforestation, peaceful use of nuclear energy, *etc.* However, it avoided the question of who would pay for it (European countries promised to pay only a partial amount).

(v) *New UN panel on environment:* To assess the environmental impact of lending by WB and IMF, and implementation of Agenda 21. Also, a Sustainable Development Commission 9SDC) to be set up to monitor the implementation of Agenda 21.

(vi) *Biodiversity treaty:* 1550 nations, excluding USA, signed a companion treaty to protect the endangered species on earth.

(C) Attitude of USA

USA stuck to its unreasonable stand even though it got completely isolated (its allies Japan and Britain signed the bio-diversity treaty).US watered down the climate treaty by non- inclusion of any deadlines. US were concerned that it would require major changes in economy that will lead to joblessness in the country. USA did not want to sign the bio-diversity treaty as it would harm the interest of its bio-technology companies (regarding patents); impose upon burden on its tax-payer(because of the funds for conservation),and; raise problems of 'control' on funds the developing countries will get. USA instead proposed a separate international plan for the world's forests by developing eco-technological practices, and contributing funds for it.

(D) India's Contribution

India, a key player in negotiations, put much heart and energy even at the risk of getting unpopular with the US administration. India did not agree to the phraseo graphy in the text of some clauses of Agenda 21('terms for transfer of technology'), India had strong reservations about the dilution of original commitment in climate treaty. India proposed a "Planet Protection Fund to help but environment 'friendly technology world-wide and make them available free of cost to any country seeking them.

(E) Significance of summit

Earth summit was intended to call attention to the environment as an urgent international issue, and to agree on how to fix it. What the summit achieved id that the problem of environment has come to be recognise as central to saving this planet and inscribed as the agenda of this day and age. However, summit failed to achieve agreement on crucial environmental issues and to extract definite commitments for financial resources from the developed countries.

The summit failed to raise enough funds for GEF. Also, the question of technology transfer remained unclear. The summit, surprisingly, did not address the central question of world population. Thus, the net- outcome is hardly satisfying in any concrete measure to the developing countries.

The experience of the summit was that the developed nations were unwilling to bear the responsibility for their consumerism though they acknowledge that their model of civilization is bringing disaster for developing nations. However, the basis of this new perception is their realisation that their own future is equally threatened. In the final analysis, North will have to be more firm in its commitments, and South must endeavour and thereby forge a consensus on the approach to save the planet.

The Earth Summit Plus Five (1997), a special session of the UN General Assembly held after five year from the historic "earth summit", was suppose to ascertain that "hoe far the committed nation had gone from Rio." The representatives of various nations reviewed the progress that they had made in achieving the goal of sustainable development and to save the planet Earth from the further deterioration.

Agenda 21

Adopted at the 1992 UNCED, Agenda 21 is another important non binding instrument and action plan for sustainable development. It provides mechanisms in the form of policies, plans, programme, and guidelines for national governments to implement the principles contained in the Rio Declaration. Agenda 21 comprises 40 chapters focusing on major issues like poverty, sustainable agriculture, desertification, land degradation, hazardous wastes, atmosphere, fresh water, toxic chemicals, biological diversity, *etc.*

These various chapters are categorized under four sections:

- Social and Economic Dimensions
- Conservation and Management of Resources for Development
- Strengthening the Role of Major Groups
- Means of Implementation

Under Agenda 21, provisions were adopted for decision making on natural resources management to be decentralized to the community level, giving rural populations and indigenous peoples land titles or other land rights and expanding services such as credit and agricultural extension for rural communities. The chapter on major groups calls on governments to adopt national strategies for eliminating the obstacles to women's full participation in sustainable development by the year 2000.

THE FEDERAL APPROACH TO ENVIRONMENTAL REGULATION

Federal environmental statutes and programmes provide much of the framework used to develop, interpret, and enforce state environmental protection laws. For this reason, it is important to acquire a general understanding of federal

environmental protection laws as they relate to state law. With the exception of National Environmental Policy and Endangered Species Act, California law preceded and was the basis for the development of federal environmental laws.

THE FEDERAL ENVIRONMENTAL PROTECTION AGENCY (U.S., EPA)

There are numerous agencies of the federal government such as the Department of Transportation, Department of Agriculture, Food and Drug Administration, and the Occupational Safety and Health Administration that have tangential authority over the environment. But primary responsibility for the nation's environment rests with the Environmental Protection Agency (U.S., EPA). The U.S., EPA is the only major federal regulatory agency that was created not by an act of Congress, but rather by a Presidential Executive Order. As such, the U.S., EPA is not an independent regulatory agency, but is purely a creature of the Executive Branch.

The U.S., EPA is among the most highly decentralized agencies in the federal government, operating through 10 regional offices. The regional office for the western states is in San Francisco. Generally, U.S., EPA headquarters in Washington, D.C. sets policy and promulgates rules, while the regional offices implement U.S., EPA's programmes.

The regional offices pass on to the states the policies and requirements that are issued in Washington, D.C. The regional offices enter formal agreements with each state that include criteria for enforcement and for other conditions of financial assistance. Each regional office has a great deal of autonomy, especially in enforcement and permitting decisions. Where state programmes do not meet federal standards or where the states have chosen not to assume responsibility, U.S., EPA regional offices may assume enforcement authority. Where states have implemented their own programmes (as in California), U.S., EPA enforcement activity (at least as to administrative and civil enforcement) is fairly limited. US EPA has peace officer investigators in the Criminal Investigation Division.EPA CID one of only three of the 63 federal agencies with peace officers who have jurisdiction beyond their regulatory programme and therefore can investigate and arrest for any federal crime.

THE FEDERAL-STATE RELATIONSHIP

While federal statutes have established national standards for the transportation, emission, discharge, and the disposal of harmful substances, implementation and enforcement of many of the large programmes has been delegated by the U.S., EPA to the states. In turn, the states apply national standards to sources within their borders through permit programmes that control the release of pollutants into the environment. Thus, while most implementation and enforcement occurs at the state or local level, the U.S., EPA maintains an overarching role with respect to the states by establishing federal standards and approving state programmes.

In a few exceptions, states can set stricter standards than those required by federal law. Some of the programmes that have been delegated (this term is used in a general sense, some of the programmes use other terms) by the U.S., EPA to the states are the emissions standards for hazardous air pollutants (HAPs), Prevention of Significant Deterioration (PSD) Permits under the CAA, the Water Quality Standards and the National Pollution Discharge Elimination System (NPDES) Programmes under the CWA, the Hazardous Waste Programme under RCRA, and the Drinking Water and Underground Injection Control (UIC) Programmes under the SDWA.

CALIFORNIA ENVIRONMENTAL LAWS

The summary that follows in the remainder of this chapter briefly describes many of California's environmental laws, including those that are analogous to the federal statutes and those that are unique to California.

The California Environmental Quality Act (CEQA)

The California Environmental Quality Act (CEQA) (Public Resources Code sections 21000 et seq.) is the California analog to NEPA. CEQA requires government projects and government-approved projects to be planned to avoid significant adverse environmental effects.

CEQA requires that prior to approval by a state or local agency of a project, an Environmental Impact Report (EIR) must be prepared to identify the significant effects of a project on the environment, the alternatives to the project, and to indicate the manner in which those significant effects can be mitigated or avoided. (Pub. Res. Code § 21002.1.) If no significant environmental effects are foreseen, a "negative declaration" (Neg Dec) briefly describing the proposed project and the reasons why an EIR should not be required may be submitted.

Designation of a Lead Agency

If two or more agencies are involved in implementing or approving a proposed project, one will be designated the "lead" agency. The lead agency will normally be the one with general governmental powers, such as a city or county, rather than an agency with a single limited purpose, such as an air-pollution-control district.

The lead agency has the primary responsibility for approving or carrying out a project, decides whether an EIR or Negative Declaration will be necessary, and prepares the document. Other involved agencies are designated either "responsible" or "trustee" agencies. These agencies consult with and provide input for the decisions of the lead agency.

Public Notice

The CEQA statute and its implementing regulations, title 22 of the California Administrative Code sections 15000 et seq., provide detailed procedures for the environmental review. The procedures include notice to the public and an

opportunity for public comment. The agency is required to respond to all public comments and to implement all feasible mitigation measures. But the agency retains discretion to approve a project despite adverse environmental impacts that cannot be mitigated or avoided if the agency finds that there are overriding considerations justifying the project.

Enforcement

CEQA is enforced by private litigation and by the Attorney General's Office. There is no specific statutory authority for enforcement by district attorneys. Legal challenges to projects alleging violations of CEQA must show that either the agency failed to follow the required procedures in its environmental review or that the project approval constituted an abuse of discretion. In general, the courts require strict adherence to CEQA's procedures but defer to the agency's balancing of the benefits of a project against any adverse environmental impacts disclosed by the EIR.

AIR POLLUTION

The California Air Resources Act, Health and Safety Code sections 39000 et seq., contains provisions required by the federal Clean Air Act as well as additional provisions to improve and protect the state's air quality. The Act provides for the establishment and enforcement of air quality standards and emission limitations. directs the State Air Resources Board (ARB) to divide the state into air basins of similar meteorological and geographical characteristics and to adopt ambient air-quality standards for each basin considering human health, aesthetic value, interference with visibility, and economic effects. Investigation and regulation of sources and types of pollution occur at both the state and local levels.

Responsibility at the State Level

The State Air Resources Board (ARB) is responsible for developing the state implementation plan required by the federal CAA. It also has general oversight powers to ensure pollution control by establishing state ambient air quality standards and by setting emission standards for mobile sources (vehicles). While primary responsibility for the regulation of stationary sources rests with the local air pollution control districts, the state ARB monitors air quality, adopts test procedures, conducts research, and regulates sandblasting material, various types of engines, motor vehicle emissions (including fuels), and emissions of various consumer products such as paint and hairspray. The ARB also enforces air related asbestos regulations in certain counties that do not have their programmes.

Responsibility at the Local Level

Local Air Pollution Control Districts (APCDs) usually encompass a single county. But several county districts have merged into regional districts. These

consolidated districts now cover the San Francisco Bay Area, the South Coast Air Basin, and the San Joaquin Valley. The APCDs have primary responsibility for the implementation of basin-wide plans by regulating stationary sources within their boundaries, such as industrial facilities and fixed equipment. Each APCD has a permit system for new and existing stationary sources to insure that emissions sources do not prevent the attainment or maintenance of air quality standards.

Enforcement

Air-Pollution Law for these particular enforcement provisions.

WATER POLLUTION

The Porter-Cologne Water Quality Control Act, California Water Code sections 13300-13999 and Title 23 of the California Administrative Code, is analogous to the federal Clean Water Act (CWA) in that it regulates discharges that may affect the quality of the state's waters. The California Act is broader in scope than the federal CWA, however, in that it includes groundwater, while the CWA regulates only surface waters. The Porter-Cologne Act is implemented by the State Water Resources Control Board and nine Regional Water Quality Control Boards (RWQCBs) that are responsible for planning, permitting, and enforcement. The State Board formulates state policies for water-quality control and implements the permit system required by the CWA.

The State and Regional Water Boards have broad authority to take a variety of enforcement actions under the Porter-Cologne Water Quality Control Act; the Toxic Pits Cleanup Act of 1984; Chapters 6.67, 6.7, and 6.75 of Division 20 of the Health and Safety Code regarding underground and aboveground tanks; Health and Safety Code section 25356.1; and Chapter 6 of Division 3 of the Harbours and Navigation Code.

Examples of enforcement actions include:

- Violation of an effluent limit, receiving water limit, or discharge prohibition contained in an order or Water Quality Control Plan (Basin Plan) adopted by the State Water Board or a Regional Water Board;
- An unauthorized spill, leak, fill, or other discharge;
- Failure to perform an action required by the State Water Board or a Regional Water Board, such as submittal of a self-monitoring or technical report or completion of a cleanup task by a specified deadline.

State Water Resources Control Board

The State Water Resources Control Board (SWRCB) is responsible for developing and implementing a statewide water-quality policy. (Water Code §§ 13140-13142.) The SWRCB also oversees the activities of the Regional Water Quality Control Boards. The SWRCB also licenses operators of local wastewater treatment plants, has an Underground Storage Tank Enforcement Unit, and has an Office of Statewide Enforcement.

Regional Water Quality Control Boards

Under the Porter-Cologne Act, the Regional Water Quality Control Boards have primary responsibility for the day-to-day administration of the laws and regulations protecting California's surface and groundwater. Each Regional Board must develop a regional water-quality plan that establishes water-quality objectives for the region and provides a framework for all administrative actions taken by the board. Each Regional Board has a person assigned as the Enforcement Manager who coordinates enforcement issues for that Regional Board.

The Permit System

National Pollution Discharge Elimination System (NPDES) permits are issued by the State or Regional Boards and are required for all point source pollution discharges into California's surface waters. Point source discharges are defined as planned non-agricultural waste discharges from man made conveyance systems.

The permit system in California is essentially the same as the federal permit system under the NPDES. Before proceeding with any waste discharge that could affect the quality of the groundwater or surface waters of the state, the potential discharger must first report to and receive a permit from the local Regional Water Quality Control Board. As of 2000, California has approximately 2,250 active NPDES permits protecting the state's water resources from industrial and municipal waste discharges. For discharges onto land that may affect water quality, Waste Discharge Requirements (WDRs) are issued by the State and Regional Boards to regulate waste-disposal impoundments and land disposal for liquid and solid wastes. The permitting system addresses many types of waste discharges, including municipal, industrial, and commercial sources. As of 2000, California has approximately 3,670 active WDRs protecting its groundwater resources.

Storm Water Programme

Discharges of storm water associated with industrial activities require compliance with the General Industrial Activities Storm Water Permit (part of the NPDES system). Requirements include submission of a Notice of Intent for coverage under the general permit, a Storm Water Pollution Prevention Plan (SWPPP), implementation of the SWPPP, and annual reports.

Hazardous-Waste Facilities

In addition to administering the state's discharge permit system, the Regional Boards participate in the administration of the hazardous-waste-facility permit system. The Regional Boards are responsible for classifying all current and proposed hazardous-waste facilities within their regions in accordance with the classification system adopted by the State Board.

Administrative Enforcement

Regional Water Quality Control Boards have authority to inspect any facility discharging or proposing to discharge pollutants into the state waters and to require the owners of those facilities to prepare technical or monitoring programme reports. If the Regional Board discovers any discharge or proposed discharge in violation of the water-quality laws and regulations, it may, after notice and a hearing, issue an administrative cease-and-desist order directing the offending party to comply with the applicable titles and regulations. Where appropriate, the Board may also issue a cleanup and abatement order. The Regional Board may itself undertake cleanup, abatement, and remedial work if it deems such work necessary to prevent substantial pollution, nuisance, or injury to the waters of the state.

The Board is authorized to seek reimbursement of any costs incurred in such work from the responsible parties through suit in state court. (Id.) If the Regional Board establishes that a party has failed to file a discharge report before discharging a pollutant, or has failed to abide by any requirements or orders issued by the Board, or has caused a discharge creating a condition of pollution or nuisance, the Board is authorized to administratively impose civil fines up to specified maximums. Alternatively, the Regional Boards may request the attorney general to seek injunctive relief in state court. District attorneys are limited to bringing criminal actions or civil actions for unfair competition.

Criminal Enforcement

Water Code Section 13387 Cases

- *Constitutional Challenges*: *People v. Appel* (1996) 51 Cal.App.4th 495, 503-505: No ex post facto defence allowed where defendant's actions took place prior to EPA's formal determination of jurisdiction over the waters on defendant's property because the statute regarding jurisdiction existed prior to defendant's actions. Challenge based on vagueness refuted as defendant refused to cooperate with the federal and state agencies' investigations, so he may not later complain that he did not know that he was in violation.
- *Intent*: *People v. Ramsey* (2000) 79 Cal.App.4th 621, 632-633: Knowledge that a material discharged into navigable waters is a "pollutant" is not an element of the offence set forth in section 13387. Mistake or lack of knowledge that the material was a pollutant is not a defence as discharging a pollutant into navigable waters is not a specific-intent crime.
- *Defence of Necessity*: *People v. Buena Vista Mines, Inc*. (1998) 60 Cal.App.4th 1198, 1202-1203: Requirements of necessity defence not present because the holding pond was inadequately sized to hold the contaminated water, and defendant did not exhaust all reasonable alternatives prior to pumping the contaminated water into the creek.

- *Felony*: *People v. Buena Vista Mines, Inc*. (1996) 48 Cal.App.4th 1030, 1033-1034: Violation of section 13387(c) is a felony (statute wording was unclear). Note the statute was amended in 2002 to clarify that imprisonment is "in the state prison."
- *Pre-emption*: *Appel*, 51 Cal.App.4th at 505: The Federal Water Pollution Control Act does not pre-empt state criminal conviction under this section for violations of the Federal Act.
- *Relationship to Federal Law*: *Buena Vista Mines, Inc.,* 48 Cal.App.4th at 1034: As the Porter-Cologne Water Quality Act refers to the Federal Water Pollution Control Act, federal authority is used to interpret the Act.

Penalties

Criminal — Misdemeanors

The following violations are misdemeanors, *i.e.*, fine of up to $1,000 for each day of violation and up to six months in jail unless otherwise stated.

CAVEAT: Water Code Section 13271(d) provides use immunity for notification in all other criminal prosecutions. The State Board may grant use immunity to anyone who is subpoenaed to testify at its hearings. (See Water Code Sections 1105-1106.)

- *Water Code Section 13265(a)*: Discharge without report or requirements (prior notice is required).
- *Water Code Section 13265(b)*: Discharge of hazardous waste without report or requirements. Note: This may also be chargeable under Health and Safety Code section 25189.5.
- *Water Code Section 13525.5*: Recycling without requirements in violation of Water Code section 13524.
- *Water Code Section 13526*: Recycling without required permit.

The following reporting violations are misdemeanors, *i.e.*, fine of up to $500 and up to six months in jail, except as otherwise stated.

- *Water Code Section 13261(a)*: Failure to file report of waste discharge after demand.
- *Water Code Section 13261(b)*: Failure to file or falsification of report of discharge of hazardous waste (up to $1,000 fine per day).
- *Water Code Section 13268(a)*: Failure to furnish or falsification of technical or monitoring reports (up to $1,000 fine per day).
- *Water Code Section 13268(b)*: Failure to furnish or falsification of technical or monitoring reports of hazardous waste (up to $1,000 fine per day).
- *Water Code Section 13271(c)*: Failure to report discharge of hazardous substances in greater than reportable quantities (fine up to $20,000 and up to one year in jail).

- *Water Code Section 13272(c)*: Failure to report discharges of oil ($500-5,000 fine per violation and up to one year in jail).
- *Water Code Section 13387(b)*: Falsification of reports of discharge to waters of U.S., or violation of any other discharge, dredge, or fill material permit requirements.
- *Water Code Section 13522.6*: Failure to file recycling report.

Criminal — Felonies

- *Water Code Section 13387*: Violation of Clean Water Act programme requirements ($5,000 to $25,000 fine for each day of violation and up to one year in jail; $5,000 to $50,000 fine for each day of intentional violation and up to three years in jail).
- *Health and Safety Code Section 25284.4 (i)*: Perjury provision for fraud by underground tank testers.

Civil

Up to $6,000 fine per day (unless otherwise stated). No district attorney authority, but a district attorney can charge violation as an unfair business practice pursuant to Business and Professions Code Section 17200 and other provisions such as the Fish and Game Code.

- *Water Code Section 13265(b)*: Discharge of hazardous waste without report or requirements (up to $5,000 fine per day).
- *Water Code Section 13385*: Violation of Clean Water Act requirements (up to $25,000 fine [in lieu of Water Code section 13350]).
- *Water Code Section 13350(a)(3)*: Unpermitted discharge of oil (up to $15,000 fine for each day of violation).
- *Water Code Section 13350(b)*: Unpermitted discharge of hazardous waste that causes or threatens to cause pollution or nuisance—strict liability (up to $15,000 fine for each day of violation).
- *Water Code Section 13261(b)*: Failure to file or falsification of a report of hazardous-waste discharge (up to $25,000 fine per day).
- *Water Code Section 13268(b)*: Failure to furnish or falsification of report of technical or monitoring programmes relating to hazardous waste (up to $25,000 fine per day).
- *Water Code Section 13350(a)(1)*: Violation of cease-and-desist order (up to $15,000 fine per day).
- *Water Code Section 13350(a)(2)*: Discharges in violation of waste discharge requirements, orders, or prohibitions that create condition of pollution or nuisance (up to $15,000 fine per day).
- *Water Code Section 13385*: Violation of orders implementing Clean Water Act (up to $15,000 fine per day, up to $25,000 fine per day [in lieu of Water Code section 13350]).

Injunctions

No district attorney authority (but remember Business and Professions Code section 17200):

- *Water Code Section 13262*: Enjoin discharge pending compliance with Water Code sections 13260 and 13264(a).
- *Water Code Section 13386*: Compel compliance with Clean Water Act requirements.
- *Water Code Section 13525*: Enjoin recycling in violation of Water Code section 13524.
- *Water Code Section 13262*: To compel report of waste discharge.
- *Water Code Section 13522.7*: To compel recycling report.
- *Water Code Section 13304*: Enjoin violations of cleanup and abatement order.
- *Water Code Section 13331*: Enjoin violation of cease-and-desist order.
- *Water Code Section 13340*: Compel abatement of pollution or nuisance in emergency.

Reimbursement

Water Code section 13304(c)—Reimbursement of costs under cleanup and abatement authority. Also, section 13305(f) provides for reimbursement of costs under cleanup and abatement authority for non-operating business or industrial facilities.

Proposition 65

This initiative is codified at Health and Safety Code sections 25249.5 et seq. There are two separate parts to the act: one deals with requirements for warning labels to the public, the other with discharges to drinking water. The act prohibits businesses from knowingly discharging into water listed carcinogens or mutagens (substances that cause genetic alteration) without first giving a warning. The specific carcinogens and mutagens are listed in the California Code of Regulations Title 22, section 12000. Provision is made for civil penalties of up to $2,500 per day for each violation. There is a significant amount of case law regarding Proposition 65. It is suggested that prosecutors contact the Attorney General's Office or the state Office of Environmental Health Hazard Assessment for more information. There is a provision for a private cause of action, but notice is required to be given to the local district attorney and the Attorney General. This is why your office may receive "Notices of Intent to Sue" under the provisions of Proposition 65 from private counsel.

Local Agencies—The Unified Programme

The Unified Hazardous Waste and Hazardous Materials Management Regulatory Programme (Unified Programme) provides for local implementation of the following six regulatory programmes:

- The Spill Prevention Control and Countermeasure Plan of the Aboveground Storage Tank programme (SPCC)
- The Hazardous Materials Release Response Plan and Inventory programme (HMRRP) (Business Plan)
- The California Accidental Release Prevention programme (CalARP)
- The Uniform Fire Code Hazardous Materials Management Plan and Inventory Statement (HMMP/HMIS)
- The Underground Storage Tank programme (UST)
- The Hazardous Waste Generator and Onsite Hazardous Waste Treatment programme

The local implementing agencies are known as CUPAs (certified unified programme agencies) or PAs (participating agencies).

Aboveground Storage Tanks

According to current laws, The Aboveground Storage Tank (AST) programme, is to be implemented by the SWRCB and the RWQCBs. The program's requirements are found in Chapter 6.67 of Division 20 of the Health and Safety Code. "In general, the [AST programme] requires owners or operators of aboveground petroleum storage tanks to file a storage statement, pay a fee... and implement measures to prevent spills." The owner or operator of an aboveground storage tank facility that has a petroleum storage capacity of more than 660 gallons in a single tank, or a total storage capacity of more than 1,320 gallons in more than one tank, is generally required by Health and Safety Code Section 25270.5 to prepare a Spill Prevention Control and Countermeasure Plan (SPCC) plan. The specific requirements for a SPCC are laid out in the Code of Federal Regulations Title 40, Section 112.7. However, funding and positions for this programme were cut in 2002. There may be legislation to transfer this programme to the CUPAs but as of this writing (2007) that has not yet occurred.

The Attorney General's Office may bring civil actions against violators of Chapter 6.67 (including violators of SPCC requirements). It may seek to enjoin violators and may seek civil penalties of up to $5,000 per day for a first offence, up to $10,000 per day for repeat violations.

Hazardous Materials Inventory and Reporting Requirements

Experience has shown that prevention mechanisms are the most cost effective methods of reducing hazardous material incidents. Implementation of state and federal hazardous material planning laws and regulations can be effective in minimizing releases of hazardous materials. Proper enforcement is critical to the implementation of the hazardous material regulatory programme and to ensure appropriate protection of public health and safety and the environment. Chapter 6.95 of the Health and Safety Code contains significant planning requirements for control of hazardous materials.

Every "person" who "handles" (defined terms) more than a specified quantity of hazardous materials must prepare a business plan, which includes a chemical

inventory (including a site map), an emergency response plan and procedures, and information on the business's hazardous materials training plan for employees. The requirements for business plans are found in Health and Safety Code Sections 25500 et seq. These regulations are found in Chapter 4 of Division 2 of Title 19 of the California Code of Regulations.

The several unique elements that include:

- The most comprehensive statutory definition of "hazardous materials":
  - "Hazardous material" means any material that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety if released into the workplace or environment.
  - "Hazardous materials" include, but are not limited to, hazardous substances, hazardous waste, and any material which a handler or the administering agency has a reasonable basis for believing would be injurious to the health and safety of persons or harmful if released into the workplace or the environment.
- A definition of "business" that includes "an employer" and government.
- A definition of "handler" to assist in defining the businesses covered.
- A comprehensive definition of "release."
- Definition of "threatened release"—important for emergency-notification prosecution.
- Requirements to immediately report significant releases or potential releases of hazardous materials to the State Office of Emergency Services and to the local CUPA.

Required Planning Elements

Each business that handles any one hazardous material in an amount that is equal to or greater than 500 pounds, 55 gallons, or 200 cubic feet of gas must develop a business plan and submit it to the local unified programme agency. This plan must include an inventory of hazardous materials and cover emergency response, pre-empt planning, training, and evacuation.

Note: This plan may be the same document used to satisfy the contingency plan requirement of the hazardous waste law. The Uniform Fire Code also requires a "plan." The business plans and inventories of hazardous materials are held by the administering agencies and are available for review by the general public.

Handlers of acutely hazardous materials (using U.S., EPA's definition of extremely hazardous substances found in 42 U.S., C. section 11002(a)(2)) may be required to develop Risk Management and Prevention Programmes (RMPPs) upon request from local CUPAs. These risk prevention programmes may be required following an evaluation of the potential hazard presented by a specific facility to public health and safety or the environment. The quantities of extremely hazardous materials, the methods and processes involved, and the results of a hazard analysis will be used to determine the necessity for an RMPP.

Trade secrets have minimal protection from emergency responders needing the data for emergency response or medical personnel needing specific chemical data for specific medical treatment of patients.

Acutely Hazardous Materials

An owner or operator of a new or modified facility that will be used for the handling of acutely hazardous materials must prepare an RMPP.

Reporting Requirements

Anyone required to file a plan is also required to report releases or threatened releases of hazardous materials to the administering agency.

Enforcement

Civil Liability

Businesses violating aspects of business plan development, review, or submission, or failing to yield inspection authority, or failing to provide adequate and updated chemical inventory data are civilly liable to the administering city or county for up to $2,000 per day of violation.

Costs of any necessary emergency response and the cost of cleanup and disposal may also be recovered. Following reasonable notice, a defendant that knowingly violates the elements in Chapter 6.95 may be civilly liable for up to $5,000 per day of violation. Civil actions may be brought by the district attorney, city attorney, or attorney general. Injunctions, restraining orders, and other appropriate orders shall be issued without proof of irreparable damage or that the remedy at law is inadequate.

Criminal Liability

Failure to notify of a significant release of hazardous materials is a misdemeanor punishable by a $25,000 fine for each day and one year in jail. Second offences are wobblers. Full costs of the emergency response, cleanup, and disposal shall also be recovered.

Knowing failure to file a business plan is a misdemeanor punishable by a $1,000 fine and one year in jail. Interference with authorized representatives of an administering agency carries misdemeanor liability. Health and Safety Code section 25515.2 deals with apportionment of criminal and civil penalties. Prosecutors receive 50 per cent of the penalties; $200 of every civil or criminal penalty must be sent to a state training fund.

Rewards—Persons Providing Information

Health and Safety Code section 25517 allows for the payment of up to $5,000 for information that materially contributes to the imposition of civil penalties or the conviction of a person or business.

California Accidental Release Prevention (CalARP)

CalARP is California's programme to implement the federal Accidental Release Prevention programme (ARP) with certain additional provisions specific to California. CalARP requires businesses that handle more than a threshold quantity of any of a list of extremely hazardous substances to prepare a Risk Management Plan (RMP) in order to analyze "potential accident factors that are present and the mitigation measures that can be implemented to reduce this accident potential."

The requirements for CalARP are found in Article 2 of Chapter 6.95 of Division 20 of the Health and Safety Code. The state Office of Emergency Services has responsibility for developing regulations that establish statewide standards for CalARP. These regulations are found in Chapter 4.5 of Division 2 of Title 19 of the California Code of Regulations.

Violators of CalARP's requirements are subject to a variety of civil penalties. If these penalties are recovered from the violator, a statute prohibits criminal prosecution of the violator for the same offence, and any civil action pending against a violator must be dismissed upon filing of a criminal complaint. A first-time violator may be held liable for up to $10,000 per day of violation and any costs incurred for emergency response or cleanup resulting from the violation. A person who commits a violation after reasonable notice is liable for up to $25,000 per day.

Criminal misdemeanor penalties apply to anyone convicted of knowingly falsifying, destroying, altering, or concealing documents used for compliance with CalARP, including fines of up to $25,000 per day of violation and/or imprisonment up to one year in county jail in addition to any costs incurred for emergency response or cleanup resulting from the violation. Second or subsequent convictions may be charged as misdemeanors or felonies.

PRINCIPLES OF INTERNATIONAL LAW

Principles of international law are fundamental norms and rules that guide the conduct of states and other international actors in the international community. These principles are derived from various sources, including treaties, customary practices, general principles of law recognized by civilized nations, and judicial decisions. They serve as the foundation for the legal framework governing relations between states, international organizations, and individuals. Key principles of international law include sovereignty, which asserts the exclusive authority of states over their territories and domestic affairs; the principle of non-intervention, which prohibits states from interfering in the internal affairs of other states; and the principle of peaceful settlement of disputes, which encourages the resolution of conflicts through diplomatic negotiations and legal mechanisms rather than resorting to force. Additionally, principles such as the prohibition of aggression, respect for human rights, and adherence to international treaties and agreements are central to international law. These principles aim to promote stability, security, and cooperation among states while upholding the rights and dignity of individuals. The principles of international law provide a framework for addressing global challenges, such as armed conflicts, terrorism, environmental degradation, and transnational crime. They guide states in their interactions with one another and serve as a basis for international cooperation and collaboration in addressing common concerns. Overall, the principles of international law reflect the shared values and norms of the international community and provide a basis for the development of rules and institutions aimed at promoting peace, security, and justice on a global scale.

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