ATLANTIC INTERNATIONAL UNIVERSTITY

CUZL 432

INTERNATIONAL LAW II

Prepared by:
VICTOR. CHANZA
ADV.DIP.LAW .ASS.DG.(ICM) PGD.DIP.LAW .LLB. LLM (CUZ)
2012

MODULE AIM

The aim of this module is to introduce students to the study of inter-governmental organization or institutions by tracing their historical developments. The module will highlight the various stages of the development of these organizations.

OBJECTIVES

At the end of this chapter, a student should demonstrate to appreciate the role of these institutions as instruments of international cooperation by states; explain the genesis of the law of international institutions; and analyze the stages of development of the law of international institutions.

MODULE CONTENT

CHAPTER ONE

1 .INTRODUTION

- The development of International Institutions in the Period 1815-1914.
- The Inter-War Period, 1919-1939
- The development of International Institutions Since 1945

CHAPTER TWO

2. GENERAL LEGAL PROBLEMS OF INTERNATIONAL INSITUTIONS

- Definition of International Institutions
- The Principal Classifications of International Institutions
- The Legal Personality of International Institutions
- Privileges and Immunities

- International Law and the Internal Law of International Institutions
- Relations With Member States
- Relations With Non-Member States.

CHAPTER THREE

3. THE UNITED NATIONS

- The Principles of the Charter and General International Law
- Membership in the United Nations
- Admission to Membership
- Suspension or Expulsion from Membership
- The Organs of the United Nations: Separate Identity
- The Principals and Subsidiary Organs of the United Nations
- The Composition of the Principal Organs of the United Nations
- The Voting Procedures of the Principals Organs of the United Nations
- Interpretations of the Charter
- The Concept of Domestic Jurisdiction in the United Nations

CHAPTER FOUR

4. THE SPECIALISED AGENCIES

- The Specialized Agencies and the Charter of the United Nations
- Membership in the Specialized Agencies
- Organs and Voting in the Specialized Agencies
- The Powers of the Specialized Agencies
- Interpretation and Amendments of the Constitutions of the Specialized Agencies
- The Co-ordination of the Activities of the Specialized Agencies

CHAPTER FIVE

5. REGIONAL INSITUTIONS

- The Principal regional Institutions
- The European Communities
- Regional Institutions of General Competence and the United Nations.

CHAPTER ONE

THE HISTORICAL DEVELOPMENT OF INTERNATIONAL INSTITUTIONS

2.01 Introduction

International organization through a body of permanent institutions for the co-operation of states is a comparatively new Phenomenon, dating only from the second half of the nineteenth century. Traditional international law was basically a law for the conduct and adjustment of the relations between states , and it was a system in which states acted separately and individually, There were no central institutions endowed with functions, powers and legal personality of their own.

OBJECTIVE

The objective of this topic is to give a historical background on the development of the international institutions and their creation. However, a student must be able demonstrate by giving a detailed an account on how these institutions operates. A student must further explain the powers these institutions possess.

If the nineteenth century witnessed the achievement of national independence and unification in many parts of the world (for example, the wars of liberation and independence in Latin America in the 1820s, the unification of Italy and Germany between 1859 and 1871), it also saw the beginning of the movement towards independence and international co-operation which today has become the most characteristic and important feature of contemporary international relations. In shorts, the relativity brief span of one hundred years has seen the transformation of the unorganized community of states into a world community which has achieved something approaching an organized social order. The historical development of international organizations as we know them today may be traced to three main periods of evolution. The first period may roughly be described as the period from the congress of Vienna (1814-15) down to the outbreak of the First World War (1914), although the actual development of permanent institutions did not take place until the latter half of the nineteenth century. The second period may be described as the inter –war period, which witnesses the creation of the League of Nations and the International Labor Organization in the Treaty of Versailles, and which also provided for the establishment of the Permanent Court of International Justice. The outbreak of the Second World War in 1939 brought this period to a close. The third period, which brings is to the present day, began with the establishment of the United Nations in 1945 and is one of the continuant evolution.

Each of these stages in the historical process has made its own unique contribution to the development of internationals institutions is essential therefore, to a proper understanding of the contemporary legal organization of international society.

2.02 **The Development of International Institutions in the Period 1815-1914**

The Congress of Vienna is generally considered as the watershed of the development of international organization the nineteenth century, the main purpose of the Congress was to reshape the European continent after the Napoleonic wars and to maintain peace within the new European system once established.

In the course of the Congress of Vienna, the notion of a Concert of Europe, which had already been expressed in the Treaty of Chaumont of 1st March 1814, gained ground. It is true that the Final Act of the Congress contained no express provision regarding periodic conferences, but the Quadruple Alliance signed on 20th November 1815 between the great powers after the final defeat of Napoleon provided that the powers would renew their meetings at fixed periods for the purpose of discussing what measures would be "most salutary for the repose and prosperity of nations and for the maintenance of the peace in Europe".

After a brief period of use, however, this periodic system of political and ambassadorial conferences broke down in the early 1820s under the strain of conflicting great-power interests. Throughout the rest of the century it was the practice to convene diplomatic conference for the consideration of major political issues which arose from time to time between the European powers. This practice proved workable as a procedure for the adjustment of opposing interests and for the avoidance of major wars. It was characteristic of this period, however, that no permanent institutions existed in the political field. From the point of view of the emergence of international institutions in the nineteenth century it is perhaps a mistake to cast too much emphasis upon the political arena as the basis of this development, for it was the technical achievements of the nineteenth century more than the political which created the climate

essential for inters-state co-operation. This was particularly the case in the field of communication, where the rapid development of telegraph and postal techniques made multilateral co-operation among states both desirable and essential.

The decisive step forward in international organizations in the nineteenth century was undoubtedly the creation of the telegraph and Postal Unions in 1865 and 1874. The International Telegraph Union was created by the Paris Telegraph Convention of 1865, and with the establishment in t 1868 of the International Bureau of Telegraph Administrations, the Telegraph Union became the first truly international organization of states with a permanent secretariat. The creation of a postal union soon followed. The Berne Convention of 1874 resulted in the establishment of the union generale de Postes, together with a Bureau international. This union was shortly to be renamed the Universal Postal Union.

The telegraph and Postal unions were the forerunners of a host of other administrative unions which came into existence in the late nineteenth and twentieth century's. Among the most important of these we may cite the international bureau of international bureau of literary Property 1883, the international convention on railway freight traffic, 1890 and the international office of Public Health, 1907.

The characteristic feature of these unions was that they operated in general, through two organs: periodic conferences or meeting of the representatives of member states, and a permanent secretariat. They thus contributed the important institutional element in international co-operation. Their permanent character was secured through a standing organ, the bureau, which was the evolutionary link between the structure of the diplomatic conference and that of the modern international organization. Moreover, as the practice of these unions developed this

practice began to produce changes in the fabric of the unanimity rule for the modification of conventional provisions. In a more general manner they contributed to the awareness of states "pofpotentialies of international organizations as a means of furthering an interest common to numerous states without detriment to that of any concerned…"

These administrative unions appearing on the international scene in the late nineteenth and early twentieth century's took the first sure steps on the road to an organized international community. The period up to the outbreak of war in 1914 was rich in experimentation with new techniques, in particular the elaboration of conference procedures, and the increasing and important use of the secretariats. The end of this period saw the development of a permanent institutional framework for the settlement of disputes. The Hague Conference of 1899 created the permanent Court Arbitration, whose form and functions were confirmed at the Hague Conference of 1907. But as shown herein this was a modest beginning. The Court was a list of arbitrators fromwhich a tribunal could be selected in a specific case, together with a permanent bureau and a set of rule of procedure. No permanently established tribunal and no provision for compulsory jurisdiction could be agreed upon in the political climate of the time. On the whole, the area of inter-state co-operation remained, therefore, limited to non-political technical activities and it was not until the First World War that the impetus for the establishment of a general political organization began to gain ground.

The Inter –War Period

The creation of the League of Nations is linked historically and juridical with the Treaty of Versailles, although that treaty, in fact, formed only a part of the total peace settlement following the First World War. The Treaty of Versailles of 28th June 1919 contained among many other important provisions the constituent instruments of both the League of Nations and the International labor organization. It also provided, in the Covenant of the League, for the establishment in the near future of a judicial organ of the League.

It is generally recognized that the experience of the League of Nations, notwithstanding its failure in its primary task of maintaining peace, constituted an important phase in the development of internationals and provided the direct precedent for the United Nations. Some understanding of main features of the League of Nations is necessary, therefore, to an understanding of the origins of the United Nations.

The Covenant of the League of Nations defined in its preamble the objects of the League as being, ‘’to promote international co-operation and to achieve international peace and security``. It envisaged a system of collective security based on the notions of reduction of armaments, pacific settlement of disputes and limitations on the right to resort to war, a collective guarantee of the independence of each member, and sanctions against a state resorting to war in violation of its undertakings with regard to pacific settlement.

The principal organs of the League of Nations were the Assembly, which consisted of all the League members; the Council originally composed of nine members five Principal Allied and Associated Powers and Four others but later enlarged to include eleven non-permanent members, and the Secretariat. The Covenant did not differentiate, in general, between the functions of the Assembly and the Council. The two organs were granted concurrent powers, and apart from the

few separate functions specifically allotted to the Assembly or the Council, their organ could deal with their meetings with any matters within the sphere of action of the League.

One of the basic features of the League was the maintenance in general of the principles of unanimity of decision as established in the traditional practice of diplomatic conferences. The principle was embodied in the voting requirement of both the Assembly and the Council, with, however, important exceptions.

The Assembly and the Council were assisted in their work by a number of technical organizations and by both permanent and temporary advisory commissions. The three technical organizations were: (i) the Economic and Financial Organization; and (ii) the Organization for Communications and Transit; and (iii) the Health Organization.

No review, however brief, of the institutional aspects of the League would be complete without a reference to its contributions in the fields of; (i) mandates; (ii) administration of the Saar Territory; (iii) protection of national minorities; and (iv) refugees.

Article 22 of the covenant provides for the placement under the mandate system of certain territories detached from Turkey and Germany at the conclusion of the First World War, and assigned to three categories, I, ii , and iii, according to their stage of development. The mandate system was based on the ‘’principle that the well-being and development of such peoples form a sacred trust of civilization``. The mandated territories were to be entrusted to ‘’advanced nations``, able to undertake this responsibility and willing to accept it. A mandate was exercised ‘’on behalf of the League`` and under its supervision, and the mandatory was required to render to the Council of the League an annual report ‘’in reference to the territory committed to its charge``. The conditions of the authority to be exercised by the mandatory were laid down in

resolutions of the League Council in agreement with each mandatory. A Permanent Mandate Commission was constituted ‘’to advise the Council on all matters relating to the observance of the mandates``. The members of the Mandate Commission were independent experts acting in their individual capacity. The right of the inhabitants of a mandated territory to petition the League was recognized. Disputes arising under the terms of the mandates were to be referred to the Permanent Court of International Justice. The Administration of the Saar Territory was entrusted to the League of Nations in accordance with article 50, chapter II of the Treaty of Versailles, which provided for government by a commission appointed by the League Council for a period of fifteen years; at the end of this time, a plebiscite was to be held to determine whether the inhabitants preferred to join France and Germany. This was the only instance of a territory being placed under the authority of the League.

The protection of national minorities in humanitarian was a duty conferred upon the League by the Peace Treaties and various other declarations and agreements. Minorities were accorded in these instruments far-reaching political, religious, educational and linguistic rights. These international arrangements allowed any member of the Council to raise before it any infringement of these rights. Petitions could also be submitted by any person or organization to the Council.

League activities in the humanitarian fields included aid to refugees driven from their countries during the First World War. The Council of the League appointed a High Commissioner, who, with the help of the International Labor Office, supervised this aid. ‘’To him must be attributed the introduction of new international document, the ‘’Nansen passport``, which served as official identification certificate for refugees unable to obtain, because of the loss of citizenship or for the other reasons, a passport from their own country’ ’Through the recognition of the ‘Nansen

passport` by most governments, the problem of the provisional status of refugees and their travel from one country to another was solved.

Dominating though the influence of the League was throughout this period, no account of the International Labor Organization (ILO) . Although a part of the same general instrument as the League Covenant and despite certain links with the League, and the ILO was intended to be an autonomous body. In practice, the ILO never ceases to exercise its autonomy throughout the interwar period and it was thus able to survive the demise of the League in 1946 and establish itself on an independent constitutional basis.

The distinguishing feature of that organization in 1920, as it is today, was the tripartite representation of governments, employers and workers. For this reason, the ILO ha occupied, and continues to occupy, a unique position among international organization. It was conceived as a permanent institution having three main organs: General Conference of Representatives of Members; an International Labor Office; and a Governing Body. The General Conference was the main organ of ILO and each member state was to have four representatives: two government delegates and one delegate each of employers and workers. The ILO office was its permanent secretariat, placed under the control of the Governing Body which was itself composed of 24 members having a tripartite distribution in the same ratio as the Conference. Other important features were the special procedure for the adoption of international conventions, and new measures of control to assure the implementation by member governments of their international obligations in this field.

The third institution which sprang from the Treaty of Versailles was the PCIJ envisaged in article 14 of the covenant. The Protocol of the signature of the Statute of the PCIJ was opened on 16

December 1920, and the Statute entered into force on 20th August 1921. Although the court was an autonomous body, and not an organ of the League in the same manner as the International Court of Justice is the principal judicial organ of the United Nations, its relationship to the League was, in fact very close. In the opinion of one learned commentator:

> The history of the drafting of the Covenant leaves no doubt that the
>
> PCIJ was envisaged at Paris as a part of the organization of the League
>
> Of Nations……the League was conceived to include a court and……..
>
> The court for which provision was made was not to be independence
>
> Of the organs of the League which owe their existence to the covenant

Itself.

The Court was a permanent body composed of fifteen members: eleven Judges and four deputy-judges to be elected by the Assembly and the Council of the League. Only states or members of the League could be parties in cases before the Court, whose jurisdiction composed all cases which the parties referred to it and all matters specially provided for in the treaties and conventions in force. Jurisdiction was not compulsory, but article 36 of the Statute contained an optional clause by which states could declare that they recognized ‘’ as compulsory ipso facto and without special agreement, in relation to any other Member or State accepting the same obligation, the jurisdiction of the Court`` in certain classes of legal disputes. The creation of the court of an important innovation, for it added to the already existing means of pacific settlement

of disputes that of judicial settlement proper. Its creation was truly great achievement of the inter-war period.

CONCLUSION

In conclusion, we may underline the principal contributions of the Versailles settlement to international institutions. In the first place, the creation of the three new institutions broadened the scope of activities which could henceforth be regarded as matter for inter-state co-operation.

THE DEVELOPMENT OF INTERNATIONAL INSTITUTIONS SINCE 1945

Although the outbreak of war in 1945 clearly signaled the failure of the League of Nations in its primary task, the need for a general organization of states whose main purpose would still be the maintenance of peace was nevertheless universally accepted. Throughout the war, therefore, the establishment of such an organization was regarded by the Allied Powers as a prime objective.

In the Moscow Declaration of November 1 of 1943 the four powers (UK, USA, USSR, CHINA) recognized ‘the necessity of establishing at the earliest practicable date a general international organization……for the maintenance of international peace and security`. Pursuant to this declaration of intent, representatives of the four powers met at Dumbarton Oaks in August and September of 1944. The issue of this meeting was the Dumbarton Oaks proposals for a new general international organization. These proposals, together with the voting formula agreed upon at the Yalta Conference in February 1945, formed the basis of the discussions at the Sun Francisco Conference, held from 25 April to 26 June 1945, which resulted in the adoption of the Charter of the United Nations and the Statute of the ICJ.

Parallel to the movement for the establishment of the United Nations there took place a similar development in the direction of increased international co-operation over a wide variety of specialized fields. The year 1944-46 consequently witnessed the emergence of a number of new or remodeled institutions. Existing organization such as ILO, ITU and UPU carried out the fundamental constitutional revisions in an attempt to meet the requirement of the post-war world. The changes wrought in the ILO through the Instruments of Amendment of 1945 and 1946 were particularly far-reaching. But the same period is also remarkable for the number of new organization which were created: the International Monetary Fund, the International Bank for Reconstruction and Development, and the International Civil Aviation Organization in 1944; the United Nations Educational, Scientific and Cultural Organization, and the Food Agriculture Organization, 1945; the World Health Organization 1946.

The post war period of 1945 of development has superimposed upon the structure of institutions and techniques, which had been slowly built up between 1865 and 1939, its own particular style, the most characteristic features being universalism, regionalism and functionalism.

The trend to universalism began, as we have seen, in the period of the League of Nations. Since the establishment of the United Nations in 1945 this movement has gained steadily. Membership in the United Nations has been more than doubled since its creation and several of the Specialized Agencies, which permit both regular and associate membership, embrace virtually all the territories of the global.

Parallel to this there has been an important growth of regional organization organizations and which find a place within the universal system. Prior to 1945 the only organization of any

Significance was the Pan American Union, which had been established in the late 19th century and continued to exercise regional functions throughput the period of the two war; shortly after the Second World War it was entitled the Organization of American States (OAS) .

The third characteristic feature of the post-1945 period has been the establishment of institutions along strictly functional lines. This development had its root in the international unions of the 19th century and had been foreseen by the framers of the United Nations Charter, who made express provision for bringing them into relationship with that organization as Specialized Agencies. But their proliferation has been created many problems of co-ordination in recent years.

CONCLUSION

If then we consider the evolution of international institutions in retrospect, it becomes evidence that the contemporary system represents the outcome of a century of slow but progressive movement. There have inevitably been much trial and err, and serious setbacks, but as each phase of development has succeeded another, the science and technique of international institutions has improved.

ACTIVITY NO.1

Discuss the development of international institutions as instruments of international cooperation

Between states.

International institutions can be classified as the per the three principles established. Elucidate these criteria in details.

What were some of the legal problems did these institutions faced in their operations.

CHAPTER TWO

GENERAL LEGAL PROBLEMS OF INTERNATIONAL INSTITUTIONS

INTRODUCTION

2.05 Definition of international Institutions

A historic feature of the organized international community is that its constitutional framework is not, like that of the state, embodied in one coherent set of legal rule. On the contrary, this framework is the sum of numerous juxtaposed and interrelated legal orders, each of which is embodied in what we generally call an international institution.

OBJECTIVES

The student must apply the knowledge obtain from the previous topic to analyze the legal personality of these institutions. However, a student must note that these legal institutions have legal capacity to commit itself towards a state. However, the question that lies in difficulty in to ascertain how, and who should be sued in both civil and criminal matters.

Now, there is an immense number of permanent legal associations as well as looser relationships and institutions, established across national frontiers, and between individuals and groups in various countries. A complete and realistic view of the international community cannot leave these phenomena out of account. But a study which approaches the activities and problems of the international community from the angle of international law must distinguish those phenomena which are particularly relevant to what we call the international institutional framework. To that end a definition of the international institutions, with which this chapter is especially concerned may be useful. By means of such a definition, it will be possible to focus attention on the essential legal elements of international institutional framework. The essential legal elements of international institutional are these. First, they are associations of states , as distinct from associations of private individuals, professional organizations, or other groups. Although such association or federations of national groups have come to exercise important international functions under the general denomination of non-governmental organizations, they do not form an essential part, for our purposes, of the organized community of states. On the other hand, there are political units, among them certain self-governing territories and constituent parts of federal, which are to be considered possessing legal personality ad and as ranking with states for the purpose of this definition. Second, every international organization has a conventional basis a multilateral treaty, which forms the constitutional of the organization. Third, this constituent instrument will have established organs of the institution which assume corporate identity

distinct from that of the component member states. Fourth, the organization so created possesses a separate legal personality distinct from that of the individual member states and is thus a subject, though in a limited degree, of international law. In accordance with these basic elements, therefore, we may define an international institution as an association of state (or other entities possessing international legal personality) establishes by treaty, possessing a constitution and common organs, and having a legal personality distinct from that of the member states.

2.06 The principle classifications of international institutions

International institutions as defined above may be classified according to three principle criteria: membership, functions and powers.

If we take membership as a criterion, institutions may be classified as universal on the one hand, and regional or limited on the other. What is relevant form a legal point of view is whether the institution is open for membership to all states fulfilling certain elementary conditions, or whether it is open only to states belonging to certain groups, defined according to geographical, ideological, economic, or similar criteria. It is not decisive, although it may be relevant from political or other points of view, whether in actual fact all the states of the world are members. This is not the case with any past or yet with any existing international institution. The united Nations and the Specialized Agencies are potentially universal; and this qualification is amply reflected in the literature where terms such as “universalist” and “a vocation universelle” are used.

Despite the fact that the Charter of the United Nations contains a Chapter entitled ‘Regional Arrangements”, no definition of regional organizations is to be found there. Indeed, a proposal for such a definition was rejected by the San Francisco Conference. We have, however,

indirectly defined such institutions by including among the OAS, the Arab League, the Council o of Europe, and the OAU. These organizations possess the characteristics of the universal institutions except of course, as to membership, which is limited to states of a particular region or having common ties of one kind or another.

The second criterion of the classification relates to the functions of thee institutions, which may be general or specialized.

The general international institution, by its very nature, embraces the whole range of activities of the international community: political, economic, social, cultural and technical. The United Nations falls within this category as do, to a rather more limited extent, some of the regional organizations.

A specialized institution, on the other hand, is limited in purpose and function to a certain specific objects. The Specialized Agencies of the United Nation and the International Atomic Energy Agency come within this category, together with a large number or regional organizations. Finally, international institutions may be classified according to their powers as policy making, regulator, or supranational. A

A policy-making institution is one which operates through the adoption of resolution and recommendation addressed to its members and is dependent wholly on the latter for the implementation of policies. This category would include general institutions both universal and regional or limited in character.

A regulatory institution will however possess an operative capacity, which is separate from that of it member states. This is the case of many of specialized Agencies, whose functions may be the management types, such as the International Bank, or of the control type such as the ILO .

The notion of a supranational organization concerned is any the less an association of stated created by them, but that its organs possess direct legislative, executive, or judicial power over the people and territories of the member states. There are no truly supranational organizations in existence at the present time, although the European Communities present some essential elements of this type.

While the above classifications are useful as a general guide, too much importance should be attached to them. International institutions are too complex in their functions and powers to allow of neat , water-tight compartmentalization, and the principal classifications we have employed cut across the lines if many of the international institutions which today constitute the organized community of states. Extreme caution should be shown, therefore, before attaching legal significance to such classification.

2.07 Legal personality of international institutions

Although international institutions are considered in this chapter primarily as contribution to a constitutional framework of the international community, it should not be overlooked that each enjoys legal personality within the traditional system of international law.

This aspect of international institutions is examined further in the context of the general doctrine of international legal personality. For present purposes it may be sufficient to point out that the legal personality of an international institution is a certain sense a pre-requisite of it constitutional functions. Organized co-operation between states is facilitated in many ways by the legal technique of considering the institution as an entity having rights and duties towards member states. The capacity of an international institution to enter into agreements with states and other international institutions is indispensable for the purpose of implementing the powers

and authority which has been granted to it by its constituent instrument, and it responsibility for illegal acts which its organs may have committed serves to protect the rights of member state. Procedural capacity also, when granted, may increase the possibilities of the reciprocal assertion of rights between the institution and state. In short, international legal personality in its various aspect is essential to the proper functioning of international institutions.

Equally important from a practical point of view, although less conspicuous as an element of a constitutional order, is the legal capacity which international institutions generally enjoy in the domestic law of member states. This, however, is primarily a question of municipal law. T is a question of international law only in so far as member states may have undertaken a duty to recognize the legal personality of an organization under their domestic law.

Related to the problem of international personality is the problem of succession between international institutions. As they do not generally exercised territorial sovereignty, this is primarily a question of the transfer of legal powers where an institution ceases to exist.

2.08 Privileges and immunities

As international institutions generally do not have a territory of their own, they have to operate in localities subject to the territorial sovereignty of states. It is apparent, therefore, that they must be accorded defined by the territorial authority with the exercise of their functions.

These privileges and immunities are not a far-reaching as those accorded to states and state representatives under traditional international law. They have a more rational and less ceremonial foundation, and their legal basis is the constituent instrument of each organization and perhaps additional treaty provisions. Not only the institution as such, but also the

representatives in it of members states, and the individual in it service, enjoy these right. The matter is in connection with other questions of immunities and privileges under international law.

2.09 International law and the internal law of international institutions

When the study of international institutions was initiated there was little doubt that the rules governing their constitution and functions formed part of the general body of international law. Although it was recognized that quite new legal problems arose, it was generally taken for granted that they came within the traditional concepts of international law. Indeed, the international institutions were established by treaties or conventions concluded between states in conformity with traditional procedures and the major legal issues which arose depended for their solution on the proper interpretation and application of these constitutive treaties.

It is true that a number of subsidiary rules were elaborate from provisions of the treaties, such as rules of procedure, financial regulations and staff regulations. The rules, however, were considered as an extension of international law contained within its traditional limits. There was little doubt that when the term “international law” was used, it embraced these new categories of rules. Thus it has never been contested that the ICJ, whose function according to Article 38 of its Statue is “ to decide in accordance with international law such disputes as are submitted to it” would have to apply these subsidiary rules if the circumstances of a case so required, notwithstanding the fact that they may not be easily brought under any of the sources expressly enumerated in that Article.

As the importance and scope of these subsidiary rules gradually increased, the opinion gained ground that it might be preferable to group them together in a separate category, distinct from the traditional rules of international law. Verdross coined the expression “internal law of the

community of states". He pointed out that there are certain categories of rule which are immediately applicable to individuals, such as the staff members of an institution. He pointed out that these rules may have structural characteristics identical with those of municipal law. By the expression coined he understood "such rules of private, criminal, administrative, and disciplinary law as may be issued by a community of states for the regulation of the conduct of individuals immediately subject to this community of states"

Pursuing this line of thought somewhat further, we might argue, however, that there are international rules other than those binding individuals which present a structural identity with municipal rules of law. The rules of procedure of an international organ are in many respects analogous to those of a national parliament. They govern the legal relations between members of a assembly, and between the assembly as a whole and its presiding officer rather than relations between sovereign states, and they establish certain relationships of subordination to an officer or body invested with certain powers. Likewise, the financial regulation of an international institution governing the budgetary process, the authorization of expenditure, auditing procedure and so on, present close analogies to the corresponding rules in national constitutional and administrative systems.

It is characteristic of all these sets of rules, that they deal with legal relationship's internal to the institution, as distinct from the relationships between it and the outside world, including the member states considered as separate legal persons having right and duties towards the institution. Many authors therefore are of the opinion that it may be useful to group all these rules together as part of what is called the international law of the institution in question. The implication is that every international institution has its own set of internal legal rules, just as every state has its own municipal law. This doctrine has obvious advantages, grouping together

as it does rules which present similar distinct features, It should not conceal the fact however, that the legal basis of these rules must be found in the constituent instrument of the basis of these rules must be found in the constituent instrument of the institutions concerned In that sense they may therefore be considered as just one particular branch of general international law.

Returning to the regulations concerning the legal status of staff members of an international institution, we find that not only do they regulate the terms of employment and generally, the right and duties of the staff, but they may also institute elaborate machinery, including appeal boards and administrative tribunals, for their handling of disputes between the institution and the individual staff member, The powers attributed to such bodies are truly judicial. In its Advisory Opinion on the *Effects of Awards Compensation made by the Un Administrative Tribunal* the ICJ stated as a well-established and generally recognized principle of law that a judgment rendered by such a body is *res judicata* and has binding force between the parties to the dispute .The Court further found that the parties to the dispute were the staff member concerned and the UN itself. Consequently the Organization was legally bound to carry out a judgment of the Tribunal and to pay the compensation awarded to the staff member. The General Assembly, as an organ of the Organization, was also bound and had to appropriate the necessary amount of money in the exercise of its budgetary function.

The legal basis for the establishment of a judicial organ having such powers was found to lie in Article 22 of the charter, which authorizes the General Assembly to establish such subsidiary organs as it deems necessary for the performance of it functions. This point to another characteristic of the internal law of international institutions. Under this device of subsidiary organs elaborate machinery has been created, not by supplementary agreements between member

states, but by resolutions of the principal organs. Cases in point are the complex system of technical assistance and UN peace-keeping operations.

2.10 Relations with member states

The basis in law of the relations between an international institution and it member stated is the constituent instrument. First, provision is often made for specific obligations, which member states are bound to observe as contracting parties to the constituent instrument, Some of the Specialized Agencies in the economic field afford striking examples of this. More important however, is the truly constitutional element, namely the powers attributed to the institution acting through its principal organs to make decisions which in various ways impose new obligations on member states or accord them certain rights. As to the exact nature and scope of such powers, constituent instruments present great differences. Although it is true to say that international institutions general do not have legislative powers, there are important instances of power to establish general rules for the conduct of states in specialized fields.

On specific issues international institutions may be empowered to make decisions legally binding on the parties concerned, although this is the exception rather than the rule. The most important instance is the power which the Security Council may exercise under Chapter VII of the charter in cases of a threat to international peace, breach of the peace, or an act of aggression. Other examples are found in some of the specialized Agencies and the regional organizations in Western Europe. Interesting examples of permissive decisions occur in the economic and financial field. Here an international institution may in certain circumstances authorize a state to take action forbidden to it without such permission.

Generally speaking, however, international institutions have only a power of recommendation. Although a recommendation is not legally binding it is not correct to deny it any legal efficacy. Whether general or specific, it places any state to which it is addressed under an obligation to take it into account in national decision –making. This is of course, an imperfect obligation which generally cannot be enforced apart from national action, and too many international recommendations have remained dead letters.

The practical effects of recommendations vary with circumstances according to the particular measure of international supervision which may be applied. Primarily, however, such supervisory measures cover the fulfillment of legal obligations under treaties or binding decisions. One group of supervisory measure have as their essential element an obligation to report what national action has been taken to give effect to an international decision or recommendation. Such reports may then be scrutinized but the institution and subjected to public debate. This is an essential element the ILO system.

In some instances investigations are set in motion on complaint or petition, either by another contracting state or by an individual or a group of individual whose interests are protected by the international instrument. This is the case in the UN Trusteeship System, and, to some extent, also in the field of human rights, It is likewise part of the ILO system. Finally, provision may have been made for international inspection. Such arrangements are in operation, although on a limited scale, within the IAEA.

Whatever the legal nature of the powers attributed to an international institution, they are specific in the sense that they may be exercised only with respect to certain subject matters prescribed by the constituent instrument. This is quite clearly so in the Specialized Agencies and many regional

organizations, and even in institutions of general competence, such as the UN. For, although characterized as general, the files of competence are never as wide as that of the omni competent states. The limitations inherent in this system are somewhat loosened through recourse to the doctrine of implied powers. Taken over form the constitutional practice of certain federal states, particularly the United States of America, it has been applied to the UN by the ICJ in the following terms:

Under international law the Organization must be deemed to have those powers which though not expressly provided in the Charter, are conferred upon it by necessary implication as being essential to the performance of its duties.

Reparation for Injuries Suffered in the Service of the UN, (1949) ICJ rep.

The Court referred to an application of the same doctrine by the PCIJ in an Advisory Opinion of 1926inwhich it stated that the ILO although established for the protection of workers only, was competent to draw up and propose labor legislation, which, in order to protect certain classes of worker, also regulates incidentally the same work when performed by the employer himself

In the European Coal and Steel Community the same doctrine seems to have been accepted on one occasion, although the Court has been more reticent on later occasions. On the whole, however, the doctrine has met with approval.

In general, the competence of an international institution to adopt decisions addressed to member states is limited to the subject matters over which the states have recognized its competence. In all international institutions there is an area of domestic jurisdiction of states in which the international institutions cannot intervene. In all matters where international law, whether written or unwritten, does not impose obligations on a state it is free to act, and no international

institutions can interfere except with its consent. In the institutions of limited competence this is generally of little importance, sine the practical effect of the rule lies already in the limitations of the subject matters on which the institution operates. In institutions of general competence it is more significant, particularly when the international disputes are in issue. As it is particularly relevant to the UN, not least because of the express provision of Article 2 (7) of the Charter it will be further examined. One particular aspect of the problem is dealt with in connection with reservations to a declaration accepting the compulsory jurisdiction of the ICJ.

2.11 Relations with non-member states

The constituent instrument of an international institution is, as a general principle, *res inter aliosacta* as far as concerns non-member states. These will neither acquire right nor will they be subject to duties under its provisions, and whatever powers may have been vested in the organs cannot be exercised in relation to non-members.

This is true also of the Charter of the United Nations, although the law of the Charter may in certain respects be considered as expressing principles which all states are obliged to respect. It is beyond doubt, however, that decision made by an organ of the UN will never have any binding effect in relation to a non-member state although they may be binding on member-states. By way of examples, a non-member state will never be under an obligation to take part in enforcement measures under Chapter VII of the Charter.

This is not to day, however, that an international institution is a legal nonentity in relation to non-member states. Its international legal personality is generally “objective” in the sense that it does not depend upon recognition by non-member states. Whatever organs are competent to act on behalf of the organization, for example, for the purpose of concluding international agreement,

have that authority in relation to non-member states as well as member states, unless the constituent instrument provides to the contrary. Through the exercise of their treaty making capacity most international institutions have established legal relationships of varying scope and intensity- some of them quite intimate, as in the case of the Un and Switzerland- with non-member states. In the European Economic Community it is provided that agreement may be concluded with third states associating them with the community in a legal relationship of mutual rights and obligations. The most important of the treaties concluded under this Article is the Convention of Yaounde of 20 July 1963 between the six member state on one side and eighteen African Malagasy states on the other.

The constituent instrument may also provide that non-member States shall be entitled to participate in the activities of the organization under certain conditions. Thus, articles 35 (2), of the UN charter allows a non-member state to bring a dispute in which it is involved before the SC or the GA, if it accepts in advance, for the purpose of the dispute, the obligations of pacific settlement provided in the charter. Likewise a state which is not a party to the statute of the ICJ may have access to the court under conditions laid down by the security council under the provision of Article 35(2) and (3) of the statute.

CONCLUSION

It is important to acknowledge that the possession of international personality means that an entity is a subject of international law, and is ‘capable of possessing international rights and duties, and has the capacity to maintain its rights by bringing international claims`.

QUESTION TWO

Article 104 of the UN Charter provides the UN with the ‘capacity as may be necessary` to execute its functions and fulfill its purposes within the territory of each member state. What Charter gap was filled by the Reparation Case?

In November 1997 gunmen stormed abroad a boat moored off Somalia and Kidnapped five aid workers from the UN and European Union. Can the UN and European Union sue for damages and why?

CHAPTER THREE

THE UNITED NATIONS

2.12 The principles of the character and general international law

INTRODUCTION

Article 2 of the charter enumerates the principles in accordance with which the organization and its members shall act.

According to the wording of Article 2 (‘shall act’), the enumerated principles constitute legal obligations on the organization and the members. In fact, of the seven principles enumerated in Article 2 , the first (‘sovereign equity of all its members’)is really a statement of a general principle upon which the organization has been founded, and the sixth and seventh principles concern the competence of the organization , Article 2 (6) extending it with respect to non-members (so far as may be necessary for the maintenance of international peace and security), and Article 2 (7) limiting it to matters which do not fall within the domestic jurisdiction of any state.

OBJECTIVE

The objective of this chapter is give a critical analysis on the functions of the work of the United Nations inter alia its core objective in its creation. However, a student must be able to analyze the different type of functions the UN conducts. It is also important that the student qualify the statement that the UN is juristic personam.

The principles contained in Article 2 (2) to (5) are the only ones which impose obligations on members of the organization. Article 2 (2) is a rather superfluous statement of the rule *pactasuntservanda* in respect of the charter but it was retained by the san Francisco conference on the ground that it was necessary to emphasize the obligations as well as the rights of members under the charter. Articles 2 (3) and (4) are two principles the observance of which are basic to the Charter as a whole and may be said to constitute the cardinal principles of the charter. According to these provisions, members of the organization are under an obligation to settle their international disputes by peaceful means and to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state. Finally, Article 2 (5) imposes on members an obligation to assist the organization in any action it may take in accordance with the charter. This provision , of itself, would not appear to create any obligation not already provided for in other parts of the charter but its place in Article 2 serves to focus attention on the general obligation of the members to assist the organization.

The statement of principles in Article 2 is not exclusive. The charter contains other provisions of equal validity with Article 2 and which also contain statements of principle such as, for example , Article 1 (20. All these principles constitute a binding legal obligation for the members of the obligation for the members of the organization, but in view of the inclusion of Article 2 (6), the question arises of the legal efficacy of these principles and the charter itself *vis-à-vis* non – member states. In reality, this question is a part of the larger issue of the legal force and value of the charter in international law generally. Opinions of writers are divided on this issue.

Some consider the charter as based on the principles of international law already established and consequently in no way external or superior to that system. It has been remarked by one commentator that the principles embodied in Article 2 are based upon ‘un

certainnombred'ideesfaisantincontestablementpartie du fondscommun des traditions juridiquesinternationales', and that 'Il y a euainsi…une volente bienarretee de subordonner la valeur des norms etabliesparla charte…a I'observation des principles superieurs de I'ordre international general.'

Other commentators have , however , seen in certain provisions of the charter such as Articles 2 (6) and 103, signs that the charter is intended to be a supreme or higher law of the international community , superior to general international law. The tendency , evidenced in article 2 (6), of the charter to be general and not only particular international law, was pointed out by Kelsen , who characterized such an attempt as revolutionary.

The charter itself provides no express indication as to its relationship to general international law. Article 103 is limited in its scope to obligations arising out of any other international agreements and does not refer to international law in general.

The question which must be asked then is whether the charter contains any principles which are not already an established part of customary international law binding on all members of the international community and which by virtue of Article 2 (6) it might purport to impose upon non-member states. If this is indeed the case, then the charter should be considered as a higher law prevailing over general international law.

A reconsideration of the principles contained in the charter in this light shows, however, that they are a restatement of principles which have evolved over a long period of time through both customary and conventional law. This is as true of the principles of sovereign equality and its corollaries (respect for the territorial integrity and political independence of states) and pacific

settlement of disputes as it is for the principle of self-determination contained in article 1 (2). The view of the charter as a form of higher law is not therefore to be retained.

This is not to deny, however, the significance of Articles 2 (6) and 103 as indications of the important place of the charter within the framework of the existing system of international law. the intention of the framers of the charter in these articles was clearly to establish it as a basic making treaty for the international community as a whole and it's in this sense that the charter should be considered as a part of general international law.in the words of one commentary , 'the charter thus assumes the character of basic law of the international community ….Non – members … are expected to recognize the law as one of the facts of international life and to adjust themselves to it.'

2.13 MEMBERSHIP IN THE UNITED NATIONS

(I) *Admission to membership*. Articles 3 and 4 of the charter distinguish between original and subsequent members. The report of the committee, which dealt with the questions of membership at the san Francisco conference , makes it clear , however , that this distinction was not intended to imply any discrimination against future members of the organization.

Admitted members possess the same rights and are under the same obligations as original members.

According to Article 4, membership in the United Nations is open to all peace-loving states which accept the obligations contained in the charter and which, in judgment of the Organization, are able and willing to carry out these obligations. The admission of a state to membership is effected by a decision of the General Assembly upon the recommendation of the Security Council. The interpretation of the conditions of membership as laid down in Article 4

caused considerable difficulties in the early years of the Organization when a crisis developed over the admission of new members. Two advisory Opinions of the ICJ have now clarified certain points with regard to the interpretation of the terms of Article 4. In a first Opinion, delivered in 1948, the Court advised that a member state was not entitled to impose conditions for the admission of a new member other than those set out in Article 4(1).

In this sense the court considered those conditions to be exhaustive, although it did not exclude the right of a state to adduce factors which ‘it is possible reasonable and in good faith to connect with the conditions laid down in that Article`. In a second Opinion in 1950, the Court advised that a decision of the General Assembly to admit a new member must follow a favorable recommendation, the General Assembly had no power to admit a new member.

Since 1955, when the membership crisis was finally resolved through the ‘package-deal` arrangement of simultaneous admission of 18 states, total membership of the Organization has increased to more than double the number of original members in 1945. At the end of 1966, there were 121 members of the Organization.

(ii) Suspension or Expulsion from Membership.

Article 5 provides for the suspension from membership of any member state against which preventive or enforcement action has been taken by the Security Council. The procedure of suspension follows that employed for admission but the restoration of a suspended member may be effected through a decision of the council only.

Under Article 6, a member of the organization which persistently violates the principles of the charter may be expelled by the General Assembly upon the recommendation of the Security Council. This provision does not specify, however, the procedure for reinstatement of an

expelled member. In providing for suspension from membership, the Charter filled a gap which had been left by the league covenant. It should be noted, however, that the conditions under which a member may be suspended are carefully circumscribed by the terms of Article 5. The provision for expulsion caused some opposition at the San Francisco Conference on the ground that an expelled member would no longer be bound by the obligations of the Chater but it was finally retained as a penalty persistent violation of the Charter. The conditions which may give rise to expulsion are not defined in the Charter and the criterion of persistent violation as expressed clearly leaves a very large measure of discretion to the General Assembly and the Security Council in the determination of what constitutes such violation.

(iii) WITHDRAWAL FROM MEMBERSHIP

Unlike the Covenant of the League of the Nations and the constituent instruments of the Specialized Agencies, the Charter does not contain any provision on the subject of withdrawal from the United Nations. The question of withdrawal was subject to a lengthy debate at the San Francisco Conference and it was finally decided not to include in the Charter a formal clause specifically forbidding or permitting withdrawal. However, a declaration was adopted in the form of a committee report which recognized that, while it would be "the highest duty" of members to continue their co-operation within the organization, a member might feel constrained to withdrawal "because of exceptional circumstances". The declaration cited as examples of "exceptional circumstances" two cases: first. If "the Organization was revealed to be unable to maintain peace or could do so only at the expense of law and justice", and second, if the rights and obligations of a member as such 'were changed by Charter amendment in which it has not concurred and which it finds itself unable to accept, or if an amendment duly accepted by the necessary majority in the Assembly or in a general conference fails itself to secure the

ratification necessary to bring such amendment into effect. The fact that this commentary was not embodied in the Charter raises the question of the legal efficacy of the declaration. In strict law, Kelsen is undoubtedly correct when he observes that 'The commentary on withdrawal…. Is of no legal importance. It was neither inserted in the Charter nor made the substance of another instrument such as an additional protocol, nor was it formulated as a formal reservation to the Charter. The manner of its adoption, however, has led some commentators to the conclusion that it is a generally accepted reservation or part of the lex societatis of the United Nations.

If we accept this declaration as authoritative, what is its effect? The use of the term 'exceptional circumstance' has been taken by some commentators as proof of the fact the declaration does not support a sovereign right of withdrawal but merely a recognition of the right to withdrawal based on rebus sic stantibus. There can be no doubt that a member wishing to withdrawal must justify its action as being based on 'exceptional circumstances'. But the declaration is too imprecise to permit any simple interpretation of this term. The withdrawal of Indonesia from the Organization in 1965 provided the first practical example of its kind and is instructive for the interpretation and application of the declaration..

The declared clause for Indonesia's withdrawal was the seating of Malaysia in the Security Council and withdrawal was part of the large 'confrontation' between the two nations. In his reply to the Indonesian letter notifying withdrawal the Secretary-General, after consultation with members of the organization, referred to the absence of any express provision in the Charter applicable to the situation and recalled that 'the San Francisco Conference adopted a declaration relating to the matter'. He did not, however, express an opinion on the question whether the circumstances were in fact exceptional; nor did he use language which implied that Indonesia had definitely ceased to be a member, but he expressed the hope 'that in due time [Indonesia]

will resume full co-operation with the United Nations'. At the beginning of the 21st session of the General Assembly in September 1966, Indonesia resumed 'full cooperation with…. And participation in the activities' of the Organization in which the President at the 1420th plenary session said: "It would therefore appear that government of Indonesia considers that its recent absence from the Organization was based not upon withdrawal from the United Nations but upon a cessation of cooperation…'

One of the question which future study might determine is whether a member withdrawing from the United Nations ceases to be party to the Statute of the ICJ, which is an integral part of the Charter. On the one hand, it might be said that it does since the ICJ is one of the principal organs of the United Nations. But on the other hand, membership of the United Nations and the ICJ is not identical and there are parties to the latter who are not members of the former. The Indonesian case has merely accentuated the questions which arise regarding withdrawal.

THE ORGANS OF UN: SEPARATE IDENTITY

The United Nations is an association of states but like all international institutions it must function through organs composed of individuals which in most cases act as representatives of member states. The constitutive instrument of the Organization, the Charter, apart from establishing the Organization itself, also creates a number of organs for the purpose of carrying out the aims of the Organization, establishes the composition of these organs, their functions and powers and their voting procedures. In the case of institutions such as the United Nations or the Specialized Agencies, where decisions and recommendations of the organs may be made by majority vote, these organs plainly assume an identity which is separate from that of the individual states represented in that organ. The exact nature of this separate identity will depend,

of course, on the functions and powers of the particular organ, and its composition and voting procedures as laid down by the constitutive instrument. In the case of the United Nations, e.g, one of the most important, if not the most important organ of the Organization, is the Security Council. This body is composed of only 15 members out of a total membership of some 120 and yet, in accordance with the provisions of the Charter, it may take decisions which are binding on all the members of the Organization. In the case of the GA too, though composed of all members of the Organization, we may point to numerous manifestations of the separate identity of the organ from that of the member states. Every time that Assembly adopts a resolution it demonstrates its separate identity from that of the members.

THE PRINCIPAL AND SUBSIDIARY ORGANS OF THE UNITED NATIONS

Chapter 3 of the charter establishes a distinction between the principal and subsidiary organs of the Organization. Article 7(1) lists as principal organs the General Assembly, Security Council, Economic and Social Council (ECOSOC), Trusteeship Council, International Court of Justice and the Secretariat. Article 7 (2) merely provides for the establishment of such subsidiary organs as may be found necessary, but without defining the term ‘subsidiary organ’ or listing any such organs. Only two other provisions of the Charter actually specially refer to the competence of an organ to establish subsidiary organs, although Article 68 authorizes the ECOSOC to set up commissions, the Trusteeship Council Rules of Procedure permit the establishment of committees and the statute of the Court provide for the creation of chambers. it is doubtful if the framers of the of the Charter intended to imply any distinction between the subsidiary organs of the GA or the SC or those of other organs, despite the differing terminology.

The principal organs of the United Nations have made considerable use of the possibility afforded them by the Charter of establishing subsidiary organs, notably in regard to political, economic, social and legal matters. There would seem to be no limit to the number of subsidiary organs which may be established, provided first that the principal organ has the competence, under the Charter, and second that the subsidiary organ's functions do not exceed those of the principal organ.

Apart from the distinction contained in Article 7, it is also possible in the terms of the Charter to discern a hierarchy among the principal organs themselves. Thus, although the GA and the SC have equal status under the Charter, both the ECOSOC and the Trusteeship Council are under the authority of the General Assembly.

Basically my aim will be to examine the principal organs of the United Nations as enumerated in Article 7(1), with particular reference to their composition, voting procedures, functions and powers.

THE COMPOSITION OF THE PRINCIPAL ORGANS OF THE UNITED NATIONS

The only principal organ composed of all members of the United Nations is the General Assembly thus article 9(1). Paragraph 2 of that Article also provides that each member shall have not more than five representatives in the General Assembly. The GA is thus a plenary organ of the Organization in which all member states are equally represented.

According to the Charter as adopted in 1945, the SC originally consisted of 5 permanent members China, France, Sovient Union, United Kingdom and the United States, and 6 non-permanent members to be elected for a term of two years thus Article 23. By an amendment

adopted in 1963 and in force since 1965, the number of non-permanent members of the sc has been increased to 10. Each member of the SC has one representative.

The composition of the ECOSOC has similarly been subject to amendment. Under Article 61 of the Charter as adopted, the ECOSOC consisted of 18 members elected by the General Assembly for a period of three years. Under the 1963 amendment the ECOSOC was enlarged to 27 members.

The Trusteeship Council differs from the other principal organs inasmuch as its total membership is not fixed at some specific figure but is dependent upon the number of member states who are administering trust territories. Article 86 of the Charter provides that Trusteeship Council shall be composed of those members administering trust territories, those members of the SC who are not among the administering members and as many other members elected by the GA for a three-year term as may be necessary to ensure that the total number of administering members is matched by non-administering members. With the gradual liquidation of the Trusteeship Council has dwindled considerably.

At the end of 1965 there were 8 members of the Council, composed of 4 administering members, 3 permanent members of the SC and one other member.

The ICJ also differs in composition from the other principal organs. Whereas the other organs consist of representatives of member states, the state being elected to the particular organ, the Court is composed of 15 independent Judges ‘elected regardless of their nationality from among persons of high moral character, who possess the qualifications required….’. The only limitation on this provision is that no two members of the Court may have the same nationality. It is doubtful, in practice, whether the elections to the Court are conducted without regard to

nationality and a general practice has developed whereby judges of the nationality respectively of the permanent members of the SC are always elected.

Article 7(1) describes the Secretariat as the sixth of the principal organs of the organization. As has been pointed out by one commentator, the designation of the Secretariat as a principal organ is somewhat misleading since the Secretariat is not organization in such a manner as to be capable of acting as a collegiate body.

Article 97 of the Charter provides that 'The Secretariat shall comprise a Secretary-General and such staff as the organization may require.' The Secretary-General is appointed, that is to say elected, by the GA upon the recommendation of the SC.

Since the SG clearly cannot perform all his functions personally, he has under his control a staff of assistants-the Secretariat. Article 101 of the Charter provides for the appointment by the SG of his staff under regulations established by the GA. Paragraph 3 of the same article states the paramount consideration in the employment of staff and the determination of conditions of service as being 'the necessity of securing the highest standards of efficiency, competence, and integrity'.

THE FUNCTIONS AND POWERS OF THE PRINCIPAL ORGANS OF THE UNITED NATIONS

The Charter deals with in great detail with the functions and power of the respect organs of the Organization of the principal organs have largely determined their scope. Thus, the GA, which is a plenary organ of the Organization, is endowed with virtually all-embracing functions by Article 10-14 in Chapter iv of the Charter. Under these provisions of the GA 'may discuss questions or any matters within the scope of the….. Charter or relating to the powers and functions of any

organs….,' 'may consider the general principles of co-operation in the maintenance of international peace and security,' including the principles governing disarmament and the regulation of armaments…..', and initiate studies in a wide range of political and non-;olitical fields under article 13. Its functions also extend to matters falling within the scope of Chapters IX and X and Chapters XII and XIII.

Despite these very wide functions, the powers of the GA under Chapter IV are limited to the discussion and adoption of recommendations which by their very nature are not binding on member states. The one exception to this is Article 17 whereby the GA is empowered to 'consider and approve the budget of the Organization'. The GA is, therefore, primarily a deliberative body. A characterization which applies a fortiori to the ECOSOC and the Trusteeship Council in their respective fields.

Article 12(1):

> While the Security Council is exercising in respect of any dispute or situation of
>
> the functions assigned to it in the present Charter, the GA shall not make any
>
> recommendation with regard to that dispute or situation unless the SC so requests.

The functions of the SC which are set out in Article 24 and 26 of the Charter may be summarized as 'the maintenance of international peace and security'. The SC differs from the GA in that within this sphere of functions it is endowed with the power of decision binding on all the members of the Organization. The special powers granted to the SC for discharge of its duties are laid in herein.

The distinction which the Charter sought to make between the function of the GA and the SC in matters relating to the maintenance of international peace and security has not been fully maintained in practice.

The function and powers of ECOSOC as described in Articles 62-66 comprise notably the initiation of studies and reports with respect to international economic, cultural, educational, health, and related matters; recommendations for the purpose of promoting human rights; the preparation of draft conventions and calling of international conferences on matters falling within its competence; and the co-ordination of the activities of the Specialized Agencies. The ECOSOC has authority to make recommendations only.

The functions and powers of the Trusteeship Council are set out in Articles 87 and 88. Like the Economic and Social Council, its competence is limited to discussion and report and it is placed under the overall authority of the GA.

Lastly, we must refer to the ICJ. The Court's function consists of the delivery of judgments in contentious cases and of advisory opine. The former are binding upon the parties to the case but the latter have no legal binding force. The jurisdiction of the court rests on the consent of the parties which may be expressly for the purpose of a particular case or through the 'optional clause' contained in Article 36 of the statute.

Although the court is an integral part of the United Nations institutional system, its function is conceived primarily as that of deciding legal disputes between states. Legal questions which may arise out of the activities of the political or executive organs of the UN are not as such within its judicial competence because the Statute allows states only to be parties in cases before the court. Consequently the Court cannot exercise functions comparable to those of a constitutional court

or an administrative court in many municipal systems of laws, and in general there is no possibility of judicial review of decisions taken or acts performed by the political or executive organs. Only through the device of a request for an advisory opine is it possible to obtain a pronouncement from the court on the legality of such decisions or acts. It is a method not infrequently resorted to. Particularly important was the case **Concerning Certain Expenses of the United Nations.** It must be borne in mind, however, that through this device a state which has grievance against a particular organ cannot institute proceedings, because advisory opine can only be requested by those organs which are authorized to do so under Article 96 of the Charter.

Furthermore, the pronouncement of the court is an advisory opine only. In both these respects, there is a marked different between the UN system and the judicial review instituted in the European Communities.

THE VOTING PROCEDURE OF THE PRINCIPAL ORGANS OF THE UNITED NATIONS

Writing in 1945, Jenks declared :

The battle to substituted majority decisions for the requirement of unanimity in international organizations has now been largely won….[This] process of development has reached its culmination in the provisions of the Charter of the United Nations which involve the complete abandonment of the requirement of unanimity in respect of the new general organization.

In effect, the League of Nations was based in the principle of unanimity, although the covenant allowed certain specific exceptions to this general rule, whereas the United Nations is based on the principle of majority vote. The last vestiges of the former unanimity rule are today to be found, in an attenuated form, only in the voting of five permanent members of the SC in carefully circumscribed cases. This departure from unanimity as a general rule of voting

procedure in international institutions is without doubts one of the most important developments to have taken place since the demise of the League.

On the other hand, there is growing awareness of the limitations inherent in a majority voting system. If a decision is adopted against the votes of states, which will ultimately have to carry the main burden of its execution, it may very well remain a dead letter. Without abandoning the majority principle as such, members of the political organs have shown an increasing readiness to seek a consensus of opinion before the formal vote is taken.

In the organs of the United Nations, each member has one vote and, with exception of the particular case of the permanent member of the SC every vote is of equal weight.

The majority-voting system may take many forms and the Charter contains a mixture of procedures which vary according to the organ in question and the functions being exercised by that organ. In its simplest form, the majority required is simple majority of the members present and voting. This is the case of decisions taken by the GA on questions which fall within the scope of Article 18(3), the so-called non-important questions, and decisions of the ECOSOC Article 67(2) and the Trusteeship Council Article 89(2)

In another form, the majority required may be qualified either by reference to a specified proportion or a specified number of affirmative members. The decisions of the GA on ‘important questions’ are governed by the first of these procedures. According to Article 18(2), such decisions ‘shall be made by a two-thirds majority of members present and voting’. The questions which fall within this category are enumerated but the list is not intended to be exhaustive and Article 18(3) subjects to a simple majority vote the determination by the GA of additional categories of important questions.

The procedure of decision by a specified number of affirmative members is employed in the SC, which in a certain category of questions, employs an additional qualification, that of the 'concurring votes' of the permanent members. With regard to procedural matters, decisions of the SC are made by an affirmative vote of any nine members, as provided for by Article 27(2) as amended. On all other matters, decisions are made by the affirmative vote of nine members including the concurring votes of the permanent members as provided for by Article 27(3) as amended. This double qualification gives, in effect, a right of veto to each permanent member in any non-procedural matter. A customary practice has developed, however, resulting in an important modification de facto of Article 27(3). A permanent member which abstains from voting is not considered as casting a negative vote, and provided that the requisite number of affirmative votes is cast, the SC is deemed to have taken a decision notwithstanding the abstention. It is controversial whether this customary practice also covers the situation in which the representative of a permanent member is absent from the Council altogether. The question last arose when the SC took important decisions on the Korean question during June and July 1950 in the absence of the Soviet representative. The validity of these decisions has been contested by the Soviet Union. Between 1946 and 1954, the SC made sixty-four non-procedural decisions by votes in which one or more of the permanent members abstained or was absent.

INTERPRETATION OF THE CHARTER

It is in the very nature of an international institution that the provisions of its constitutive instrument, and in particular those provisions relating to the functions and powers of the various organs, will in being applied by those organs be subject to interpretation. In the case of United Nations, for example, the principal organs within their dairy activities will be both applying and

interpreting various provisions of the Charter, and in some cases, as for example, in the admission of new members, different organs will interpret the same provisions of the Charter.

Interpretation of the same Charter provision may then produce a conflict of view not only between individual members, but also between the GA and the SC.

The vast majority of constitutive instruments, and in particular those of specialized agencies, contain provisions for the authoritative interpretation of the instrument; in the United Nations Charter, on the other hand, no such provisions is to be found.

The problem of Charter interpretation was discussed at length at San Francisco but the Conference failed to agree on a solution. A statement on interpretation was included in the final report of Committee IV (2), which envisaged various ad hoc possibilities of arriving at appropriate interpretation in the event of conflict. The report considered that such interpretation could be arrived at either through an Advisory Opine of the ICJ at the request of individual members or organs, or by recourse to an ad hoc committee of jurists. But such interpretation would not be authoritative, in the sense of legally binding on members, and this fact was recognized as a precedent for the future, it be necessary to embody the interpretation in an amendment to the Charter.

THE CONCEPT OF DOMESTIC JURISDICTION IN THE UNITED NATIONS

The concept of domestic jurisdiction is a general problem of international institutions, but it is a problem which arises most frequently and in most acute form in a general political organization such as the United Nations. For this reason, a brief consideration of the problem with specific reference to the Charter is required.

Article 2(7) of the Charter states:

> Nothing contained in the present Charter shall authorize the United Nations
>
> To intervene in matters which are essentially within the domestic jurisdiction
>
> Of any state or shall require the Members to submit such matters to settlement
>
> under the Charter; but this principle shall not prejudice the application of
>
> measures under Chapter VII

In order to understand the scope of this provision it is useful to compare it with the corresponding, but not identical, provision of the league of Nations Covenant. According to Article 15(8) of the Covenant, the Council, when exercising its function in relation to the pacific settlement of disputes, could not proceed with a case if it would that the disputes arouse out of a matter which 'by international law is solely within the domestic jurisdiction' of a party.

In its Advisory Opine on the Nationality Decrees issued in Tunis and Morocco 1923 the PCIJ interpreted this provision as applying to matters which were not in principle, regulated by international law. The court went on to state that the question whether a certain matter was or was not solely within the domestic jurisdiction of a state was a relative question; it depended upon the development of international relations. It may very well happen, however, that in a matter which, like that of nationality, was not in principle regulated by international law, the right of a state to act at its discretion was nevertheless restricted by specific obligations it had undertaken towards other states. In such a case, the jurisdiction of the state was limited by rules of international law, and Article 15(8), ceased to apply.

The provision of the UN Charter differs in several respects from that of the Covenant. First, its scope is not limited to the settlement of disputes. It establishes a general limitation on the authority of the United Nations by excluding from its jurisdiction ‘matters which are essentially within the domestic jurisdiction of any state’, but at the same time it makes an important exception to the general rule in favor of the application of enforcement measures under Chapter VII. Second, it does not expressly refer to international law as the determining criterion. Third, it does not exclude only those matters which are ‘solely’ within the domestic jurisdiction of a state, but all matters which are ‘essentially’ so.

The aim pursued by those delegations at the Sun Francisco Conference which argued in favour of this wording was to limit the competence of the Organization. At the same time it was seen an advantage that the wording was more flexible than that of the Covenant and thus, left a certain margin for a political appreciation.

The practice of the United Nations seems to indicate that the first preoccupation has not been satisfied. The provision has not operated so as to restrict the exercise of its competence by the Organization. On the other hand, full advantage has been taken of the flexibility of the provision. This has been facilitated by the fact, that the Charter has no compulsory procedure for establishing an authentic legal interpretation of a particular provision.

In the result a substantial body of interpretative practice by the organ of the organization has succeeded in establishing, by a process similar to the development of customary law, the limits of the concepts within the framework of the United Nations.

The questions which have provoked the application of the principle contained in Article 2(7) most frequently in the UN are those concerning human rights, colonialism and self-

determination. Thus the question what constitutes a matter essentially within the domestic jurisdiction of a state has been a recurring factor in United Nations practice over a wide range of important questions, necessarily involving all the principal organs of the organization. In the case of the ICJ, it must be noted here, the problem of domestic jurisdiction arises in connection with reservations to declarations under the optional clause.

The concept is not only relative, as was pointed out by the PCIJ, but it is also, by its very nature, extremely subjective. A permanent definition of the limits of the concept in the United Nations practice is not, therefore, possible.

In practical terms, this ‘maximum freedom of action’ has been manifested in the recognition that the GA may address resolutions to a specific member state with regard to its treatment of its people, for example, the policy of apartheid and the treatment of racial minorities in South Africa in the development by which the GA became entitled to the request the submission of political information, under Article 73 (e) of the Charter, on non-self-governing territories; and in the gradual adoption of the view that issues of self-determination of peoples were of international concern, falling outside the scope of Article 2(7), a trend which culminated in 1960 with the Declaration on the Granting of Independence to Colonial Countries and Peoples.

CHAPTER FOUR

THE SPECIALIZED AGENCIES

THE SPECIALIED AGENCIES AND THE CHARTER OF THE UNITED NATIONS

This development was already well advanced in 1945, for in addition to older institution such as the ILO and UPU, the Bretton Woods financial institutions (the IMF and the IBRD) were already in existence. The Charter took this development into account by providing for the establishment between these and future institutions and the United Nations. According to Article 57(1), 'The various specialized agencies, established by intergovernmental agreement and having wide international responsibilities, as defined in their basic instruments… shall be brought into relationship with the United Nations'. The Charter also gave the United Nations power of initiation in the creation of new organizations.

In practice the term 'Specialized Agencies' is used to denote those institutions which have entered into relationship with the United Nations in accordance with the terms of the Article 63 of the Charter. Charter IX of the Charter is the United Nations, which exercises, through the GA and the ECOSOC, an overall supervisory function, including co-ordination. The principal satellites of the system are the Specialized Agencies, each of which has been created by an intergovernmental agreement conferring upon it a distinct international personality and wide responsibilities in a particular field. At the present time eleven of these agencies have concluded agreements under Article 63 of the Charter

(ILO,IMF,IBRD,ITU,UPU,ICAO,WHO,WMO,FAO,UNESCO, IMCO) and one, the IAEA, has concluded an analogous agreement.

The functions and powers of these agencies and the rights and obligation of their member states.

The aim of the present section is to provide a brief general guide to their main institutional features and to consider the major problems of the co-ordination of their activities.

MEMBERSHIP IN SPECIALIZED AGENCIES

As in the case of the United Nations, a general distinction may be made between original and admitted members. The original members of a Specialized are those who were already members at the time when it acquired the status of a Specialized Agency, or in the case of a new institution generally those members who participated in the conference which established it. Admitted members be admitted as of right by virtue of membership in the United Nations, or they may be required to seek admission through a vote of approval of the plenary organ of the agency. The distinction between original and admitted members, however, is in general without significance as regards the rights and obligations of members.

Although, generally speaking, membership in the Specialized Agencies is limited to states, there are exceptions. The membership of the UPU, e.g consists both of states and their dependent territories where the latter possess an independent postal administration.

Further, a number of Specialized Agencies provide for ‘associate membership’, thus enabling participation by countries which enjoy internal self-government but have not yet achieved full independence. In the WHO ‘territories’ or groups of territories which are not responsible for the conduct of their international relations’ may be admitted upon application by the state or

authority having responsibility for those relations. Associate members do not have the full rights of members being restricted in the right to vote in the organs of the agency or the right of election to certain organs.

Expulsion from membership is not generally provided for, although in some cases expulsion from the United Nations will entail expulsion from the Specialized Agency.

In this respect, the financial institutions differ from the other Specialized Agencies. Under Article VI.2 of the Bank Agreement failure to fulfill its obligations may result in suspension, followed by expulsion, of the delinquent member. Article VI.3 further provides that any member of the IMF, ceasing to be a member, shall automatically cease to be a member of the Bank by three-fourths of the total voting power agrees otherwise. Article XV of the fund Agreement provides in Section 2 for what is called ‘compulsory withdrawal’ in the case of members who fail to fulfill their obligations.

With the exception of the WHO, all the constituent instruments of the Specialized Agencies contain provisions for withdrawal. In general, the period of notice required is one or two years. Other obligations arising may also be required, such as the fulfillment of all financial obligations arising out of membership.

ORGANS AND VOTING IN SPECIALIZED AGENCIES

The organic structure of the Specialized Agencies is very simple, comprising a plenary body in which all the members are represented; an organ of more restricted participation; and a secretariat. In the majority of Specialized Agencies it is the plenary body which is the chief repository of power; e.g the UNESCO General Conference shall ‘determine the policies and the

main lines of work of the organization' the WHO Assembly shall 'instruct the board in regard to matters upon which action, study, investigation or reports may be considered desirable', and the FAO Conference 'shall determine the policy and approve the budget of the organization.

Each member state has one vote and the voting rule is generally a simple except where a two-third majority is required on such matters as recommendations, submission of conventions to members, admissions of new member, or approval of the budget.

The financial institutions may be contrasted as group with the other Specialized Agencies. In them the final authority is the Board of Governors, consisting of one governor and one alternative. Each governor serves for five years and can be reappointed. The distinctive feature of this group is their system of weighted voting which is measured in terms of the actual subscriptions. Thus in the Fund each member has 250 votes plus one additional vote for each part of its quota equivalent to $100,000, and in the Bank each member has 250 votes plus an additional vote for each share held.

In additional to the plenary organs, a common feature of all Specialized Agencies is an executive council, elected by the plenary organ. Generally there are no privileges in the form of permanent membership. At the same time, however, the election is based not only on the general principle of equitable geographical distribution, but functional criteria have also been adopted for the selection of those members which play an important role in the particular field of the agency. An example is the Council of the ICAO, on which adequate representation must be assured of the states of chief importance in air transport, and the states which make the largest contribution to the provision of facilitates for international air navigation. Another example is the Council of IMCO, the 18 members of which are elected by the Assembly according to the following criteria:

6 members shall be governments of states with the largest interest in providing international shipping services, 6 other members shall be those with the largest interest in international seaborne trade, and the remaining 6 members shall be other governments which have special interests in maritime transport or navigation and whose election to the Council will ensure the representation of all major geographical areas of the world.

In the ILO, 10 of the 24 government representatives in the Governing Body represent the most important industrial countries, and in the IAEA, the 25 members of the Board of Governors are elected according to a complicated formula conceived so as to ensure adequate representation of those states which are the most advanced in the technology of atomic energy, including the production of materials, as well as of the various areas.

In the various organs of Specialized Agencies, member states are generally represented by persons belonging to the appropriate branch of national administration, and in some cases this is expressly provided for. In WHO, the constitution requires that delegates should be persons having special qualifications in the field of health, and preferably should be drawn from national health administrations of member states.

Non-governmental organizations are associated with Specialized Agencies for the purposes of consultation according to principles established by the ECOSOC. In the ILO, however, tripartite system of representation gives them a more prominent position, since as we have seen, in addition to delegates of governments, representatives of the employers' and workers' organization are members of the two main organ. These representatives must be nominated in agreement with the most representative employers organizations and trade unions of the countries from which they come. Each delegate has one vote, bit the two non-governmental

delegates are not bound by instructions of their government. The employers representatives and the workers' representative tend to form groups which in several respects, and particularly the adoption of common attitudes to problems before the Conference, have functions similar to those of political party groups in national parliaments.

The tripartite system of representation was originally conceived against the background of the structure of traditional capitalist society. Difficulties have arisen with respect to other social and economic systems, and the validity of credentials of workers' and employers' delegates were in effect government spokesmen who could not act and vote independently.

THE POWERS OF THE SPECIALIZED AGENCIES

The Specialized Agencies have developed elaborate procedures whereby decisions or other acts of the institution may create legal obligations for member states. This development has been particularly marked in the ILO. Conventions adopted by the ILO Conference must be submitted by governments of member states to the appropriate bodies in their countries for enactment of legislation or the taking of other action necessary to make the convention internally applicable.

INTERPRETATION AND AMENDMENT OF THE CONSTITUTION OF THE SPECIALIZED AGENCIES

The Constituent instruments of the Specialized Agencies, unlike the UN Charter, make express provision for their interpretation in the event of a dispute between the members or organs : thus in the financial institutions, a power of final decision on disputes as to interpretation is given to the plenary organs. Other agencies entrust interpretation to their organs but provide for final

recourse to the ICJ; others again provide for direct reference of such disputes to a third party such as the Court or a specially appointed tribunal.

The constitutions of all the Specialized Agencies and the IAEA provide

CHAPTER FIVE

REGIONAL INSTITUTIONS

INTRODUCTION

Our aim here is to describe briefly the principal regional institutional now in existence. In the following subsection we shall discuss those which have supranational tendencies and in the third subjection, we shall evoke some of the general which arise from the co-existence of universal and regional institutions.

OBJECTIVE

The objective of this chapter is to analyze the various international institutions the United Nations have created and those institutions which are independent from the United Nations as they exist. These among these international institutions is ILO ,ITU, UPU. A student must be able to grasp these concepts and apply them in trying to differentiate the various international institutions.

The term ‘Regional institution`, as it is used today, covers a wide variety of organization which differs markedly in membership, functions and powers. A regional institution may be continental in range of membership and differ very little from the United States itself; such is the Organization of American States. The Organization of Africa Unity, though continental in conception, is still in the early stages of development of its functions and powers. Other regional Institutions, such as the League of Arab States, embrace small groups of states united by historic bonds and common interest based on a variety of differing factors. Many are little more than associations of states for a single common purpose such as defense or economic aid, while

others, such as the European Communities, having far-reaching aims with large political and economic implications.

Our aim here is to describe briefly the principal regional institutions now in existence. In historical perspective, the American continent provided the first example of regionalism. The Organization of American States (OAS) which was established by the Pact of Bogota in 1948, is in the product of a long period of gestation which may be traced back to the aftermath of the liberation and independence of the Latin American Republics. In its present form the OAS comprises four main organs, the Inter-American Conference being the supreme organ, meeting normally every five years. Consultations of Foreign Ministers take place more frequently than the Conference, although such consultations are usually called to consider urgent matters only. A Council of the OSA composed of the permanent representatives of the member states functions on a semi-permanent basis and, finally, the Pan American Union, which is the direct successor of a former commercial bureau, now functions as the Secretariat of the OAS. Although the OAS has a highly developed organic structure, its organs are of consultation only, without any powers of decision binding member states.

The League of Arab States was established in 1945. The principal organ of the League is the Council, which acts as a general rule by unanimity. Majority decisions are only binding on consenting states in accordance with article 5 of the Charter of the League.

The Council of Europe, established in 1949, groups together a number of western and southern European states for general purposes. Its executive organ is the Committee of Ministers, in which decision require unanimity. The most original feature of the Institution is the Consultant Assembly, which is composed of representatives elected by the national parliaments of member

states. The number of representatives of each states varies according to the size of population: eighteen seats for the largest states and three seats for the smallest. The Assembly is a deliberative body which addresses its conclusions in the form of recommendations to the Committee of Ministers.

The most recent of the regional institutions of general competence is the Organization of Africa Unity created at Addis Ababa in 1963. The principal organ which meets annually is the Assembly of Heads of States and Government. Decisions of the Assembly require are implemented by the Council for Ministers. Resolutions of the Assembly a two-thirds majority while those of the Council of Ministers a mere simple majority.

There are also numerous regional institutions, pacts and associations which function in specific field: social, cultural, scientific, political and military. Some of the economic, scientific and technical organizations, such as the Council for Mutual Economic Co-operation (Comecon) , and the Latin American Free Trade Association (LAFTA)

2.28 THE EUROPEAN COMMUNITIES

Three distinct institutions grouping together France, Italy, Western Germany and the Benelux countries have emerged since 1945: the European Steel Community (1951), the European Economic Community (1958) and the Euratom (1958) (ECSC, EEC, &Euratom). While two of these bodies act within a clearly defined field the EEC serves the more general purpose of achieving an economic unification of the member states. The realization of these far-reaching objectives requires a strong institutional structure. At the outset each of the Communities had its own council of Ministers as well as its own executive organ (High Authority in ECSC; Commission in EEC and Euratom), but merger was effected by the treaty of 8 April 1965. When

it comes into force there will be one single Council in which member states are represented by cabinet ministers. It may adopt binding decisions by a majority vote. Some decisions require a qualified majority, and in those cases votes are weighted. Although this is the voting system provided for by the treaties, there may be strong political objections to overriding the vote of a large member state in the matters of vital importance to its interests.

A remarkable feature is the independent executive body, the Commission. It consists of nine Members appointed for four years by mutual agreement of the governments of member states. They exercise their functions in full independence, without taking instructions from governments. The Commission not only acts as an organ which executes and administers the decisions of the Council. The Commission will address its proposals to the Council, which may then adopt, reject or modify them.

To a large extent, the powers of the Council and the Commission are supranational in the sense that these bodies may adopt regulations or individual decisions which have direct legal effects in the member states, binding individuals, companies and associations, without the need of any intermediate action by national authorities

The Assembly, or European Parliament, consists of 142 members who are designated by their respective national parliaments. Its principal function is advisory. The Council must consult it before adopting general regulations and directives. It also exercises a certain political control over the activities of the Commission, since it may pass a motion of censure upon it by a two-thirds majority. Apart from this it does not possess any legislative power.

The Court of Justice of the Communities is composed of 7 Judges nominated for the terms of 6 years by mutual agreement of the member governments. Its function is to assure the legality of

any decision or action by the authorities of the Communities. Access to the Court is open not only to members states, but in most cases also to the individuals or associations whose interests are directly affected. Without entering into a detail examination of the European Communities we may conclude that they represent a type of constitutional structure which is much developed than that of other international institutional. In this regard we may be justified in considering ‘European Community Law` as a special category ranging somewhere between the general law of international institutions and the law of a federal state.

2.29 Regional Institutions of General Competence and the United Nations

The co-existence of regional institutions of general competence such as the OAS and the OAU, and universal institutions of general competence, such as the United Nations inevitably raises questions of compatibility in certain situations. Both the framers of the League Covenant and the United Nations Charter were at pains to demonstrate that the existence of both regional and universal institutions for the maintenance of peace and security.

Thus article 21 of the Covenant provided:

> Nothing in this Covenant shall be deemed to affect the validity of international
>
> Engagements such as treaties of arbitration or regional understanding like the
>
> Monroe Doctrine for securing the maintenance of peace.

The provisions of charter viii of the Charter which deal with regional arrangements are much more comprehensive, even though, as we pointed out earlier on. The charter contains no definition of the term ‘regional arrangement`. The charter does not preclude the existence of

regional arrangements for dealing with ‘such matters relating to the maintenance of international peace and securing as are appropriate for regional action`, provided that the activities of regional bodies are consistence with the purposes and principles of the Charter.

Members of the United Nations which enter into regional arrangements shall make every effort to settle their disputes on a regional basis before recourse to the Security Council and the Security Council is called on to encourage the development of the pacific settlement of disputes through regional agencies and where appropriate, use such agencies for enforcement action under its authority. Article 53 also provides, however, that no enforcement action shall be taken by the regional agencies without the authorization of the Security Council, and Article 54 provides that the Council shall be at all times kept fully informed of ‘activities undertaken or in contemplation under regional arrangements or by regional agencies for the maintenance of international peace and security`.

Although these general principles are fairly clear and simple, their application has given rise to difficulties. In many cases, parties to a disputes may find that their interests are either prejudice or favored if the referred to a regional institution where the balance of power is different from that of the universal institutions.

In other fields than the maintenance of international peace and security the United Nations and the regional institutions of general competence have exercised a wide measure of co-operation and representatives of the regional assist, as observe, in the work of the United Nations. By formal resolutions of the 3rd , 5th and 20th sessions of the General Assembly, the Secretaries-General of the OAS, the League of the Arab States and the OAU, have been invited to attend sessions of the General Assembly as observers.

CONCLUSION

It is important to note that these regional institutions have limited jurisdictions especially when it comes to the matters that affect countries which may not be member state to these regional institutions. However, in the economic field the organizational structure has been further complicated by the establishment of four economic commissions. The members are all United Nations member states within the region, and non-member states may participate. They may address recommendations direct to member states, without passing through ECOSOC.