

UNIT 4. INTERNATIONAL PERSONALITY AND SUBJECTS OF INTERNATIONAL LAW

1. Significance and acquisition of international personality.
2. Established subjects: States.
3. Established subjects: international organizations.
4. Other international actors: multinational companies and non-governmental organizations.
5. The condition of the individual in international law.



SIGNIFICANCE AND ACQUISITION OF INTERNATIONAL PERSONALITY

A. General aspects: the alleged rule of attribution of international personality

GENERAL ASPECTS: THE ALLEGED RULE OF ATTRIBUTION OF INTERNATIONAL PERSONALITY

- **Concept of personality or subjectivity:** various perspectives (linguistic, philosophical, and legal).
 - From the legal perspective: entity with the capacity to act within a given legal framework, capable of being an addressee of the rules and establishing legal relations, becoming a holder of rights and obligations.
 - Concept of **international personality** (initially) capacity to act in international relations, to establish legal relations with other international subjects, to be the creator and addressee of rules, and to be the holder of rights and obligations governed by international law.
 - ❖ Classic doctrine of international law: excessively influenced by its civil law background - it is the international legal system itself which determines, by means of a rule, which are the subjects legitimized to act within it.
 - rule attributive of international personality.
 - ❖ Modern doctrine of international law: more realistic, empirical, and inductive conception of international personality.
 - AGO, REUTER and DUPUY: international personality did not belong to the world of legal-formal or "legal" categories, but would derive from the realities ascertainable on the sociological and legal levels of international relations.

- ❖ The synthesis between these two currents : MIAJA DE LA MUELA
 - the only rule of attribution of international personality is that which is embodied in the so-called principle of effectiveness: the entities effectively acting in the international order (which de facto carry out activities that are the object of a certain recognition) are considered as persons or subjects of the legal order in question.
 - ✓ It is not a single personality modality, but various degrees of personality development. When can it be said that an entity acting in international relations has acquired a sufficient projection to be considered a subject of the legal system? Professor Reuter: for an entity acting in international relations to be considered as having international personality, it must engage in a range of activities that fall into at least the following three fronts:
 - i. Exercise of the power of legation (*ius communicationis-legationis*), i.e., effective maintenance of official relations with other states or international organizations.
 - ii. Exercise of the capacity to enter treaties (*ius tractandi*) and, in general, capacity to participate in the process of creating rules of international law.

- iii. Capacity to answer for wrongful acts eventually committed and to challenge the responsibility of other subjects of international law (*ius standi*): i.e., capacity to be an active (claimant) and passive (respondent) subject of international responsibility.

ESTABLISHED SUBJECTS: STATES

- A. The state and its constitutive elements
 - A.1. General aspects
 - A.2. Constitutive elements of the state
- B. The sovereignty of the state and its corollaries: equality; non-intervention; and sovereign immunity
 - B.1. Content of sovereignty: the powers of the state
 - B.2. Corollaries of state sovereignty
- C. The dynamics of the state
 - C.1. General considerations
 - C.2. Identity and continuity of the state
 - C.3. Birth and recognition of new states
 - C.4. Political transformation: recognition of governments
 - C.5. Territorial transformations: the succession of states
- D. State bodies in charge of international relations
 - D.1. General aspects
 - D.2. The head of state, the head of government, and the minister of foreign affairs
 - D.3. Diplomatic relations: diplomatic missions, special missions and representation before international organizations and delegations at international conferences
 - D.4. Consular relations

A. THE STATE AND ITS CONSTITUTIVES ELEMENTS

A.1. General aspects

- The state is a complex reality that can be examined from various perspectives: sociological, political, and legal.
 - Form of political organization arose with the European monarchies of the 15th and 16th centuries and its emergence is historically linked to the birth of international law.
 - Since Treaty of Westphalia, the sovereign state is the fundamental element of international society and the quintessential subject of international law
- **Doctrine definition:** the state is "an entity endowed with a territory, a population and a government, which is sovereign and independent, in the sense that it is not subordinate to any other state or entity, depending directly on international law".
- Matter of fact not of law: principle of effectiveness important role. The birth of states is a relatively constant process that continues to occur in a variety of ways in today's world: because of a resolution of an international organization; by virtue of an international agreement; because of the dismemberment or dissolution of a state, or because of a series of armed conflicts through the exercise of the right of self-determination of the peoples; or through unilateral declaration of independence supported by the major powers.
- Diversity of states but they have the same legal status under international law as entities endowed with sovereignty and defined by the principle of sovereign equality.

- Primary subject of international law and occupies a central place in this order, since it is the pivot of most international law.
 - Primitive conception: only subject. Excessively dogmatic and narrow.
 - Today's reality: the state is not the only subject of international law. In today's world, alongside states, the primary subjects of international law, there coexist other established subjects, international organizations, which we might call "secondary" (created by the states themselves). These have specific problems.

A.2. THE CONSTITUTIVE ELEMENTS OF THE STATE

- For international law, the existence of a state results from the concurrence of three constitutive elements: territory; population; and political-legal organization.
 - *Example:* German-Polish Mixed Arbitral Tribunal stated in its Judgment of 1 August 1929: "For a state to exist, it requires as indispensable a territory, a human collectivity and a public power exercised over this collectivity and this territory".
- **The territory:**
 - Territorially based entity (IO do not possess territory): the territory constitutes the support or physical base on which the population is settled and over which it exercises its sovereignty. IL is indifferent to dimensions or configuration of the territory (micro-states).

- It comprises:
 - Terrestrial space delimited by its borders.
 - Marine spaces subject to its sovereignty.
 - National airspace.
- The territory is delimited by borders, which must be well determined and have a certain firmness. International jurisprudence has pointed out that for the existence of a state "it is sufficient for the territory to be of adequate consistency, even if its frontiers have not yet been precisely delimited, and that the state is currently exercising its independent public power over that territory".
- The territory of the state is inviolable against any external action.
 - UN Charter of the United Nations prohibition on the use or threat of force.
 - Resolution 2625 (XXV) of 24 October 1970.

➤ **Population**

- Definition: The human community established on the territory of the state and over which the state exercises its authority. The number, density, homogeneous character, or the sedentary or nomadic character of the inhabitants of the state is immaterial in IL.
 - *Example: ICJ 1975 Advisory Opinion on Western Sahara.*
- Composition: Persons politically linked to the state by the nexus of nationality (the citizens) and, in a broad sense, it also includes foreigners residing in the territory.

➤ **The political and legal organization:**

- A state must have a governmental and administrative structure that makes possible the effective exercise of state functions in the internal and international order.
 - It must also have a legal system capable of establishing the rights and obligations of citizens and of effectively ensuring the exercise of these rights and obligations.
- The form of organization of the state (unitary, federal, autonomous, etc.) is irrelevant for international law, which recognizes the principle of self-organization of the state.
 - Example: ICJ Advisory Opinion 1975, concerning the Western Sahara case
 - However, the political organization and its exercise ad intra and ad extra must be effective and guarantee the fulfillment of the state's own functions.
 - ❖ Art. 4 UN Charter: The membership requires a state "able to carry out" the obligations set out in the charter.
 - ❖ Doctrine: authority in its territory and over the state's population;
 - the government must guarantee:
 - ✓ the necessary organic mechanisms to maintain relations with other states and with the other subjects of the international order.
 - ✓ the necessary organs to exercise the legislative, executive, and judicial functions.
 - ✓ to ensure the control of its economy, national security, and other public services.

- ✓ capable of ensuring the stability of international relations vis-à-vis the other states.
- Traditionally, the political status of the government was indifferent to international law: Resolution 2625 (XXV) of 1970: right to choose freely the form of government as an essential element of the principle of sovereign equality and non-intervention in internal affairs.
- Today, there is universal consensus on the protection of human rights, political democracy, and the rule of law: but it cannot yet be affirmed that the democratic character of government is a condition for the existence of the state.

B. THE SOVEREIGNTY OF THE STATE AND ITS COROLLARIES: EQUALITY, NON-INTERVENTION, AND SOVEREIGN IMMUNITY

- The international status of the state is marked by the recognition of its **sovereignty**, which is a constitutional principle of the legal system.
- Definition: it is the characteristic and exclusive attribute of the state.
 - In the internal sphere: supreme (*summa potestas*) and complete (*plenitudo potestatis*) authority.
 - At the international level: absence of subjection to a power superior to that of the state itself and is equivalent to independence. It implies exclusive responsibility for the exercise of authority over a given territory to the exclusion of any other state.
- Content: entails a broad sphere of powers (state responsibilities) which it can exercise independently and autonomously, and duties:
 - Exclusive powers for the exercise of legislative, executive, and jurisdictional powers in the domestic sphere.
 - Permanent sovereignty over natural resources and wealth and over the economic activities carried out in its territory. GA Resolution 1803 (XVII) of 14 December 1962.
 - Sovereign powers to decide freely on its external action, with no limitations other than those established by international law.
 - Duty: the need to respect the sovereignty of the other states and the requirements introduced for this purpose by international law.

B. 1. CONTENT OF SOVERIGNTY: POWERS OF THE STATE

(i) Nature and scope of state powers

- Powers of the state: domestically and internationally.
 - In its internal dimension: power to legislate for the whole of its territory, the exercise of jurisdiction by its courts of justice, and the monopoly of coercive power within its territory.
 - In its external dimension: freedom to conduct its international relations independently and without being subject to requirements other than those deriving from international law itself.
- State powers:
 - original or inherent character (sovereignty), which constitute an essential attribute recognized by international law.
 - Discretionary: they can be exercised freely without interference from the other subjects of international law. Effect:
 - Existence of powers that have not been regulated by international law and therefore belong to the internal jurisdiction: *domaine réservé* of the state and "exclusive powers" (an autonomous power of decision).
 - ❖ Art. 2.7 UN Charter
 - Initially full: general scope and not restricted by the principle of specialty.

(ii) Limits to the exercise of state powers

- The powers of the state are subject in their exercise to certain limits set by international law:
 - PCIJ Lotus case of 1927, the powers of the state cannot be exercised in the territory of another state: “In this sense jurisdiction is certainly territorial; it cannot be exercised by a state outside its territory except by virtue of a permissive rule derived from international custom or from a convention”.
 - Limited by obligations that have been freely assumed with respect to specific matters: PCIJ Wimbledon case of 1923 “The right to enter into international agreements is an attribute of state sovereignty.”
 - Limitation of the so-called “regulated powers” (powers which under international law are subject to a restrictive regulation to ensure their compatibility with the powers of other states or with the collective interests of the international community).
 - Process of progressive reduction of original powers.
 - International organizations / Human rights developments.

B.2. COROLLARIES OF STATE SOVERIGNTY

(i) Sovereign equality

- Fundamental principle of IL
 - Article 2.1 of the Charter of the United Nations.
 - Developed in GA Resolution 2625 (XXV) of 24 October 1970: All states enjoy sovereign equality. They have equal rights and equal duties and are equal members of the international community, notwithstanding differences of an economic, social, political, or other nature.
- It comprises the following elements:
 - States are legally equal;
 - Each state enjoys the rights inherent to full sovereignty;
 - Each state has the duty to respect the personality of other states;
 - The territorial integrity and political independence of a state are inviolable;
 - Each state has the right to freely choose and carry out its political, social, economic and cultural system;
 - Each state has the duty to comply fully and in good faith with its international obligations and to live in peace.
- Compatible with certain treaty derogations that admit disparities of treatment in favor of certain states:

- Privileges accorded to some states by granting them a pre-eminent position in certain areas (the right of "veto" of the permanent members of the Security Council).
- Practices of positive discrimination in favor of certain states suffering from a structural situation of inequality or vulnerability.
 - Advantages of developing countries in the World Trade Organization system.
 - The special status of landlocked or geographically disadvantaged states.
 - Principle of "common but differentiated responsibilities" in international environmental law.

(ii) Non-intervention in internal affairs

- The principle of the sovereign equality of states implies the obligation not to intervene in matters within the domestic jurisdiction of other states.
 - [ICJ Judgment of 9 April 1949 Case of the Straits of Corfu](#)
 - Proclaimed by [GA Resolution 2131 \(XX\) of 21 December 1965](#) "Declaration on the Inadmissibility of Intervention in the Internal Affairs of states and the Protection of their Independence and Sovereignty".
 - Content of this principle specified in [Resolution 2625 \(XXV\) of 24 October 1970](#): No state or group of states has the right to intervene directly or indirectly, for any reason whatsoever, in the internal or external affairs of any other state: armed intervention, other form of interference or threat against the personality of the state or the political, economic and cultural elements that constitute it, are violations of international law.

- Analysis by ICJ Judgment of 27 June 1986 concerning the case of military and paramilitary activities in and against Nicaragua:
 - Principle of customary international law.
 - This principle prohibits any state or group of states from intervening directly or indirectly in the internal affairs of another state.
 - matters in respect of which the principle of sovereignty of states recognizes their right to decide freely.
- Recent times: trend towards the introduction of certain exceptions to the prohibition of intervention in the internal affairs of other states
 - assistance, interference, or "humanitarian intervention".
 - The "responsibility to protect" populations when the territorial state does not duly fulfill its duties in this respect: reaffirmation of the obligation of states to be responsible for the well-being of their populations and to assist the United Nations in protecting populations from genocide, war crimes, ethnic cleansing, and crimes against humanity.

(iii) Sovereign immunity of the state

- A state may not be subjected against its will to the judicial (immunity from jurisdiction) or coercive (immunity from execution) powers of another state without its consent: *par inter pares no habet imperium*.

- Body of customary rules:
 - Absolute theory of immunity: the courts of a state cannot exercise jurisdiction against a foreign state without its consent or take enforcement measures against it.
 - Relative theory of immunity: distinguishes between acts of the state performed in the exercise of its sovereign powers (*iure imperii* acts - state immunity) and those performed in the context of civil and commercial activities (*iure gestionis* acts).
 - This relaxation also begins with respect to the immunity of execution of the foreign state.
- ICJ: in favor of maintaining the immunity of the foreign state from jurisdiction and enforcement of civil claims brought in national courts alleging a violation of peremptory norms (*ius cogens*).
 - [Judgment of 3 February 2012 concerning state jurisdictional immunities](#): "*A state is not deprived of immunity merely because it is accused of serious violations of international human rights law or the international law of armed conflict that could constitute war crimes or crimes against humanity*".
- ILC: [United Nations Convention on Jurisdictional Immunities of States and their Property of 2 December 2004](#) (not in force, missing eight parties).

C. THE DYNAMICS OF THE STATE

C.1. GENERAL CONSIDERATIONS

- States are social bodies subjects to historical dynamics: changes and modifications ("transformations of the state") that may affect its various component elements (population, territory, and government) and are of interest to international law when they affect its relations with other states.

C.2. IDENTITY AND CONTINUITY OF THE STATE

- General principle relating to the transformations of the state: principle of "identity and continuity" of the state: except in cases where the state is totally extinguished, the state entity remains identical for international law despite changes.
 - Application in cases of revolutions (changes in governing regimes).
- Rationale: do not alter the international status of the state or affect the persistence of the rights and obligations established under international law.

C.3. BIRTH AND RECOGNITION OF NEW STATES

- Emergences of new states: colonial emancipation, dismemberment or splitting of another state, unification of states, etc.
- Other members of the international community reaction: recognition or non-recognition of the new state.

(i) Concept and modalities of recognition

- Doctrinal (Institute of IL) definition: free act by which one or more states declare the existence on a given territory of a politically organized human society, independent of any other existing state, capable of observing the prescriptions of international law, and by which they consequently express their willingness to consider it as a member of the international community.
- Modalities:
 - Expressly, by means of a specific and formal declaration of recognition.
 - Tacitly or implicitly, by means of other acts implying recognition of the state (complex question).
 - Cases of (mis)so-called "collective" or concerted recognition: a group of states have agreed on the conduct to be followed with respect to the recognition of new states in each case (a concerted act adopting criteria for the recognition, which will then materialize through individual recognition by each of the states).

(ii) Discretionary nature of recognition

- It is a free act because it is within the discretionary power of the state with total independence and based on criteria of opportunity.
 - Political nature.
 - Evolution of IL: limit discretion in matters of recognition.

- Implications of principle prohibiting recourse to the threat or use of force against the territorial integrity or political independence of any state, or in any manner incompatible with the purposes of the United Nations.
Ex: Declaration on 15 November 1983, by the Turkish community in the northern part of Cyprus as an independent state under the name "Turkish Republic of Northern Cyprus".

(iii) Declaratory nature of recognition

- The recognition does not have a constitutive value (it does not create the state being recognized) but is merely declaratory, since it merely states that the state exists.
 - Existence of the state is governed by the principle of effectiveness, precedes recognition and does not depend on it.
 - The state exists when a government exercises its authority over a given territory and population, regardless of its recognition or non-recognition by other states.
 - Recognition does not create the recognized state, but simply expresses the acceptance of its existence by the recognizing state.
- However, the effects of recognition are not inconsequential.

C.4. POLITICAL TRANSFORMATIONS: RECOGNITION OF GOVERNMENTS

- General rule: changes in the regime of government do not affect the international status of the state.
- However, in cases where a revolutionary change in the power structure occurs within a state, the question of "recognition of governments" often arises in practice.
 - Third states are free to decide whether to recognize the de facto government.
 - Attempts have been made in international practice to subject this process to predetermined criteria or guidelines:
 - "legitimacy" criteria.
 - theory of "effectiveness".
 - "Estrada doctrine": the maintenance or withdrawal, as it seems convenient, of diplomatic agents.

C.5. TERRITORIAL TRANSFORMATIONS: SUCCESSION OF STATES

- Changes in the territory: specific problems of "state succession". Complexity of situations caused by diversity of cases (the emergence of new states because of the emancipation of colonial countries, the merger of two pre-existing states, the division of a state into two states, the dismemberment of a state, and the segregation of a part of the territory of a state).

- Definition: replacement of one state (predecessor state) by another (successor state) in the responsibility for the international relations of a territory. Questions regarding:
 - treaties concluded by the predecessor state with respect to the territory being succeeded.
 - property, archives, and debts of the predecessor state.
 - membership of the predecessor state in international organizations.
 - nationality of the population of the predecessor state.
 - private property affected by the succession, etc.
- Some of the matters: international codification.
 - succession of states with respect to treaties of 1978: principles of *tabula rasa* (new states) and continuity of treaties (other cases).
 - succession of states with respect of property, archives, and debts of 1983 (casuistic).
 - ILC Draft Articles on the nationality of individuals in relation to the succession of states.
- Generally: problems solved by special agreements between the predecessor state and the successor state.

D. STATE BODIES IN CHARGE OF INTERNATIONAL RELATIONS

D.1. General aspects

- States do not live in isolation but related to other subjects of international law: international relations, responsibility of the organs to which national law confers such powers, assigning them the representation of the state at the international level and acting in its name and on its behalf (principle of self-organization of the state).
 - Status under international law and enjoy a regime of inviolability, privileges, and functional immunities recognized by this system.
 - These immunities and privileges are not personal but functional in nature, since they are granted not for the benefit of individuals, but to ensure the effective performance of their functions as representatives of states.
- Regime of diplomatic relations based on the idea of voluntary consent and mutual benefit, as well as on respect for the balance of positions between the state sending a diplomatic mission and the state receiving it:
 - ILC codification of customary international rules (detailed regulation):
 - Convention on Diplomatic Relations of 18 April 1961.
 - Convention on Consular Relations of 24 April 1963.
 - Convention on Special Missions of 16 December 1969.

- Convention on the Representation of States in their Relations with International Organizations of a Universal Character of 14 March 1975 (not yet in force)
 - Convention on the Prevention and Punishment of Crimes against Specially Protected Persons, including Diplomatic Agents of 14 December 1973, etc.
- The state organs of international relations are:
- the organs of the central power endowed with responsibility for international relations (i.e., head of state, head of government and minister of foreign affairs).
 - the specialized organs of the state's foreign administration (i.e., diplomatic missions, special missions, representations to international organizations, and delegations to international conferences, as well as consular offices).

D.2. THE HEAD OF STATE, THE HEAD OF GOVERNMENT, AND THE MINISTER OF FOREIGN AFFAIRS.

- Head of state (HS), head of government (HG) and minister of foreign affairs (MFA) are vested with the highest authority for the conduct of the state's international action.
- Comparative constitutional practice.
 - No definition under IL. Status in accordance with national law.
 - International case law/conventions:

- PCIJ Judgment of 5 April 1933, concerning the case of the legal status of East Greenland: MFA.
 - Article 7 of the Convention on the Law of Treaties of 23 May 1969: no necessary full powers.
 - ICJ Judgment of 20 December 1974, concerning the nuclear tests case: HS.
 - ICJ Judgment of 3 February 2006, in the case of armed activities in the Territory of the Congo (New Application: 2002): “*in accordance with its uniform case law, it is a well-established rule of international law that the HS, the president of the government, and the MFA are deemed to represent the state merely by virtue of the exercise of their functions, including the performance, on behalf of their state, of unilateral acts which have the force of international commitments*”.
- The HS, the HG, and the MFA, when in a foreign state, enjoy inviolability, immunities, and privileges recognized by international law.
- Article 21 of the Convention on Special Missions of 8 December 1969: persons when they are on diplomatic mission in another state enjoy personal inviolability (they may not be subjected to any measure of arrest or coercion either in their person or in their residence, property, baggage or correspondence) + exempted from the criminal jurisdiction of the territorial state and enjoy immunity from civil jurisdiction.

- Likewise, the HS, HG, and MFA, when they are in a foreign state, are "internationally protected persons": the state in which they are located must assume special obligations of protection.
 - Convention on the Prevention and Punishment of Crimes against Specially Protected Persons, including Diplomatic Agents, of 14 December 1973.
- Neither absolute nor for life, but they cover the persons concerned only for the duration of their term of office and for acts performed in their official capacity.
 - The question of the limits for the commission of so-called "international crimes" has given rise to complex situations:
 - Pinochet case.
 - [The ICJ Judgment of 14 February 2002, in the case of the arrest warrant of 11 April 2000.](#)
 - ❖ Absolute nature of the criminal immunity of a **serving** MFA.
 - ❖ Only may cease to apply in three specific cases: (i) when they are tried by the national courts of their own state under its national law; (ii) when their own state has decided to waive their immunity; and (iii) when they are charged before certain international criminal tribunals, when these have jurisdiction.
 - ❖ Upon the removal of the minister concerned from office, she or he ceases to enjoy immunity from jurisdiction in other states.

- These pronouncements, which are also applicable *a fortiori* to heads of state and heads of government, imply a considerable brake on the extensive tendencies to the exercise of universal criminal jurisdiction by national courts.

i. In Spanish Law

- Capacity for external action of the King, the Prime Minister, and the Minister of Foreign Affairs are clearly defined in our constitutional and legislative system.
 - Article 56.1 of the Constitution states that "the King is the Head of State" and as such, "assumes the highest representation of the Spanish state in international relations... and exercises the functions expressly attributed to him by the constitution and laws". But the powers of the King in the field of foreign relations are not substantive, but representative, being limited to solemnly formalizing the acts decided by the Government with the authorization of the Cortes Generales if necessary.
 - Article 63 of the constitution.
 - Article 22 of Act 25/2014, of 27 November.
 - Article 98 of the Constitution: the head of the Government (Prime Minister) is the one who directs the action of the Government, which in turn is the body that directs the foreign policy of the state (Art. 97 of the constitution).
 - Article 6.3 of Act 2/2014 on state action and foreign service.
 - Article 6.5 of Act 2/2014 on state action and foreign service: MFA.

D.3. DIPLOMATIC RELATIONS

➤ Evolution:

- Traditionally: bilateral diplomacy (establishment of stable diplomatic missions that constituted embassies of one state in another (classical diplomacy)).
- New international situations: new ways such as special missions (ad hoc diplomacy) or missions accredited to international organizations and conferences (multilateral diplomacy).

➤ **Diplomatic missions:**

- Definition: permanent organs of representation of a state before another state to perform a series of functions that are globally known as diplomatic relations. They are the organs of the state that are responsible for the ordinary conduct of diplomacy.
- Status rules of customary international law that have subsequently been codified by Convention on Diplomatic Relations of 18 April 1961.
 - Peremptory obligations
 - Fundamental nature.
- Establishment, suspension, and termination of diplomatic missions: mutual consent (Art. 2), also other aspects such as the rank of the mission, the possibility of establishing mission offices in locations other than the main headquarters, the possibility of multiple accreditation (i.e., to several states) and the number of persons forming part of the mission.

- In any case, the accrediting state must ensure that the person proposed as head of the mission has obtained the assent of the receiving state (known as the *placet*), without the latter being obliged to give reasons for its refusal to grant it (Art. 4).
- In cases of suspension of diplomatic relations, the receiving state must maintain the protection of the mission, and the sending state may entrust its custody, as well as the protection of its interests and those of its nationals, to a third state acceptable to the receiving state (Art. 45).
- Functions of the diplomatic mission (Article 3 of the Convention - not *numerus clausus*):
 - representing the sending state to the receiving state;
 - protecting in the receiving state the interests of the sending state and those of its citizens.
 - negotiating with the receiving state.
 - ascertaining by all lawful means the conditions and developments in the receiving state and reporting thereon to the sending state.
 - promoting friendly relations and developing economic, cultural, and scientific relations between the sending state and the receiving state.
 - Consular functions.

BUT: performed in accordance with the principle of legality, i.e., respect for international and domestic law (respect the laws and regulations of the receiving state" not interfere in the internal affairs of that state).

Declaration of *persona non grata* of those members of the mission's personnel whose continuance in office is undesirable or, if necessary, terminate diplomatic relations.

- Inviolability, immunities, and diplomatic privileges:
 - to the mission itself, i.e., the premises, archives, and documents, correspondence and diplomatic pouch of the mission (Art. 22 Convention): inviolable (not fiction of extraterritoriality) and tax and customs exemptions, as well as immunity from jurisdiction and execution.
 - ❖ Diplomatic asylum in embassies: the convention does not grant a laissez-passer.
 - to the members of the staff of the mission, i.e., the individuals forming part of the mission (diplomatic, administrative, technical, and service staff of the mission):
 - ❖ Members of the diplomatic staff (diplomatic agents):
 - the person of the diplomatic agent is inviolable, he may not be subjected to any form of detention or arrest.
 - They are also "internationally protected persons" (application of provisions of the Convention on the Prevention and Punishment of Crimes against Specially Protected Persons, including Diplomatic Agents of 14 December 1973).

- Very broad immunities and privileges, which cover them personally for official or private acts for the duration of their accreditation and are extended to members of their household: immunity from criminal, civil, and administrative jurisdiction, as well as immunity from execution, subject to certain exceptions and provided that the inviolability of their person or residence is not impaired (Art. 31).
- Other exemptions such as those relating to social security provisions, in respect of services rendered to the sending state (Art. 33), those relating to personal or real, national, regional, or municipal taxes and duties, with certain exceptions (Art. 34), as well as any personal allowances (Art. 35).
- The diplomatic agent shall not engage in any professional or commercial activity in the receiving state for personal gain (Art. 42).
- ❖ Members of the administrative and technical staff:
 - they are not nationals of the receiving state and do not have their permanent residence there: enjoy similar inviolability, privileges, and immunities, although the latter shall not extend to acts performed outside the performance of their duties (Art. 37.2).
- ❖ Members of the service staff of the mission (not citizens of the receiving state nor have their permanent residence there): lesser privileges and immunities (Art. 37.3).

- Duties: to respect the laws and regulations of the receiving state (which is understood to include the rules of the road and the payment of fines) and are obliged not to interfere in the internal affairs of that state (Art. 41.1).
 - Possibilities for receiving state: May, at any time and without having to give reasons for its decision, declare any member of the diplomatic staff *persona non grata* or declare that any other member of the mission's staff is not acceptable, in which case the accrediting state shall remove that person or terminate his or her functions (Art. 9).
 - Possibilities for the accrediting state: may waive immunity from jurisdiction of its diplomatic agents, provided that the waiver is made expressly (Art. 32).
- **Special missions**: forms of the so-called "ad hoc diplomacy" (new requirements of international relations - rapid solutions and growing need for direct contacts between states).
- Regulation: Convention on Special Missions of 16 December 1969
 - Definition: "a temporary mission, having the representative character of the state, sent by a state to another state with the latter's consent to deal with it on particular matters or to perform a particular task before it".
 - Features:
 - Temporary nature of their duration.
 - Specificity of their tasks.

- Alternative mechanism or an additional to classic diplomacy.
- Establishment, suspension, and termination
 - Dispatch: principle of mutual consent applies to other matters relating to the establishment of the mission.
 - The parallelism of the regulations can also be observed regarding the suspension and termination of special missions.
- Functions of special missions: principle of mutual consent of the sending and receiving states.
- Inviolability, immunities, and privileges: Accorded to the material means of the special mission, i.e., the premises, archives, and documents of the special mission, and to the members of the special mission, like those applicable to diplomatic missions and diplomatic personnel.
- **Representation before international organizations.**
 - Growth of IO and proliferation of international conferences: development in the scope and content of diplomatic relations ("multilateral diplomacy"). Differences:
 - The relationship created is equivalent to a tripartite legal situation, involving the territorial or host state, the international organization, or diplomatic conference, the member states of the organization, or participants in the conference.
 - Need to reconcile not always coinciding interests that connect different legal orders (headquarter agreements, conventions on privileges, and immunities of the organization, and special agreements concluded on the occasion).

- Attempt to establish a more general regulation: the Convention on the Representation of States in their Relations with International Organizations of a Universal Character was drawn up on 14 March 1975 (representation of states before the United Nations, its specialized agencies, the International Atomic Energy Agency, and any similar organization of a universal character (Art. 1.2), and to their representation at conferences convened by such an organization or under its auspices (Art. 2.1). BUT NOT IN FORCE: Case by case basis.

➤ **Before international organizations**

- Establishment of a permanent representation or mission, to which are generally added occasional delegations that participate in the activities of their various specialized organs.
 - The missions are accredited to the organization and not to the host state.
 - Serves as liaison between the member state and the organs of the organization.
 - Acts as channels of communication between their respective governments and the organization, as well as with the other member states on matters within the organization's responsibility.
 - Regime: headquarters agreements and in the conventions on immunities and privileges of the respective organization.

➤ **Delegations to international conferences.**

- Different from missions to international organizations, since such conferences are meetings of states with an occasional character and a specific purpose.

- Status: usually specified in special agreements concluded with the host state in whose territory the conference is held.
- Applicability of the provisions of the 1975 Vienna Convention if they have been convened by one of the organizations to which the convention applies.

D.4. CONSULAR RELATIONS

- Needs of international trade and navigation. Consular posts have also assumed other functions related to the defense of the interests of the sending state and those of its nationals in the receiving state.
- Consular posts: consulates general, consulates, vice-consulates, or consular agencies established by a state in cities of another state, which are responsible for consular relations.
- Rules of customary international law governing this secular institution have been codified by the Convention on Consular Relations of 24 April 1963.
 - **Establishment, suspension, and termination**
 - Principle of mutual consent.
 - The suspension and termination of consular relations follows similar guidelines to those applied to diplomatic relations.

■ **Functions of the consular posts**

- Very broad and diverse:
 - ❖ protection in the receiving state of the interests of the sending state and its nationals
 - ❖ fostering the development of commercial, cultural, and scientific relations between the sending state and the receiving state.
 - ❖ promoting friendly relations between them.
- The functions related to the activities of citizens:
 - ❖ consular assistance functions ("render aid and assistance to citizens of the sending state");
 - ❖ administrative and legal functions (issuing passports and travel documents, acting as a notary, civil registrar, and other similar functions);
 - ❖ international judicial cooperation functions (representing citizens of the sending state before the courts of the receiving state and communicating judicial decisions and executing letters rogatory); and
 - ❖ functions related to maritime and air navigation.

- **Inviolability, immunities, and privileges**
 - For the "consular officers" (consular officers who are citizens or permanent residents of the receiving state have a special status) who direct the consular post.
 - ❖ career consular officers (or *consuls missi*): like those discussed in the case of diplomatic missions.
 - ❖ Honorary consular officers (or *consuls electi*): narrower in scope
 - Special case of consular officials who are citizens or permanent residents of the receiving state shall enjoy only immunity from jurisdiction and personal inviolability for official acts performed in the exercise of their functions, unless the receiving state grants other facilities, privileges, and immunities.

ESTABLISHED SUBJECTS:
INTERNATIONAL
ORGANIZATIONS

- A. International organizations in general
- B. The United Nations Organizations
 - B.1. Background and creation of the UN: The United Nations Charter
 - B.2. Purposes and principles of the organization
 - B.3. The condition of member of the UN
 - B.4. The organs of the United Nations
 - B.5. Specialized agencies of the United Nations
- C. International organizations in the field of economics
 - C.1. The IMF
 - C.2. The World Bank Group
 - C.3. The GATT and the WTO
 - C.4. Other organizations

A. INTERNATIONAL ORGANIZATIONS IN GENERAL

- Second half of the 19th century-onwards: institutionalization of international community. To achieve their purposes, certain powers were exercised de facto, and certain obligations assumed in international relations.
 - Jurists who professed a formalistic view of personality: assimilation to state.
 - Evolution of international relations: international organizations, which exercised de facto functions and powers in the international order, constituted a new category of subjects of international law.
 - [Reparation for injuries suffered in the service of the United Nations, Advisory Opinion: I.C.J. 1949:](#)
 - Facts of the opinion: assassination of Count Folke Bernadotte, who had been sent by the United Nations as mediator to Palestine following the Arab-Israeli conflict of 1947-48. In response to this assassination of a UN agent, the General Assembly consulted the ICJ on the possibility of the organization to bring an international claim against the government responsible for the death of the said agent.
 - ICJ: the question (the possibility of bringing an international claim) raised by extension the question whether the United Nations Organization ultimately possesses what the doctrine calls international personality.
 - ICJ Opinion: line of thought inspired by the theory of the “implied powers”.

- ❖ The UN does indeed possess an international personality which entitles to bring an international claim for damage suffered in the person of its agent both vis-à-vis any state member of the Organization and even vis-à-vis States which were not members of it.
- Application of the same rationale, *mutatis mutandi*, to other international organizations: international organizations constituted a subject (secondary, if you will, but a subject nonetheless) of international law.
- The determination of the personality: case-by-case basis, having regard to the provisions of the constituent treaty and the functions, powers, and responsibilities exercised by the organization concerned. Recalling the triptych proposed by Professor Reuter, it is significant to note that international organizations largely meet the required requirements:
 - communication capacity: convention on the representation of states in their relations with international organizations, adopted in Vienna on 14 March 1975.
 - capacity to conclude treaties: convention on treaties concluded between states and international organizations or between two or more organizations.
 - responsibility of international organizations: progressively moving in the affirmative direction.

B. THE UNITED NATIONS ORGANIZATION

B.1. BACKGROUND AND CREATION OF THE UNITED NATIONS ORGANIZATION

- "European Concert of Powers" (19th and early 20th centuries) broke down definitively with the outbreak of WWI.
- Peace Treaty (Versailles, 28 June 1919): League of Nations (closest antecedent to the UN).
 - Not strong enough to achieve its essential objectives, particularly in the field of peacekeeping.
 - the invasion of Manchuria by Japan in 1931;
 - the war between Italy and Abyssinia between 1934 and 1935;
 - the annexation of the Czech Sudetenland by Germany in 1939;
 - and the Soviet invasion of Finland in the same year.
 - Never had a truly universal membership.
- Allied Powers WW2: consider the need for a new international organization with a universal vocation and general aims which, when the war ended, would structure the international community.
 - Declaration of the Allies, signed in London on 12 June 1941 by 14 allied states;
 - the Atlantic Charter signed on 14 August 1941 (President Roosevelt and Prime Minister Churchill).

- Declaration of the United Nations, signed in Washington on 1 January 1942 by 26 states;
- Declaration of Moscow, signed on 30 October 1943 by the representatives of the four Allied Powers (United States, United Kingdom, Soviet Union and China), which expressly provided for the creation of a new international organization at the end of WW2.
- San Francisco Conference (25 April to 16 June 1945):
 - 50 states participating.
 - Preparatory work carried out by the four great powers at the Dumbarton Oaks (1944) and Yalta (1945) Conferences.
 - The outcome: adoption of the [Charter of the United Nations and the Statute of the International Court of Justice](#) (ICJ), on 26 June 1945, and entered into force on 24 October of the same year.
- Charter of the UN:
 - founding treaty of the UN, but it is not “another treaty”:
 - It creates the only existing international organization with a universal vocation and general purposes.
 - Article 103 of the Charter introduces a principle of hierarchy of norms in international law.

B.2. PURPOSES AND PRINCIPLES OF THE UNITED NATIONS

- Chapter I "Purposes and Principles":
 - **"Purposes"**: aims or objectives to be achieved by the UN. They are the ultimate reason for its creation.
 - **"Principles"**: rules of conduct to be observed by both the UN and its members in the pursuit of those "Purposes".

(i) Purposes of the United Nations

- Article 1: *"The Purposes of the United Nations are:*
 - *To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace.*
 - *To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace.*

- *To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and promote and encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.*
- *To be a center for harmonizing the actions of nations in the attainment of these common ends”.*
- **“Maintenance of international peace and security”.**
 - Preamble: *"to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind".*
 - Primary responsibility of the organization.
 - In pursuit of this main purpose - two types of measures:
 - adoption of "effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace" (Chapter VII "Action in Cases of Threats to the Peace, Breaches of the Peace, or Acts of Aggression“).
 - Adoption of measures which, "by peaceful means and in conformity with the principles of justice and international law, bring about the adjustment or settlement of international disputes or situations which might lead to a breach of the peace“ (Chapter VI "Peaceful Settlement of Disputes“).

➤ **“Strengthen universal peace”:**

■ In its pursuit:

- adopt all measures it deems appropriate, including especially those aimed at "promoting friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples" (developed in Art. 55).
- Promotion of international cooperation in the political field among the members and the encouragement of the codification and progressive development of international law (Art. 13.1.a).

➤ **“Carry out international cooperation”**

■ Two broad areas:

- in the solution of international problems of an economic, social, cultural, or humanitarian nature (global objective of "development and the eradication of poverty").
- in the "development and encouragement of respect for human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion" (overall objective of "human rights, democracy and good governance").

➤ **Serve "as a center for harmonizing the efforts of nations" to achieve the other common purposes:** especially important.

(ii) UN principles

- For the realization of these purposes, the UN and its members must conduct themselves in accordance with the seven principles enumerated in Article 2:
 - Principle of the sovereign equality of all its members.
 - Principle of good faith.
 - Peaceful settlement of international disputes.
 - Refrain from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations.
 - All members shall give the United Nations every assistance in any action it takes in accordance with the present charter and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action.
 - Ensure that states not members act in accordance with these principles so far as may be necessary for the maintenance of international peace and security.
 - Not intervene on matters which are essentially within the domestic jurisdiction of any state or shall require the members to submit such matters to settlement under the present charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

➤ **Development of the principles:**

- GA Resolution 2625 (XXV), "Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations": Material content to the principles.
 - Basic principles of international law.
 - Principles of Resolution 2625 (XXV) which already appeared in Article 2:
 - ❖ prohibition of the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the UN.
 - ❖ settlement of international disputes by peaceful means in such a manner that international peace and security and justice are not endangered.
 - ❖ non-intervention in matters within the domestic jurisdiction of states.
 - ❖ sovereign equality of states.
 - ❖ states shall fulfill in good faith the obligations assumed by them in accordance with the charter.
 - New principles included in this resolution:
 - ❖ obligation of the states to cooperate among themselves in accordance with the charter.

- ❖ equal rights and self-determination of peoples.
- Principles exclusively in the charter: the principle that members shall render the UN assistance in any action it takes in accordance with the charter; and the principle of the authority of UN over non-member states, to the extent necessary for the maintenance of international peace and security.
- Legal value of such declaration of principles:
 - [ICJ Judgment on the merits of 27 June 1986, in the case of military and paramilitary activities in and against Nicaragua \(Nicaragua v. United States of America\)](#): contents of the principle of the prohibition of the threat or use of force and the principle of non-intervention in matters within the domestic jurisdiction of states, contained in Resolution 2625 (XXV), reflect customary international law.
 - [ICJ Advisory Opinion of 22 July 2010 on the conformity with international law of Kosovo's unilateral declaration of independence](#): GA Resolution 2625 (XXV) reflects customary international law.

B.3. MEMBERSHIP IN THE UNITED NATIONS

(i) Acquisition of membership

- Articles 3 and 4: original members and members admitted to the UN: same rights and obligations (≠ admission procedure).
 - Article 3: original members are those states that fulfilled a double condition: 1) having participated in the San Francisco Conference or having previously signed the Declaration of the United Nations of 1 January 1942; and 2) having subscribed and ratified the charter, in accordance with Article 110 of the charter.
 - Article 4: admission of new members
 - Conditions:
 - to be a state, i.e., to meet the constituent elements of a state;
 - to be a "peace-loving" state (presumed for all states nowadays);
 - to accept the obligations contained in the charter (need for an express declaration to this effect);
 - to be capable of fulfilling these obligations; and
 - to be willing to comply with them.
 - Evaluation of the conditions by GA and SC.
 - Others?
 - [ICJ first advisory opinion on the conditions for admission of a state as a member of the United Nations \(1948\)](#):

- ❖ Are the conditions laid down in Article 4 exhaustive? *"The natural meaning of the terms used in Art. 4 leads to the conclusion that these conditions constitute an exhaustive enumeration (...)"* not merely as necessary conditions, but also as sufficient conditions.
 - ❖ The provisions of Article 4 necessarily imply that each application for admission should be examined and voted upon separately and on its own merits;
- Problem: the veto available to Soviet Union at the SC.
 - ❖ political agreement joint admission of 16 new members on 14 December 1955, among them Spain, in addition to several states of the communist bloc and several "enemy states".
- **The procedure:** *"decision of GA upon the recommendation of the SC"*.
 - Problem: veto of the Soviet Union in the SC.
 - ICJ Advisory Opinion of 3 March 1950 on the responsibility of the GA for the admission of a state to the United Nations: Can the GA do it by itself? NO. The charter requires two things for admission to take place: a "recommendation" of the SC (preceding in time) and a "decision" of the GA.
- **Effects of membership** in the UN: the date on which the GA approves its decision on admission.
- Nowadays: 193 members following the admission of the Republic of South Sudan on 14 July 2011.

(ii) Suspension on the exercise of the rights and privileges inherent to the condition of member

- *Article 5: A member of the United Nations against which preventive or enforcement action has been taken by the Security Council may be suspended from the exercise of the rights and privileges of membership by the General Assembly upon the recommendation of the Security Council. The exercise of these rights and privileges may be restored by the Security Council.*
- Possibility of suspension of the exercise of the rights and privileges inherent to membership, but not of the obligations:
 - Procedure:
 - decision corresponds to the GA, "upon recommendation" of the SC.
 - reinstatement corresponds exclusively to the SC.
- Attempts examples: South Africa (for its apartheid policy), Portugal (for its colonial policy), or Israel.

(iii) Loss of membership

- *Article 6. A member of the United Nations which has persistently violated the principles contained in the present charter may be expelled from the Organization by the General Assembly upon the recommendation of the Security Council.*
 - no case in which a member state has been expelled.
- The possibility of voluntary withdraw is not contemplated in the charter but there is no specific prohibition.

- UN Practice: 20 January 1965, Indonesia announced its decision to withdraw from the UN after Malaysia (which Indonesia did not recognize despite having been a member of the UN for eight years) was elected as a member of the SC.
 - Indonesia ceased to contribute to the UN budget and did not participate in the activities of its organs.
 - 19 September 1966, Indonesia communicated its decision to “resume full cooperation with the UN and participation in the activities of the organization” but it was not required to submit again to the procedure for admission.

B.4. THE ORGANS OF THE UNITED NATIONS

(i) The General Assembly (GA)

- Plenary organ composed of all its members (represented by a maximum of five persons), and each member has one vote (Arts. 9 and 18.1). It is the most egalitarian and democratic principal organ.
- It does not operate on a permanent basis. In plenary session: once a year during the regular session (generally coinciding with the third Tuesday of September).
- After plenary debate: agenda distributed among the six main committees to prepare draft resolutions to be submitted to the GA plenary for adoption.

- Special sessions "whenever circumstances require" or even in emergency special sessions at the request of the SC or a majority of the members. Once the plenary debate is concluded, the broad agenda of each session is distributed among the six main committees of the GA.

➤ **The powers:**

- General clause: *"discuss any matters or questions within the scope of the charter or relating to the powers and functions of any organs provided for in the charter and make recommendations on any such matters or questions to the members of the United Nations or to the Council or to both"* (Art. 10).
 - Exception Article 12: unless so requested by the SC, GA shall not make any recommendation on disputes or situations in respect of which the SC is performing the functions assigned to it.
- Specific powers:
 - Admission of new members/suspension of rights
 - To consider the general principles of cooperation in the maintenance of international peace and security, including the principles governing disarmament and the regulation of armaments;
 - To promote international cooperation in the political field and to encourage the codification and progressive development of international law.

- Promote international cooperation in economic, social, cultural, educational and health matters and to assist in the realization of human rights and fundamental freedoms.
- Recommend measures for the pacific settlement of disputes in the field of decolonization.
- Approve the budget of the UN and determine the contributions to be paid by each member.
- Elect non-members; elect the non-permanent members of the SC; members of ECOSOC and the CAF; the judges of the ICJ; and the Secretary-General (SG).
- Establish subsidiary organs as it deems necessary for the performance of its functions.

➤ **Adoption of resolutions:**

- Charter: procedure of a majority vote UN members.
 - “Important questions”: a two-thirds majority vote of the members present and voting. They are:
 - recommendations relating to the maintenance of international peace and security.
 - the election of non-permanent members of the SC, members of ECOSOC, members of the CAF.

- the admission of new members to the United Nations, the suspension of the rights and privileges of members, as well as the expulsion of members;
 - questions relating to the functioning of the trusteeship system; and
 - budgetary questions.
- “Other matters”: majority of the members present and voting.
- UN practice: adoption by consensus after due deliberation, the president of the GA may propose that a resolution be adopted without a vote. If no member objects, the draft resolution is finally adopted.
- **Effects of resolutions:** most of the resolutions adopted by the GA contain recommendations that are not binding, per se, on the member states.
 - ***Only binding*** in matters relating to:
 - membership of the UN;
 - approval of the regular and, if necessary, special budget;
 - the determination of the contributions to be borne by each member;
 - the approval of its rules of procedure;
 - the election of its president and of the members of the other principal organs.

(ii) The Security Council (SC)

- Principal organ with restricted membership.
- **Composition:** 15 members, each with one representative, who may be a member of their government or a specially designated representative.
 - Five are permanent members of the SC: China, France, the Russian Federation (as successor to the Soviet Union), the United Kingdom, and the United States.
 - The remaining ten: non-permanent members, elected by the GA for a two-year non-renewable term, with special attention to:
 - their contribution to the maintenance of international peace and security and to the other purposes of UN, as well as...
 - ..."equitable geographical distribution" (GA Resolution 1991 (XVIII) of 17 December 1963), with 5 States to be elected from Africa and Asia; 1 from Eastern Europe; 2 from Latin America; and 2 from Western Europe and another state.
- **Functioning:** "to be able to function continuously" by appointing a representative at UN.
 - Regular meetings (in its headquarters but may meet elsewhere).
 - may be convened for emergency meetings by its chairman.
- **Powers of the SC:**
 - Primary responsibility: maintenance of international peace and security.

- ICJ Advisory Opinion of 20 July 1962 on certain expenses of the United Nations:
 - “Primary”, not exclusive, but it is only the SC that can require its enforcement by means of coercive action against an aggressor.
 - When the SC performs the functions imposed on it by this "primary responsibility", all UN members recognize that the SC "acts on their behalf".
- Other powers concurrent with GA:
 - admission, suspension, and expulsion of members.
 - election of ICJ judges and of the SG.
 - convening of the General Conference for the Revision of the Charter.
- Exclusive powers of the SC:
 - make recommendations or issue measures to ensure the execution of an ICJ judgment.
 - establish subsidiary organs as it deems necessary for the performance of its functions.
- **Adoption of resolutions:**
 - Charter: procedure of majority voting among the members of the SC, with each member having one vote. The voting rules vary according to whether the matter is one of "procedure" or one of substance ("all other matters").
 - Decisions on "procedural matters": the affirmative vote of any nine SC members.

- For "all other matters": affirmative vote of nine SC members is required, including "affirmative votes of all permanent members" (veto right of permanent member of the SC).
 - practice: flexible rule understanding that abstention or absence from voting by a permanent member is not equivalent to the exercise of the veto.
 - a member of the SC who is a party to a dispute shall abstain from voting, but this provision has hardly been applied in practice.
 - Practice: consensus method. After discussion of an issue within the SC, its chairman (acting in this capacity and not as a representative of a member state in the SC) summarizes the discussion and draws the conclusions, stating that they reflect the will of the SC. If no member of the SC raises objections, they are deemed to be definitively adopted without the need for a vote.
- **Effects of SC resolutions:** may contain recommendations (not binding) or decisions binding on all UN members, even if they are not members of the SC or even if they have not voted in favor of them.

(iii) The Economic and Social Council (ECOSOC)

- Principal organ of UN with restricted membership.
 - Composition: 54 members elected by the GA, renewed annually by thirds. Each member of ECOSOC has only one representative. But it is possible to participate in its deliberations without the right to vote: (1) any UN member having a particular interest in any matter; (2) representatives of the specialized agencies; and (3) representatives of NGOs dealing with matters within the authority of ECOSOC.
- **Functioning:**
 - Meetings, when necessary, in accordance with its rules of procedure. In practice, it meets twice a year.
 - “High-level sessions” of ECOSOC, of two kinds:
 - *“Annual ministerial reviews”* to assess progress and accelerate action towards the achievement of the “millennium development goals” and the other goals included in the United Nations Development Agenda.
 - The last annual ministerial review was held on 9-10 July 2015 to manage the transition from the “millennium development goals” to the “sustainable development goals (SDGs)”. Since then, the “annual ministerial reviews” have been integrated into the “High-level Political Forum” (review of the progress made in the implementation of commitments related to the implementation of the SDGs).

- Annual meetings (8 days), which includes a three-day inter-ministerial segment.
- Every four years at the level of heads of state and government under the auspices of the GA (2 days).
- *High-level biannual "Development Cooperation Forum"*.
 - review trends in international development cooperation, including strategies, policies and financing;
 - promote greater coherence among the development activities of the development partners;
 - strengthen the links between normative and operational work.
- Decentralized exercise of power, distributing the work items between the plenary and its various "commissions" (functional commissions, regional commissions, standing committees, etc.) .

➤ **Responsibilities**

- Advisory body to the SC (Art. 65) and the GA (Art. 66), to which it must provide all information requested.
 - reports on international economic, social, cultural, educational, and health matters and formulates recommendations on such matters.
 - formulates recommendations to promote respect for human rights and fundamental freedoms for all, and on the realization of such rights and freedoms.
 - formulates draft conventions on matters within its responsibility for submission to the GA.

- convenes international conferences on matters within its authority.
- Responsible for concluding liaison agreements with the specialized agencies and for coordinating their activities with those of the UN.
- Establish "commissions" as it deems necessary for the performance of its functions.
- **Adoption of resolutions and decisions:** majority of the votes of the members present.

(iv) The Trusteeship Council (CAF)

- Chapter XII an "international trusteeship system" applicable to:
 - territories under mandate (LoN mandate system);
 - territories which, as a result WW2, were segregated from "enemy states";
 - territories voluntarily placed under this system by states responsible for their administration.
- Main objective of this regime: promote the advancement of the inhabitants of the trust territories and their progressive development towards self-government or independence.
 - Success: CAF decided to formally suspend its work on 1 November 1994, after the Palau Islands achieved independence.
 - agreed to meet only, when necessary, by its decision or the decision of its chairman, or at the request of a majority of its members of the GA or the SC.

(v) *The International Court of Justice (ICJ)*

- The "principal judicial organ" of UN.
- Statute annexed to the charter and forms an integral part thereof, but it is not, however, a court having compulsory jurisdiction over disputes arising between states.
 - Obligation of peaceful resolution and freedom for choice.
- **Membership:**
 - All members of UN are ipso facto parties to the ICJ.
 - Other states: may become parties "in accordance with the conditions to be determined in each case the AG on recommendation of the SC" (Art. 93).
 - The conditions have always been the same: instrument of ratification containing: 1) acceptance of the provisions of the ICJ Statute; 2) acceptance of all the obligations assumed by UN members under Article 94 of the charter; and c) an undertaking to contribute to the expenses of the ICJ equitable sum to be determined from time to time by the GA, after consultation with the government of that state.
- **Jurisdiction**
 - Contentious responsibility: to settle all disputes of a legal nature submitted to it by states.
 - Advisory role: to render advisory opinions on legal questions submitted to it by UN organs and international organizations authorized to do so.

(vi) The Secretariat

- **Composition:** composed of the Secretary-General and such staff as the UN requires.
 - SG: chief administrative officer appointed by the GA on the recommendation of the SC. Term not provided in the charter (practice: renewable term of years)
 - Responsibilities: varied and increasing.
 - ❖ set of technical-administrative roles, such as: 1) preparing the draft of the UN budget and the control of expenditure and income; 2) organizing the secretariat and recruiting staff; 3) acting as secretary at all sessions of the GA (SC, ECOSOC, and CAF) and performing by delegation the functions entrusted by these principal organs; 4) preparing studies and reports and providing documents, data, and information to the other principal organs; 5) acting as the depositary of international treaties, being responsible for their registration and publication; 6) translating all documents into the various official languages of the UN; 7) coordinating the activity of the various UN organs; 8) organizing international conferences on matters of world interest; etc.
 - ❖ beyond mere technical-administrative functions, it also exercises powers of a political and diplomatic nature: administration of peacekeeping operations (PKOs) and mediation or good offices in international disputes, review of economic and social trends, and problems and the preparation of studies on human rights and sustainable development...

- Secretariat staff: appointed by the SG in accordance with the rules established by the GA. The determining criteria in their appointment are the need to ensure the highest degree of efficiency, competence, and integrity, as well as guaranteeing the broadest possible geographical representation among its staff. International servants accountable only to the UN.
- **Functioning:** permanent.

B.5. SPECIALIZED AGENCIES

- Article 57: *"The various specialized agencies established by intergovernmental agreement, having broad international responsibilities as defined in their statutes, and relating to economic, social, cultural, educational, health, and related matters, shall be brought into relationship with the organization in accordance with the provisions of Article 63. Such specialized agencies thus brought into relationship with the organization shall hereinafter be referred to as 'the specialized agencies'"*.
- The specialized agencies are genuine international organizations, with their own legal personality, acting autonomously and independently of the UN.
 - Some predate the UN.
 - They are international organizations with a universal vocation which, unlike the UN, do not have general but specific purposes.

- They are responsible for carrying out international cooperation of a sectoral nature in "economic, social, cultural, educational, health and related fields".
- It is an indispensable condition that it be brought into relationship with the UN by the procedure provided for in Article 63: ECOSOC may conclude with these organizations international agreements establishing the terms and conditions under which they are bound as specialized agencies. These relationship agreements must subsequently be approved by the GA.
- The relationship established is not one of hierarchical dependence on the UN, but of functional decentralization.
- At present, there are 19 binding agreements:
 - [Food and Agriculture Organization](#) (FAO) - Rome
 - [International Civil Aviation Organization](#) (ICAO) - Montreal
 - [International Fund for Agricultural Development](#) (IFAD) - Rome
 - [International Labour Organization](#) (ILO) - Geneva
 - [International Maritime Organization](#) (IMO) - London
 - [International Monetary Fund](#) (IMF) - Washington
 - [International Telecommunication Union](#) (ITU) - Geneva
 - [United Nations Education, Science and Culture Organization](#) (UNESCO) - Paris
 - [United Nations Industrial Development Organization](#) (UNIDO) - Vienna
 - [Universal Postal Union](#) (UPU) - Bern.

- World Bank Group (includes the International Bank for Reconstruction and Development (IBRD); the International Centre for Settlement of Investment Disputes (ICSID); the International Development Association (IDA); the International Finance Corporation (IFC); and the Multilateral Investment Guarantee Agency (MIGA))
- World Health Organization (WHO) - Geneva
- World Intellectual Property Organization (WIPO) - Geneva
- World Meteorological Organization (WMO) - Geneva
- United Nations World Tourism Organization (UNWTO) - Madrid
- There are other IO with a universal vocation and specific purposes that have concluded cooperation agreements, but have not become specialized agencies and maintain collaborative relations with a good number of regional organizations.
- The specialized agencies and the other international organizations, universal or regional, which collaborate with UN constitute the "United Nations system".

C. INTERNATIONAL ORGANIZATIONS IN THE FIELD OF ECONOMICS

C.1. Organization for Economic Cooperation and Development (OECD)

- OECD (Organization for Economic Cooperation and Development) - Paris.
- Composition: 38 member countries produce two-thirds of the world's goods and services.
- Function:
 - To foster prosperity and fight poverty through economic growth, financial stability, trade and investment, technology, innovation, entrepreneurship, and development co-operation.
 - Countries assess each other's policy performance and propose advice for improvement.
 - Set standards.

C.2. International Monetary Fund (IMF)

- IMF (International Monetary Fund) - Washington
- Composition: 190 member countries
- Function:
 - promote international monetary cooperation, exchange stability, and orderly exchange arrangements.
 - foster economic growth and high levels of employment.
 - provide temporary financial assistance to countries to help ease balance of payments adjustment: loans - including emergency loans - to member countries experiencing actual or potential balance of payments problems, and help them rebuild their international reserves, stabilize their currencies, continue paying for imports, and restore conditions for strong economic growth, while correcting underlying problems.

- Monitors the international monetary system and global economic developments to identify risks and recommend policies for growth and financial stability.
- It undertakes a regular health check of the economic and financial policies of its 190 member countries.
- identifies possible risks to the economic stability of its member countries and advises their governments on possible policy adjustments.

C.3. The World Bank (WB)

- The World Bank 189 member countries.
 - Origin: the International Bank for Reconstruction and Development - soon called the World Bank - helped rebuild countries devastated by World War II.
 - From reconstruction to development with a heavy emphasis on infrastructure such as dams, electrical grids, irrigation systems, and roads.
 - 1956 founding of the International Finance Corporation, the institution became able to lend to private companies and financial institutions in developing countries.
 - 1960 founding of the International Development Association put greater emphasis on the poorest countries, part of a steady shift toward the eradication of poverty becoming the Bank Group's primary goal.

- The subsequent launch of the International Centre for Settlement of Investment Disputes and the Multilateral Investment Guarantee Agency further rounded out the Bank Group's ability to connect global financial resources to the needs of developing countries.
- Function:
 - It is world's largest source of development assistance, providing nearly \$16 billion in loans annually to its client countries.
 - It uses its resources to help each developing country onto a path of stable, sustainable, and equitable growth in the fight against poverty.
- Difference from IMF: the two institutions have complementary missions.
 - The World Bank Group works with developing countries to reduce poverty and increase shared prosperity, while the International Monetary Fund serves to stabilize the international monetary system and acts as a monitor of the world's currencies.
 - The World Bank Group provides financing, policy advice, and technical assistance to governments, and focuses on strengthening the private sector in developing countries. The IMF keeps track of the economy globally and in member countries, lends to countries with balance of payments difficulties, and gives practical help to members.
 - Countries must first join the IMF to be eligible to join the World Bank Group.

OTHER INTERNATIONAL ACTORS: MULTINATIONAL COMPANIES AND NON-GOVERNAMENTAL ORGANIZATIONS

A. MULTINATIONAL CORPORATIONS

- Contemporary world: characteristic phenomenon of the capitalist model of production.
 - UN definition (broadest sense): all those that control assets, factories, mines, sales offices, etc., in two or more countries.
 - Many political, economic and legal issues. Beyond their purely economic dimension, multinational enterprises also carry out certain activities that are characteristic of entities endowed with international personality.
 - Some multinational enterprises enter into agreements with states which have been called "quasi-international agreements" that pose difficulties in their qualification (public sector and private sector).
 - ❖ In many cases, such agreements expressly exclude their submission to the national law of the country in which the company is to operate, by providing for either international law or the provisions of the agreement itself (lawless contract).
 - Any disputes that may arise from the activities of multinational companies are sometimes submitted to an international means of settlement: international arbitration (thus escaping the jurisdiction of the state in which the multinational operates).

- However, multinational companies do not seem to possess a real capacity for communication with states at the same level, nor do they seem to have the capacity for active or passive international responsibility (on this point they are subject to the regime of diplomatic protection like any other private individual).
- Therefore, it does not seem possible to maintain that multinational companies can be subjects of international law, without ignoring the role they play in the international order as lobbies.

B. INTERNATIONAL NON-GOVERNMENTAL ORGANIZATIONS (NGOs)

- Private entities that carry out activities in the international framework:
 - ECOSOC Resolution of 27 February 1950: "Any international organization which has not been established by way of an intergovernmental agreement shall be considered as a non-governmental organization"
- They have a private character, since they are not formed by states and are not governed by international agreements.
 - Legal status is determined by the domestic law of the country in which they are constituted.
 - They are not subject to international law, but their influence on contemporary international relations is undoubtedly decisive in many spheres and their contribution to the progress of these relations is particularly noteworthy.
- However, a growing number of NGOs carry out activities within the framework of international society:
 - Among the oldest NGOs are the International Chamber of Commerce, the Inter-Parliamentary Union, the International Olympic Committee, and the International Red Cross.

- International Red Cross: special relevance. Some authors have pointed out the possibility of considering, by way of exception, a certain personality for the Red Cross and, more specifically, of its International Committee (ICRC).
 - Created in 1863 as a private institution. Today it is composed of the national Red Cross societies, the league of Red Cross societies and the International Committee of the Red Cross (ICRC), which in a way constitutes the executive body of the Red Cross.
 - The ICRC (association subject to Swiss law) has concluded several headquarters agreements concerning its delegations, other agreements with numerous states to assist refugees, and with some international organizations.
- Apart from this special case, the international status of NGOs, is generally limited to the consultative dimension, i.e., to the status of "observer" (with the right to speak but not to vote) UN-Art. 71 Charter.
- International practice has widely recognized the importance of NGO participation in all spheres related to their fields of activity, increasingly granting them consultative or observer status in international forums: international humanitarian law (ICRC); human rights (Amnesty International, Human Rights International, Human Rights Watch, etc.); humanitarian assistance and aid (Doctors without Borders); and environmental protection (Greenpeace International, Friends of the Earth International, International Union for the Conservation of Nature).

CONDITION OF THE INDIVIDUAL IN INTERNATIONAL LAW

- A. General considerations
- B. Rights of individuals: international protection
- C. Obligations of individuals: international sanction

A. GENERAL CONSIDERATIONS

- The situation of the individual at the international level is basically characterized by what has been called "mediatization of man by the state", although the progressive humanization of this order increasingly recognizes individuals as having a certain projection as addressees of some of its norms.
 - In classical international law: states monopolized all capacity to act in international relations with the result that the individual was completely diluted and only through the state could he or she receive any consideration (diplomatic protection, extradition, etc.).
 - With passage of time: many international norms and institutions have taken individuals into consideration, whose specific interests have been the object of a certain protection. However, at this initial stage, individuals appeared as "object" of the rule of international law, and it was only states that were bound by the rules in question and that could claim compliance with them in the event of a violation.
 - regime of minorities established in the 1919 peace treaties;
 - international protection of human rights, the Universal Declaration of 1948; humanitarian law of war.
 - Recent times: individual as a possible holder of rights and obligations directly emanating from the international legal order and eventually sanctioned by international jurisdiction.

B. RIGHTS OF INDIVIDUALS: INTERNATIONAL PROTECTION

Progressive advance towards the establishment of certain rights that correspond directly to the individual and there has been a progressive advance towards the establishment of mechanisms for the protection of these rights directly before an international body (framework of international organizations).

➤ Evolution:

- Precedent of the mixed arbitral tribunals (MAT) set up after the First World War.
- League of Nations established a petition-claim procedure for the inhabitants of mandated territories.
- UN:
 - established a right of petition for the inhabitants of territories under trusteeship (Art. 87 charter).
 - International Covenant on Civil and Political Rights of 1966 contains an optional protocol establishing human rights to which "communications" may be submitted by individuals who are victims of a violation of the rights set forth in the covenant in question (Protocol, Art. 1).

- A similar possibility of individual recourse has been established by the United Nations Convention on the Elimination of all Forms of Racial Discrimination of 21 December 1965 (in force since 4 January 1969).
- A particular case is that of "international civil servants" working in the service of international organizations: legal protection is provided by the rules of international law and by administrative tribunals of an international character.
- The most advanced levels of attribution to the individual of certain rights that may be claimed before an international jurisdiction have occurred at the regional level, especially in Europe.
 - within the Council of Europe: possibility of bringing an individual action before the European Court of Human Rights.
 - European Union has established a system of "supranational" law, the most salient features of which include the direct effect of some of its provisions on the citizens of the member states, and the possibility for these individuals to claim the protection of their rights not only before national jurisdictions but also, in certain cases, before the Court of Justice of the European Union.

C. OBLIGATIONS OF THE INDIVIDUALS: INTERNATIONAL SANCTION

Individuals also appear in certain cases as addressees of international norms which impose obligations on them and whose violation calls for a repressive sanction to be imposed by national courts or, in exceptional cases, by an international criminal court.

➤ Development:

- *Delictum iuris gentium*, such as piracy, the practice of slavery, trafficking in persons, counterfeiting currency, drug trafficking, trafficking in protected species, hijacking of aircraft, etc., the criminalization of which is initially established by international treaty, but the punishment of which is attributed to states through their own courts (universal criminal jurisdiction).
- International instruments to prosecute those responsible for war crimes, crimes against peace, and crimes against humanity:
 - After WW2: new categories of crimes were defined in an international instrument (the London Statute of 8 August 1945) and their sanction was implemented through an international jurisdictional instance created for this purpose: the International Military Tribunals of Nuremberg and Tokyo.
 - The International Law Commission drew up a Draft Code of Crimes against the Peace and Security of Mankind (1996).

- For its part, the UNSC established an International Criminal Tribunal for the former Yugoslavia (ICTY) in 1993 and an International Criminal Tribunal for Rwanda (ICTR) in 1994, to prosecute individuals considered most responsible for the commission of international crimes in those terrible conflicts.
 - Other mixed (international/national) criminal tribunals have since been established for East Timor (1999), Sierra Leone (2002), Cambodia (2003), Iraq (2003), and Lebanon (2007).
 - In addition, on 17 July 1998, an intergovernmental conference in Rome adopted the Statute of the International Criminal Court (ICC), that entered into force on 1 July 2002 and constitutes the first instance of its kind with universal jurisdiction and scope.
- Individual appears as the addressee of norms of international law that criminalize certain categories of particularly serious crimes and whose repression can be carried out by international criminal tribunals.



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