
UNIT 8 UN SYSTEM: PEACEKEEPING, PEACEMAKING AND ADJUDICATION

Structure

- 8.1 Introduction
- 8.2 Peacekeeping, Peacemaking and Peace Building
 - 8.2.1 Peacekeeping: Characteristics
 - 8.2.2 Peacemaking
 - 8.2.3 Peace Building: Characteristics
- 8.3 Peacekeeping, Peacemaking and Peace Building in Practice
 - 8.3.1 The Congo
 - 8.3.2 Peacekeeping in Iraq and Kuwait
 - 8.3.3 Peacekeeping in Cyprus
 - 8.3.4 Nicaragua
 - 8.3.5 Haiti
 - 8.3.6 West Irian
 - 8.3.7 East Timor
 - 8.3.8 Cambodia
 - 8.3.9 Namibia
 - 8.3.10 Angola
 - 8.3.11 Rwanda
 - 8.3.12 Somalia
 - 8.3.13 Western Sahara
 - 8.3.14 Mozambique
 - 8.3.15 Yugoslavia
- 8.4 Adjudication
 - 8.4.1 The International Court of Justice
 - 8.4.2 European Community
 - 8.4.3 European Convention of Human Rights and the European Court of Human Rights
 - 8.4.4 Inter-American Court of Human Rights
 - 8.4.5 The International Criminal Court
 - 8.4.6 The World Trade Organisation
- 8.5 Summary
- 8.6 Exercises

8.1 INTRODUCTION

The UN's Agenda for Peace can be broadly separated into four groups: preventive Diplomacy, Peacemaking, Peacekeeping and Peacebuilding. Preventive diplomacy tries to put an end to a conflict by getting the concerned parties to resolve the conflict before it become violent. Peacemaking tries to resolve the conflict diplomatically but **after** the bout becomes violent. It tries to get the involved parties to cease-fire. Peacekeeping role of the UN comes into play at **this** stage to make sure that the ceasefire is **honoured**. Peacebuilding is the last stage that promotes peace and order by raising social structures, legal systems and sometimes even setting up a new government.

The principal focus of **this** unit is on methods of peaceful settlement of disputes which are not purely diplomatic: peacemaking, peacekeeping, **and** adjudication. While peacemaking may involve the traditional or diplomatic **modes** of settling disputes described in the preceding unit, peacekeeping **goes** beyond these, though it falls short of military or enforcement provisions in Chapter VII. It is non-aggressive use of military force to help nations in conflict reach a settlement. Other non-diplomatic methods of resolving disputes are the adjudicative methods where a third party is invested with power to decide the dispute. The method by which the decision is reached is not, as in diplomacy, by persuasion, but by determining the question of fact on which the parties are in **disagreement** and reaching a decision on the dispute by applying the applicable law to the **facts**. The unit also bestows attention on the adjudicative functions of the International Court of Justice and other judicial tribunals.

8.2 PEACEKEEPING, PEACEMAKING AND PEACE BUILDING

8.2.1 Peacekeeping: Characteristics

"Peacekeeping" as an operation does not find mention in the UN Charter. It has grown out of the practice of the UN. It has been described fairly accurately in the Blue Helmets: **A Review** of United Nations Peacekeeping, thus: "As the United Nations practice has been evolved over years, a peacekeeping operation has come to be defined as an operation involving military personnel, but without enforcement powers, undertaken by the United Nations to help maintain or restore international peace and security in areas of conflict. These operations are voluntary and are based on consent and cooperation. While they involve the use of military personnel, they achieve their objective not by force of arms, thus, contrasting them with the 'enforcement action' of the United Nations under Article 42" (UN, 1999).

By and large, peacekeeping forces are employed to act as a buffer between two parties which had been at armed **conflict**, but which have accepted a **ceasefire**. In some situations, it may be considered that an Observation Mission would satisfy the purpose of observing whether the ceasefire is being kept. In 1947, for example, the Security Council appointed UN Observation Team in Indonesia in connection with the conflict between the **Dutch** Colonists who attempted to maintain the old colonial order'as against Indonesian nationalists.

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No member of the Security Council was prepared to support the Dutch colonial order. The Observer Team was to observe and report to the Security Council the observance of the various ceasefire lines and sporadic fighting. The Security Council considered the reports from the Observers and acted towards Indonesian independence. In 1949, the Security Council appointed the UN Military Observer Group in India and Pakistan (UNMOGIP) to observe whether the ceasefire between India and Pakistan in Kashmir was being kept, and that Group exists even now. The parties agreed to ceasefire and what was needed was observance of the compliance by the parties. Observation Groups were employed in some other cases also.

An Observer Group may not consist of more than 100 members. A peacekeeping force, on the other hand, consists of several thousands of lightly armed soldiers. An Observer Group simply observes and reports, but a peacekeeping force should first of all secure a ceasefire, and possibly ensure the withdrawal of the forces to the positions occupied before the adoption of the ceasefire. The model of a peacekeeping force may be found in the UN Emergency Force (UNEF-I) established in 1956-57. Britain, France and Israel were involved in armed conflict with Egypt, following the nationalisation of the Suez Canal by Egypt. The UN General Assembly met in Emergency Special Session acting under the Uniting for Peace Resolution, called for a ceasefire, and directed the Secretary General to deploy a peacekeeping force to secure the observance of the ceasefire.

Peacekeeping operations are based upon the following principles: First, the parties to the conflict must agree to ceasefire and withdraw troops to agreed positions, and to the presence of the peacekeeping forces on their soil. The UNEF-I was inducted with the express consent of Egypt. When in 1967 President Nasser of Egypt withdrew the consent for stationing the peacekeeping force, Secretary General U Thant ordered the withdrawal of the force. The peacekeeping forces are contributed by willing members of the UN, and in accordance with the agreement reached by the Secretary General and the contributing member. Generally a conflicting party does not agree to emplacement of forces on its soil if the State to which the forces belong has a vested interest in the outcome of the conflict.

Second, the peacekeeping force must act with impartiality and neutrality between the rival parties. If they do not, the State wherein the forces are situated might create difficulties to the functioning of the forces. In 1974, the Security Council established the UN Observer Force (UNDOF) pursuant to the agreement on disengagement between Syria and Israel following the Israeli occupation of Golan Heights. This Israeli occupation has been an obstacle to permanent peace between Syria and Israel, but the UNDOF has been successful in maintaining calm on the Syria-Israeli front ever since it was established, and one of the contributing factors to the success has been the UNDOF's neutrality and impartiality.

Third, the peacekeeping forces are authorised to use force only in self-defence. Peacekeeping forces are supplied with rifles and transport vehicles. They are not capable of carrying out an enforcement action. If peacekeeping forces are unlike forces that take enforcement action, they are also unlike observer missions, which are not likely to be engaged in self-defence. Peacekeeping forces may have to patrol the buffer zone or other demilitarised zones. Very lightly armed observer groups are incapable of performing peacekeeping.

8.2.2 Peacemaking

Peacemaking is defined in *An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-keeping, Report of the Secretary General*, as "action to bring hostile parties to agreement essentially through such peaceful means as those foreseen in Chapter VI of the Charter." (International Legal Materials (ILM), 1992, p. 956). But in actual practice, it has gone beyond this. It may include coercive and forceful action, unlike the consensual operation of peacemaking.

8.2.3 Peace Building: Characteristics

In the Agenda for Peace, the Secretary General Boutros Boutros-Ghali proposed "peace building" as a way of preventing resumption of civil conflicts by the parties which for the time being have stopped fighting as a result of peacemaking efforts. There is every chance of such resumption, resulting in the whole fabric of the civil society collapsing as a result of an intensified civil war. The objectives of peace building stated by him include "disarming the previously warring parties and restoring order, the custody and possible destruction of weapons, repatriating the refugees, advisory and training support for security personnel, monitoring elections, advancing efforts to protect human rights, reforming and strengthening governmental institutions and promoting formal and informal processes of political participation" (Wedgewood and Jacobson, 2001, p. 1). The objectives of peace building are wide ranging, some of short term and some of long term. Just as peacemaking may present problems of taking coercive action, peace building is likely to entail using some coercive measures. Therefore, peacemaking may include some peace building as well. In the cases studied below, it will be observed that peacekeeping, peacemaking and peace building have occurred in different combinations and sequence.

8.3 PEACEKEEPING, PEACEMAKING AND PEACE BUILDING IN PRACTICE

After World War II no major war has occurred. This may not have been entirely due to the UN presence. It may have been due to nuclear deterrence, mutual assured destruction on a practically unacceptable scale. But there have been minor wars, such as between India and Pakistan, Iran and Iraq, Great Britain and Argentina, Israel and its neighbours, etc. Civil wars and internal conflicts have, however, taken a very heavy toll. According to an estimate, civil wars have scarred the world's poorest countries, leaving more than a million dead, many more driven out of their homes, billions of dollars of resources destroyed and economic opportunities wasted (White, 1997, p. 277). The Security Council had to respond by peacekeeping, peacemaking and peace building operations in reference to such situations. In some cases, the Council was quite successful, in others it was partial success and in some it was failure. In civil war situations peacemaking is difficult. There may be more than two groups at conflict. The lines of conflict may not be clear for there could be guerrilla warfare. For this reason arranging a ceasefire line and maintaining it is difficult. There will now be a study of several situations of civil conflict, besides conflicts of an international character.

8.3.1 The Congo

The Congo attained independence from Belgium in 1960. Before and after independence, the Congo remained a collection of tribes rather than ~~an~~ integrated nation. Belgium intervened in inter-tribal conflicts in the name of humanitarian assistance. President Kasavubu and Prime Minister Lumumba sent a cable to the Secretary General, Dag Harnmerskjold, requesting military assistance to protect their country against "external aggression which is a threat to international peace." The Secretary General invoked Article 99 of the Charter and asked the President of the Security Council to convene a meeting of the Council. The Council met, barely two weeks after the independence of Congo and passed a resolution calling upon Belgium to withdraw its forces, and to authorise the Secretary General to provide the necessary military assistance, in consultation with the Government of the Congo, until the Congolese forces could discharge their tasks. The Secretary General initiated the UN operations in the Congo (ONUC).

But the situation deteriorated as the internal conflict became intense, and Tshombe, the President of Katanga province of the Congo declared secession, and Belgian troops did not withdraw. Again on the initiative of the Secretary General, another resolution was passed, which recognised the unity of the Congo, called upon the Belgian forces to leave the Congo, and authorised the Secretary General to take all necessary action to this effect. The resolution requested all States to refrain from interference in the Congo, as it might undermine the territorial integrity and political independence of the Congo.

Belgium refused to withdraw its forces from Katanga, and ONUC did not have authority to enter Katanga. The Council again passed a resolution authorising that ONUC to enter Katanga, declaring that ONUC would not be a party to or influence in any way the outcome of the internal conflict. The Council called upon members to carry out its decisions in accordance with Article 25 and 49 of the Charter.

The situation further worsened as President Kasavubu and Prime Minister Lumumba **dismissed** each other from office and the army chief of staff, General Mobutu staged a revolt. At this juncture, the Soviet Union vetoed a resolution proposed by the Secretary General. By this time the Soviet Union's support got crystallised towards Lumumba, and the U.S. support in favour of Kasavubu. The U.S. proposed that the question be transferred to the General Assembly under the Uniting for Peace Resolution. The General Assembly adopted a resolution stating that in order to safeguard international peace it was essential for the UN to assist the Central Government of the Congo and towards this end requested the Secretary General, Dag Harnmerskjold, to take "vigorous action" to restore law and order to preserve the unity, integrity and political independence of the Congo. It called upon all members not to intervene in the conflict and reminded them of their obligation under Articles 25 and 49 of the Charter. Shortly after this Dag Harnmerskjold died in an air crash while travelling in the Congo.

The General Assembly could not proceed further as the requisite majority could not be obtained for any resolution. Then the matter was taken back to the Security Council which was able to adopt a resolution which consisted of two parts: The first part characterised the situation as a "threat to international peace and security" and as "serious civil war situation". It called for UN measures to prevent civil war, to make arrangements for

ceasefire and to halt all military operations, and to use force, if necessary, as a last resort. It urged the withdrawal of all Belgian troops, advisers and mercenaries. It decided to investigate into the death of Lumumba also in an air crash, allegedly because the army closed an airport where he was to land. The resolution noted violation of human rights and fundamental freedoms. It rejected the claim of sovereignty of Katanga, and authorised the Secretary General to take "vigorous action" including the use of force if necessary to expel foreign military personnel not under UN command.

Here it may be seen there was an authorisation for the UN forces to use force to restore the Central Government's authority in Katanga. But there was no authorisation to impose any political solution to end the conflict. But various measures were authorised to help the parties to reach a political settlement. The use of force to end the secession of Katanga came very close to enforcement action. Eventually a relatively stable State emerged called Zaire. It was an UN peacekeeping operation with fringes of enforcement action. Perhaps it is now apt to call it as peacemaking.

8.3.2 Peacekeeping in Iraq and Kuwait

Peacekeeping combined with power to take limited enforcement action was a feature of the task entrusted to UN Iraq-Kuwait Observation Mission (UNIKOM) established in 1991 by the Security Council. In 1990, Iraq invaded Kuwait, and the Security Council acted first with non-violent sanctions. When they failed, the Security Council authorised the U.S. led coalition to evict Iraq from Kuwait. After Kuwait was freed, the Security Council adopted a resolution laying down the conditions for a ceasefire. Iraq accepted the conditions and a formal ceasefire came into effect. UNIKOM was established to monitor the demilitarised zone and in 1993 increased its strength to prevent violations of the demilitarised zone.

8.3.3 Peacekeeping in Cyprus

The UN played in Cyprus a peacekeeping role of a neutral or limited character. In 1963, violence broke out between the Greek and Turkish communities over a constitutional amendment proclaimed by the President Archbishop Makarios of Cyprus. The Security Council adopted a resolution in March 1964, which noted that the situation was likely to threaten international peace and security, and called upon members to refrain from any action likely to worsen the situation or endanger international peace, and asked the Government of Cyprus to take all measures to stop violence, and recommended the creation, with the consent of the Government of Cyprus, a UN Peacekeeping force (UNFICYP). The function of the force is to preserve international peace and security. Between 1964 and 1974, the UNFICYP did not act as a buffer between two fighting forces, but acted only as a police force to maintain and restore law and order. In 1974, there was Greece-backed coup against President Makarios and there was imminent Turkish invasion in response to the Greece led coup. The Secretary General, Kurt Waldheim, and the Cypriot representative requested a meeting of the Security Council. On July 20, 1974, the day on which Turkey invaded Cyprus in support of its Moslem population, the Security Council adopted a resolution declaring that there was a serious threat to international peace and security and demanded the end of the foreign military intervention. The implied invocation of Article 39 of the Charter, in the peremptory language used, was taken as a provisional

measure under Article 40. The Secretary General suggested in his report that the UNICYP should create a security zone between Turkish forces and Greek Cypriot forces. The Security Council requested the Secretary General to implement the report. The Cypriot case conformed to the consensual peacekeeping operation, with the difference that the force acted for some time as a police force, bordering on peacemaking.

8.3.4 Nicaragua

In 1980s, the United States adopted the then President, Ronald **Regan's** doctrine that the United States should extend support to anti-Communist forces, whether governmental or non-governmental, anywhere in the world. Pursuant to this policy, the Central Intelligence Agency (CIA) of the U.S. extended support to the contras in Nicaragua fighting against the government. In 1987, there was a regional peace arrangement, the Guatemala Agreements, which called for cessation of aid to irregular forces and of the use the territory of one State for attack on other States. By a resolution adopted in November 1989, the Security Council **emplaced** in 1990 a military component of the peace effort. There were two groups, the UN Observer Group in Central America (ONUCA) to supervise elections, and a military component of peace effort to supervise the observance of the Guatemalan Agreements. In the elections held in 1990 in Nicaragua, a right wing opposition secured majority. Following this, the contras agreed to be demobilized. The rebel camps in Honduras were disbanded; the contra rebels assembled **in**, specified places in Nicaragua. The ONUCA, with more military men added, exercised the responsibility to take the delivery of weapons and other military equipment, including the uniforms. The progress of disarmament was difficult, but the commander of the ONUCA and the UN Secretary General expressed satisfaction with the disarmament and demobilisation. This operation was in the nature of peacemaking.

8.3.5 Haiti

In 1991, President Aristide, elected President of Haiti in 1990, was deposed by a military coup. The Security Council imposed oil and arms **embargo**, and it caused the military rulers to agree to restore the **President** to authority. The sanctions were lifted, but the **military** leaders failed to implement their undertaking. In 1994, the Security Council passed a resolution **authorising** the U.S. to take military action to restore democracy. The threat of military action influenced the military rulers to step down, and to consent to a UN force to oversee the **return** to democracy. The sanctions were lifted after democracy was restored. This is an example of peacemaking between the democratic forces and the military opponents.

8.3.6 West Irian

Though the Indonesian independence issue was settled in 1950s, disputes between the Netherlands and Indonesia continued over some islands in the archipelago. One such island was West Irian. The Indonesians airdropped some men in jungles who got engaged in guerrilla warfare with the Dutch forces. In 1962, the Netherlands and Indonesia agreed that the administration of West Irian be transferred to a UN Temporary Executive Authority (UNTEA) pending the transfer of the territory to Indonesia. A UN Security Force (UNSF) was to observe the ceasefire, after which the transfer should take place. The UNSF **should** police the island until transfer. The UN mission successfully achieved its task.

8.3.7 East Timor

Until 1975, East Timor was a Portuguese colony and it was forcibly occupied by Indonesia. Following long drawn out negotiations, both Portugal and Indonesia agreed to ask the UN Secretary General to conduct a popular consultation to find out whether the people wanted autonomy within Indonesia or independence. A plebiscite was held. The **result** of the direct ballot was rejection of autonomy within Indonesia. Following the announcement of the result, there was an intense campaign of violence by the military forces opposed to independence. Many were uprooted from their homes. The Security Council acted **under** Chapter VII of the Charter to establish a multinational force of about 11000 troops and civilians under Australian command. This UN Mission of Support in East Timor or UNIMIST was empowered to use all necessary means to restore order and **facilitate** humanitarian assistance. At the same time, as the civilian and judicial administration had collapsed, the UN Security Council established the UN Transitional Administration for **East** Timor (UNTAET) to administer the territory. Its mandate included building capacity for self-government. The UNTAET was to act under a special representative of the UN **who** was empowered to enact new laws and regulations, and to suspend, amend or abolish the existing laws. The UNTAET mission ended with the independence of East Timor in **May 2002**. The UNIMIST, however, continued its peacekeeping tasks even after East **Timor's** independence. Thus, the UN handled both peacekeeping and peace building tasks **here**.

8.3.8 Cambodia

In 1980, the UN General Assembly passed a resolution on Cambodia (**Kampuchea**) calling for an international conference on Kampuchea, and laying down the principles to form the basis of discussion at the **conference, viz.**, negotiation with Vietnam for an **agreement** for withdrawal of Vietnamese forces, observance of human rights, free elections, **and non-interference** by outsiders. The Security Council in 1990 authorised a massive **peacekeeping** operation. The UN Transition Authority in Cambodia (UNITAC–1991-1993) oversaw **the** elections. The Khmer Rouge, an intransigent party **in** the civil conflict, accused UNITAC of not being neutral, and not ensuring the withdrawal of all Vietnamese forces, and **did not** give up its arms. The Security Council adopted a resolution asking the Secretary General to study the implications of Khmer Rouge not complying with the conditions for **free** elections. The Council decided that elections should be held in all areas not **under** the Khmer Rouge control. Only one-fourth of the Khmer Rouge forces were in **cantonment** sites for disarming. Despite these conditions elections were held. The presence of **significantly** large groups of Khmer Rouge forces prevented real peace emerging in the **country**.

8.3.9 Namibia

South West Africa (later came to be called Namibia) was placed under the **Mandate rule** of South Africa by the League of Nations. The UN Charter brought all the **Mandate** Territories under its Trusteeship system. But South Africa refused to accept **the Charter** obligations. In 1966, the UN General Assembly terminated the mandate of **South Africa**. The South West African Peoples Organization (SWAPO) formed to fight **against the** continued rule by South Africa. In 1969, the Security Council declared that **the continued** occupation of South West Africa by South Africa was illegal and accepted a plan **proposed** by the Secretary General for elections under international supervision paving the way for

independence. The plan could not be implemented as South Africa did not cooperate. In 1988, an accord was reached outside the UN, which linked South African withdrawal from South West Africa with Cuban withdrawal from Angola. The Security Council decided to establish the UN Angola Verification Mission (UNAVEM) to supervise the withdrawal of Cuban forces. The UN operations in South West Africa consisted of peacekeeping between South African forces and the forces of SWAPO, supervising the ceasefire, **demobilising** illegal forces and holding free and fair elections. The UN operation took a long time and was possible only because of an agreement reached outside the UN. The UN carried out its operations on a consensual basis.

8.3.10 Angola

In Angola the National Union for Total Independence of Angola (UNITA) fought for freedom from Portuguese rule. Another faction was also in the field with the same objective, the Popular Front for the Liberation of Angola (PFPLA). Cuban forces assisted UNITA. The 1988 peace plan, mentioned above in connection with Namibia, linked the withdrawal of the South African forces from South West Africa with the withdrawal of Cuban forces from Angola. The Security Council **emplaced** 'the UN Angola Verification Mission (UNAVEM-I) to verify the withdrawal of Cuban forces, and to conduct free elections. The elections were held in 1992 and a majority was secured by the PFPLA. The UNITA charged the UNAVEM-II, which supervised the election, that it did not conduct the elections in a free and fair manner and repudiated the result. It resorted to arms and captured many municipalities. In 1995, the Security Council established a larger mission, UNAVEM-III, on a peacekeeping mission, to use good offices to reconcile the factions, to monitor the extension of the administration throughout the State, to effect **ceasefire** and disengagement of fighting forces, to help demobilization and disarmament of UNITA, to effect the return of government forces to barracks, to supervise the Angolan police force, and to supervise the Presidential election. The mission was **sccessfully** achieved.

8.3.11 Rwanda

Trouble started in Rwanda in 1993 when the Patriotic Front (RPF) of the Tutsi tribe started fighting against the Government then controlled by the Hutu tribe. The Security Council **emplaced** the UN Observer Mission Uganda-Rwanda (UNOMUR) to observe whether the **RPF** was receiving aid across the Rwanda-Uganda border. The **RPF** and the Government reached an agreement, the **Arusha** Accords of 1993, for a comprehensive settlement, first by establishing a transitional government until elections, next integration of armed forces of the two sides, and then holding elections. A neutral international force was to be established to implement the agreement. On the Secretary General's report, the Security Council established the UN Assistance Mission for Rwanda (UNAMIR) to help achieving the peace process. However, on April 6, 1994, in an air crash near Kigali airport the President of Rwanda and the President of Burundi died. On the next day, **barricades** were raised in Kigali, the capital of Rwanda, and the extremists of the Hutu started the massacre of the Tutsi people and the moderates among the Hutu who advocated reconciliation. About 200,000 died in the massacre which was genocide on a large scale. The resulting civil war caused the reducing of the role of UNAMIR to merely that of **rescuing** the civilians from the conflict area and rendering humanitarian assistance. The Security Council, instead of increasing the strength of UNAMIR to put down the civil war, reduced the strength to play

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the role of an intermediary to effect reconciliation between the factions and to render humanitarian aid. In May, the Security Council decided to have a new force of 5,500 men to contribute to the security of displaced persons. But, it appeared that such a force would not be available until July. As a temporary measure, France was authorised to deploy its forces for enforcement action, under Chapter VII of the Charter, to provide security and protection for displaced persons. By August, the RPF gained control over the whole territory. However, a situation arose of massive flow of refugees to neighbouring countries. During the period of the disturbance about half a million died in the genocide, three million were displaced and two million fled to neighbouring countries. The refugee camps in the neighbouring countries presented the problem of inter-ethnic fighting, By February 1996, nearly 1.5 million people remained in the neighbouring countries. During 1994, the State was reduced to extreme disorderliness: no administration, no functioning economy, no judicial system, no educational system, no water or electricity supply, and no transport.

The next two years saw the things slowly returning to normalcy with the assistance of UNAMIR, the U.N. High Commissioner for Refugees, other national agencies, and some non-governmental organisations. The presence of UNAMIR provided a measure of confidence among people. Canada, Britain, United States and France provided in 1996 a force to give humanitarian assistance. On the whole, the UN was unable to take effective enforcement action to stop the civil war; it did some peacemaking and peace building.

In November 1994, the Security Council established the International Criminal Tribunal for Rwanda (ICTR), invoking Chapter VII of the UN Charter. Several Hutu extremists who indulged in genocide and committed crimes against humanity were brought before the Tribunal, which was based in Arusha. The ICTR was established on the request of the new Government controlled by RPF, which desired that the trials should not appear as vengeance against the Hutu. The trials enforced the principle of accountability and helped to build peace.

8.3.12 Somalia

In 1992 civil conflict broke out in Somalia, and the Security Council found that the civil conflict disturbed the stability and peace in the region and the continuation of it would constitute a threat to international peace and security. The civil war led to starvation of people on a large scale. An operation to provide humanitarian assistance (UNOSOM) did not provide the intended assistance. The Secretary General outlined three options before the Security Council: 1) To continue the presence of UNOSOM based upon the principles of peacekeeping. 2) To withdraw the military elements of UNOSOM and allow humanitarian agencies to negotiate with the fighting factions; 3) To use military force countrywide or in some limited areas by UNOSOM, or by a group of States under the Security Council's authorisation. He informed that the United States was willing to lead such an operation. The Security Council unanimously resolved, basing on Chapter VII of the Charter, authorising the Secretary General and the member States cooperating with the United States to use all necessary means to secure an environment congenial to providing humanitarian relief. The Council called upon the fighting parties to cooperate with the force so established. The operation under the U.S. leadership, the Unified Task Force (UNITAF), started with 28,000 men from the U.S. and 17,000 from other countries. It proceeded aggressively to disarm the various factions and extending humanitarian assistance. It did not limit itself to

action of self-defence. But in February 1993, the U.S. started reducing its troop strength. This was apparently due to the fact that several U.S. service men were killed and the growing sentiment in the U.S. was why should Americans get killed for the sake of a cause in some remote part of Africa. The Secretary General proposed and the Security Council approved the creation of a UN force, 28,000 strong, invoking Chapter VII of the Charter (UNOSOM-II). This force proceeded aggressively and in the process actually became one of the sides fighting the civil war, directing its action against Somalia National Alliance. In this situation, the Security Council decided in **March** 1995 to withdraw from Somalia, as the operation was going beyond the principles of peacekeeping. In his final report on UNOSOM II, the Secretary General stated that there was a need for a careful and creative rethinking about peacemaking, peacekeeping and peace building in the context of the Somalia operation. It was a frustrating experience. It requires to be recognised that each civil war situation presents features unique to it.

8.3.13 Western Sahara

After the cessation of the Spanish rule over Western Sahara, the question arose whether it should become part of Morocco, which staked a claim to it, or remain independent. In accordance with the agreement reached at the instance of the UN Secretary General and the Organisation of African Unity, the UN Mission for Referendum in Western Sahara (MINURSO) was established in 1991 to supervise ceasefire and to conduct a referendum to decide whether West Sahara should become part of Morocco or remain independent. But the referendum was postponed on a number of occasions due to disagreement on who should be entitled to vote. The MINURSO continues to be in existence now.

8.3.14 Mozambique

In 1992, the fighting between the two political parties in Mozambique caused deaths on large scale and uprooted many people. The UN Operations in Mozambique (ONUMOZ) held elections in 1994 and brought an end to the conflict. The UN Secretary General described the operation in Mozambique as a story of success in peacekeeping, peacemaking and humanitarian and election assistance.

8.3.15 Yugoslavia

The problems faced in Yugoslavia from 1990 to 2000 were varied and traumatic. Yugoslavia before its disintegration consisted of six Republics: Serbia, Slovenia, Croatia, Bosnia-Herzegovina, Montenegro, and Macedonia, and two autonomous regions, Kosovo and Vojvodina. The population is multi-ethnic. Slovenia had predominantly Slovenes, but there were minorities of Serbs, Croats and Hungarians. Croatia had Serbs who were concentrated in two areas. In Serbia, two-thirds were Serbs, but the autonomous Kosovo and Vojvodina were parts of Serbia and Vojvodina had a Hungarian minority. Kosovo had local Albanians 91 per cent. In Montenegro, besides Montenegrins, there were Moslems and Albanians constituting one-third of the population. Bosnia-Herzegovina had Moslem population of 40 per cent, 32 per cent Serbs, 18 per cent Croats and rest others. In Macedonia, 20 per cent were Albanians, 67 per cent Macedonians, and the rest other minorities. Presidential Council headed the Federal Government of Yugoslavia, and the chairmanship of it circulated among the Presidents of the six republics.

In December 1990, in Slovenia 85 per cent of people voted for independence. About the same time, Croatia declared the supremacy of the Croatian law over the federal law. Negotiations for preserving the federation failed as the Serbs insisted on a tight federation while others desired a loose federal system. In May 1991, the majority of voters in Croatia opted for independence. At this stage, the U.S., European Community (EC) and the Conference on the Security and Cooperation in Europe (CSCE) supported the territorial integrity of Yugoslavia. In June 1991, both Slovenia and Croatia declared independence. The Central authority (JNA) reacted to this by moving its army in Slovenia with heavy armour and attacked the Slovenian militia. Slovenian authorities declared that a state of war existed and appealed for international assistance.

EC and CSCE attempted to bring about a ceasefire but hostilities started in Croatia also. The Serbs in Slovenia and Croatia joined with JNA, and Serbia increased its military involvement. The EC took the position that the internal boundaries in Yugoslav federation should not be altered by force, and if done such changes would not be recognised. The EC managed to arrange for a ceasefire, monitored by observers in civilian clothes and carrying no arms, and called for a peace conference at The Hague. The conference laid down the following principles as the basis of settlement: no unilateral change of internal boundaries by force, protection of the rights of all in Yugoslavia, and due note to be taken of the legitimate concerns and aspirations of all.

The Security Council met in September 1991 and adopted a resolution stating that the fighting in Yugoslavia and its consequences in neighbouring States constituted a threat to international peace and security, and the resolution noted the efforts of EC and CSCE to secure peace. Thus Chapters VII and VIII of the UN Charter were brought into the picture. The Council appealed to those involved in the conflict to observe ceasefire. It called upon all members of the UN to impose an embargo on weapons and military equipment into Yugoslavia. It requested the Secretary General to use his good offices to have the differences resolved.

In the final event, the efforts of EC and CSCE in preserving the integrity of Yugoslavia did not succeed. The Security Council did not find the necessary consent to introducing a peacekeeping force forthcoming. In February 1992, the Security Council endorsed the creation of a peacekeeping force, United Nations Protection Force (UNPROFOR). An advance party of it proceeded in March to the area, but it never became operational.

In January 1992, the EC recognised Slovenia and Croatia. This was followed by recognition of Bosnia-Herzegovina and Macedonia. Serbia claiming as the successor state of the former Yugoslavia objected to the recognition. The EC imposed certain conditions for recognition: The desire to become independent must be demonstrated to be in accordance with the people's will, and the new State should undertake to respect human rights and humanitarian law. Even in December 1991, a Commission of the EC considered that the Republic of Yugoslavia was in a process of dissolution. In April 1992, Serbia and Montenegro affirmed that they would remain as the Federal Republic of Yugoslavia, but the claim to be the successor of old Yugoslavia was disputed by the EC and United States.

In Bosnia-Herzegovina there was an agreement that the three main ethnic groups, Moslems, Croats and Serbs would be maintained as separate constituent groups, function as such in

central organs. But it was later repudiated by the Serbs, and there was outbreak of violence on large scale. Serb militia along with JNA units, including air force, gained control over a significant part of the **territory**. The President of Bosnia-Herzegovina appealed to the EC, CSCE and United Nations for protection against Serbian aggression.

The Security Council met in April 1992, and demanded that all parties to implement the **ceasefire** and facilitate humanitarian assistance. Due to the on-going violence, the refugees in the **neighbouring** Croatia reached the figure of 600,000. The Serbs in Bosnia-Herzegovina made a concerted attempt to create an ethnically pure region of Serbs. The situation in Bosnia-Herzegovina was such that the Security Council met in May 1992, called upon all the parties to stop fighting, **demanding** the JNA and Croatian forces to stop interfering in Bosnia-Herzegovina, and appealed to all to create conditions under which humanitarian assistance can be extended where needed.

The Security Council met in April 1993 and adopted a resolution commending the peace plan agreed to by both the parties in Bosnia-Herzegovina as reported by the Secretary General, called upon both the parties to observe ceasefire, condemned the violation of international humanitarian law, including the practice of "ethnic cleansing", the massive and systematic detention and rape of women. Acting under Chapter VII of the Charter, the resolution stated that the measures envisaged in the resolution would come into effect if Bosnian Serbs renewed attacks or did not comply with the peace plan.

In May 1993, the Security Council, acting under Chapter VII of the Charter, established an international criminal tribunal, the International Criminal Tribunal for Yugoslavia (ICTY) for the trial of war crimes, genocide, and crimes against humanity. The Government of the Netherlands provided facilities at The Hague for the Tribunal to function, and for the **under-trials** to be kept in custody. There are two views about the wisdom of this measure. The first view is that the leaders of the fighting groups will not permit any agreement to be reached if there is a threat that the leaders will be criminally tried. And so the establishment of **the** Tribunal will contribute to the prolongation of the fighting. The second view is that **peace** is not possible if those who had committed grave crimes go about free and unscathed. Doubtless the establishment of the Tribunal will have some deterrent effect and contribute to implementing the principle of accountability of persons for their individual criminal acts.

In 1995, the Dayton, Ohio, peace talks resulted in reaching the General Framework Agreement for Peace (GFA) in Bosnia-Herzegovina. The GFA was the final outcome of **several** conferences held earlier, The GFA was signed by the representatives of the **Republic** of Bosnia-Herzegovina, the Republic of Croatia, and of the Federal Republic of Yugoslavia (represented by the President of Serbia, Slobodan Milosovic).

In 1998 crisis arose in Kosovo. It had autonomous status under Yugoslavia in the time of **Marshall Tito**, but that status was repudiated by President **Slobodan Milosevic**. The Albanian majority in Kosovo, facing discrimination in all fields, rose in insurrection. The Kosovo Liberation Army (KLA) began to get arms, men and materials from across the Albanian border.

The KLA adopted the hit and run tactics. The Serbian response was a large scale attack on ethnic Albanians who left their homes and fled to hills. In October 1998, Serbia agreed

to the presence of international observers to **guarantee** that the state police action would not abuse civilians. In January 1999, the contact **group** with Serbia, consisting of **the** United States, Britain, France, Germany and Russian Federation, convened a negotiation conference in France and presented a framework agreement between Albanians and Yugoslav Government for Kosovian~autonomy. This settlement required Yugoslavia to withdraw its forces from Kosovo, the KLA to lay down their arms, NATO peacekeeping forces to enforce the agreement and a three year period to settle the political future. The Yugoslav Government refused to accept the terms. Then the NATO undertook a seventy-eight day bombing campaign not limited to Kosovo but extending to the whole of the Yugoslav Federation. The objective was stated to be to avert a humanitarian catastrophe. In June 1999, the Security Council, acting under Chapter VII of the Charter, required that all military and para-military forces to withdraw from Kosovo, and authorised NATO military deployment, and a U.N. civil administration to develop provisional institutions for democratic, and autonomous self-government, until political settlement and holding of elections. **The** regime was of indefinite duration, though provisionally for 12 **months**. The NATO took the action, without authorisation from the Security Council fearing **Russian** or **Chinese** veto in the Security Council.

The Yugoslav crisis defused in the year 2000, when elections were held in Serbia and Montenegro and Vojislav Kostunica won in the Presidential election defeating Slobodan Milosovic. The attempt by Milosovic to call for second round of elections failed due to popular uprising in Serbia and Montenegro. Kostunica assumed the Presidency of Federal Republic of Yugoslavia (FRY), comprising Serbia and Montenegro. The U.S. lifted the sanctions against FRY. FRY applied for membership of the UN and was admitted. The United States, France, Germany, and Britain established **formal** diplomatic relations with FRY.

Peace building in Kosovo was of high dimension. When the UN Mission in Kosovo (UNMIK) arrived, they found that there was utter chaos and anarchy. With the presence of UN Mission and the international force established by the NATO, refugees who fled to Macedonia and Albania started returning. They were nearly half a **million**, and they started seizing back their former belongings. There was **organised** crime and **smuggling**, and attacks on Serbs and non-Albanians and trafficking in women. Surpassing all the tasks of **reconstruction**, there was the need to establish a basic legal framework. The pre-existing law, with necessary corrections made to ensure the protection of human rights, was taken as the starting point.

There was also the task of promoting democracy, developing political and professional organisations, and **strengthening** the mass media. Humanitarian assistance had to be extended to those who lacked food and shelter. It was also necessary to build a market-based economy, to promote trade, to issue and facilitate circulation of currency and banking.

8.4 ADJUDICATION

Adjudication, or judicial settlement, is the process by which a dispute is settled by a third party, who is invested with authority or jurisdiction to decide, by determining **the** facts at dispute between the parties and applying the relevant law, after giving each **party** equal opportunity to present their respective cases in accordance with the authoritative rules of

procedure. Within the State, the judiciary exercises a sovereign function, and adjudicates disputes between private parties, between private parties and the executive. It may also adjudicate challenges to laws enacted by the legislature testing them on the touchstone of the constitution. The international community is radically different from the State system. There is no centralised executive and States themselves perform the functions of obeying the law and enforcing the law. There is no centralised legislature, and laws come into existence by agreement, by practice followed with the conviction that it is obligatory to follow it. There is only a very rudimentary judicial system. Let us examine the International Court of Justice (ICJ) and other existing judicial tribunals.

8.4.1 The International Court of Justice

After World War I, the League of Nations was established and following it the Permanent Court of International Justice (PCIJ). With the outbreak of the World War II, the League of Nations became practically defunct. The United Nations was established after World War II, with the ICJ forming one of its principal organs in place of the PCIJ of the League period. The statute of the ICJ was so designed that a continuation is maintained between the PCIJ and the ICJ.

The Court consists of 15 Judges elected by the General Assembly and the Security Council, by simple majority, voting separately but simultaneously. Each Judge is elected for a term of nine years. Every three years five Judges retire and their places are filled by election. The qualification to be a Judge is that he should be of high moral character and qualified to be appointed to the highest judicial office in his country. Nominations of candidates for election are not made by Governments but by national groups in the Permanent Court of Arbitration, established by First Hague Peace Conference, 1899. The ICJ consists of only a Registrar and a list of persons who might be appointed as arbitrators. Each party to the Convention establishing the Court is entitled to nominate four persons.

Only States can be parties before the ICJ. Under Article 96 of the UN Charter, the General Assembly, the Security Council and any organ of the UN and any Specialised Agency authorised by the General Assembly, may seek the Advisory Opinion on any legal question arising within the scope of their work. While an Advisory Opinion is given great respect, it is not binding on anybody.

The jurisdiction of the ICJ is based upon the consent of the parties to the dispute, the consent given in one form or another. The consent may be given expressly in respect of any particular dispute. If one party sues and the other does not raise any objection to jurisdiction, the Court gets jurisdiction (by virtue of the principle of *forum prorogatum*). The consent may be given under the UN Charter, or under any treaty in respect of any particular class of disputes. (Article 36 of the Statute of the ICJ).

There is the so-called compulsory jurisdiction under the "Optional Clause". A State may by a Declaration declare that it accepts *ipso facto* the Declaration, without the necessity of any further agreement, the jurisdiction of the Court, as against any State that similarly accepts the jurisdiction by Declaration. The Declaration may be unconditional or conditional. In order to encourage States to accept the jurisdiction of the Court, if not fully at least partially, it is provided that the Declaration may be with reservations stated in the Declaration.

Generally Declarations made by States are with conditions regarding the time when the dispute arises or the category to which the dispute belongs. Reciprocity is an essential condition; thus not only the State that makes a reservation regarding any particular type of disputes may claim the benefit of it but also its opponent before the Court. In other words, unless the dispute is within the scope of the Declarations of both the parties to the dispute the Court cannot have jurisdiction.

The judgment given by the Court is binding only on the parties and in respect of that particular dispute. The Court frequently cites its previous decision and follows, but this is as a matter of practice and in order to maintain uniformity in the standard of justice, but not as a matter of legal requirement as in the common law systems derived from English law. European systems of law derived from the civil law system have no such legal requirement.

Though the jurisdiction of the Court is limited, it has given judgments on a large number of cases, along with the opinions of dissenting judges. Many of these cases are not the ones in which the parties would have gone to war to settle them. They have indeed given quietus to the controversies involved. Parties rather seem to prefer adjudication in those cases where the Governments concerned do not feel the interests involved to be vital, but would need an authoritative decision to satisfy the domestic public for giving up a claim.

8.4.2 European Community

European Community has developed a special constitutional structure bringing about a certain degree of integration. It has established the Court of European Communities at Luxembourg, which adjudicates disputes arising from the obligations under the Community treaty.

8.4.3 European Convention of Human Rights and the European Court of Human Rights

Under the European Convention of Human Rights and Fundamental Freedoms adopted in Rome, 1950, the European Court of Human Rights was established and it started functioning from 1960. The Convention provided for the establishment of a Commission of Human Rights. Any party to the Convention may complain to the Commission that another party is violating human rights under the Convention. The Commission investigates the facts and tries to effect a "friendly settlement" between the parties and reports that a settlement has been reached. If no settlement is reached, the Commission makes and submits its report to the Council of Ministers of the parties to the Convention. The Council decides by a vote of two-thirds majority whether a violation has occurred and what measures should be taken. The parties are bound to act in accordance with the decision of the Council of Ministers. The Commission can receive complaints only from Governments, but if a party declares that the Commission is competent to receive complaints from individuals, groups of individuals and non-governmental organisations, then it can receive complaints from non-governmental agencies and individuals as well.

The European Court of Human Rights consists of as many judges of different nationalities as there are members of the Council of Europe, established in 1949. Only States and the

Commission on Human Rights can be parties before the Court. The jurisdiction of the Court is confined to following types of cases, (a) the cases which the parties submit by special agreement: (b) cases regarding which the parties have made declarations that would accept jurisdiction without special agreement, and (c) cases submitted by the Commission. If the Commission makes a report that it has failed to effect a "friendly settlement" between the disputing parties and submits the report to the Council of Ministers, and within three months from the transmission of the report to the Council of Ministers, submits the case to the Court of Human Rights, the Court decides the disputes. Then the Committee of Ministers can only supervise the implementation of the decision. The Court's decision is an alternative to the decision of the Council of Ministers when the Commission reports failure to effect "friendly settlement", and submits the case to the Court within three months of making the report.

8.4.4 Inter-American Court of Human Rights

The American Convention of Human Rights, 1969, which entered into force in 1978, established an American Commission on Human Rights and the Inter-American Court of Human Rights. By 1990, ten State parties to the Convention accepted the jurisdiction of the Court, but not the United States. The Court has competence to decide contentious cases and gives advisory opinions on questions referred to it by any State accepting the Court's jurisdiction.

8.4.5 The International Criminal Court

During the 1990s, the Security Council, acting under Chapter VII of the UN Charter, established The International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). These were modelled after the international criminal tribunals that were established after World War II, such as the Nuremberg Tribunal. The UN convened a diplomatic conference at Rome in 1998, and it adopted the Rome Statute for International Criminal Court. Britain, France, Russian Federation and the United States, besides others took active part in drafting the Statute. However, later the United States refused to become a party to the Statute. The objection of the United States is that the U.S. service men, acting in different parts of the world may be brought under the jurisdiction of the Tribunal.

There are two principles underlying the Convention. First, the principle of complementarity, that is, the Court should assume jurisdiction only when the national legal system is unable or unwilling to exercise jurisdiction. Generally, only high official of States commit the offence and the State would be unwilling to exercise criminal jurisdiction over them and other States would not be willing. Second, the Court should deal only with crimes of serious concern to the international community. These crimes are: genocide, war crimes, crimes against humanity and the crime of aggression. The Statute of the Court defined these offences.

The Court is based at The Hague with three divisions. (a) The pre-trial division which is concerned with the gathering of evidence, the arrest of the accused, and the custody of the accused. (b) the Trial Division consisting of the registry, the prosecution and the trial judges, and (c) the Appellate Division to give the convicted accused the benefit of an appeal.

8.4.6 The World Trade Organisation

The General Agreement on Trade and Tariffs (GATT) was converted into the World Trade Organisation (WTO) with some changes. The **GATT** had a dispute settlement mechanism and the WTO mechanism was patterned on it.

The Agreement establishing the WTO provides that its General Council, consisting of the representatives of all the parties to the **Agreement**, has the responsibility to form a Dispute Settlement Body (DSB). The membership of the DSB is the same as that of the General Council, but has separate **rules** of procedure, staff, and document series. Disputes that arise under the WTO Agreements are submitted to panels constituting in accordance with the Understanding on the Rules and Procedure Governing Settlement of Disputes (**DSU**). A panel is an **ad hoc** body constituted for the particular dispute. The Secretariat of the DSB maintains a roster of "well **qualified** persons", i.e., persons who were involved previously in dispute settlement either as panelists, or counsel, or those who served in trade office, or in GATT secretariat or who have been teaching and writing on international trade law.

When the Clause in the Agreement covering the dispute requires consultation, the complaining party must initiate the consultation with the other party and the other party must respond within ten days. All consultations must be completed within thirty days. If consultations do not fructify in a settlement, or the dates prescribed are not kept, a request may be made to the DSB to constitute a panel. The DSB constitutes a panel at its regular meeting or at a meeting called specially for the purpose.

The panel must adhere to the prescribed rules of procedure of receiving written statements, oral presentations, and written rebuttals within the prescribed time limits. The panel must prepare a report, containing a descriptive part of the dispute, the undisputed parts of the dispute and the rival contentions of the parties. The draft of the report must be sent to the parties for their response. After receiving the response in time, an interim report is prepared and submitted to the parties. After receiving the comments of the parties the Final Report is sent to the DSB. All this process up to the DSB receiving the report must be completed within fourteen to eighteen weeks. The Final Report goes into effect unless the DSB by consensus disapproves the Report. The panel is thus an effective third-party decision maker but a safeguard is provided against possible mistakes. There is the Appellate Body holding office for a period of four years. Continuity is maintained in the Appellate Body by staggering the appointments. An appeal may be made within sixty days of the issuance of the Final Report of the panel. The Appellate **Body can** review only on questions of law. The Appellate Body gives its report to the DSB.

If the report finds that there is no violation of the agreement covering the dispute, the case is over and the losing party cannot resort to any retaliatory action concerning the alleged violation. On the other hand, if the report finds that there has been a violation, **the** panel or the Appellate Body will "recommend to the aggrieved party to resort to retaliatory action. The losing party may inform the DSB that it will comply with the report in a phased manner or within" reasonable period " , subject to the approval of the DSB. The "reasonable period" has the prescribed time limits, which in any case do not exceed fifteen months. If the losing party takes measures to comply with the report of the panel or Appellate Body, the issue will then be whether there was full compliance, and this again will be a **dispute** **to** be submitted to a panel.

The above is a novel system of third-party dispute resolution created to deal trade disputes, especially those concerning restrictions on trade and tariffs.

8.5 SUMMARY

As we observed; violent conflicts that require UN intervention generally have three phases. First, there is a ongoing violent conflict between two or more parties when the UN assumes the role of the peacemaker in an effort to end the violence. Once the ceasefire has been established, the second phase begins. Here, the UN takes the role of a peacekeeper to enforce the ceasefire. In the third phase, the UN's takes up peacebuilding efforts which seek to rebuild infrastructure, political institutions and trust in order to prevent future conflict. These phases can overlap. Though peacekeeping generally occurs after peace has been negotiated, however fragile that may be, as we saw in the numerous examples, peacekeeping and peacemaking can go on at the same time.

While the principal methods of peacemaking are negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement etc., in actual practice, it may include coercive methods and even violent interventions while some have suggested that judicial settlements can be effectively used for peacemaking, it should be noted that the international judicial system is still rudimentary. The jurisdiction of the ICJ is limited to States and that too to States which have consented to accept, in one form or the other, the jurisdiction of the Court. Moreover, there is no mechanism for the enforcement of the decisions of the ICJ. There are other judicial bodies such as the European Court of Human Rights, WTO etc.. but their jurisdiction is limited

8.6 EXERCISES

- 1) How do observer groups differ from peacekeeping forces?
- 2) Examine the meaning and characteristics of peacekeeping. Give instances where peacekeeping has been successful.
- 3) Describe the procedure adopted by the WTO to resolve trade and tariff disputes between member states.
- 4) The International Court of Justice cannot be regarded as a Court for the World. Comment.