

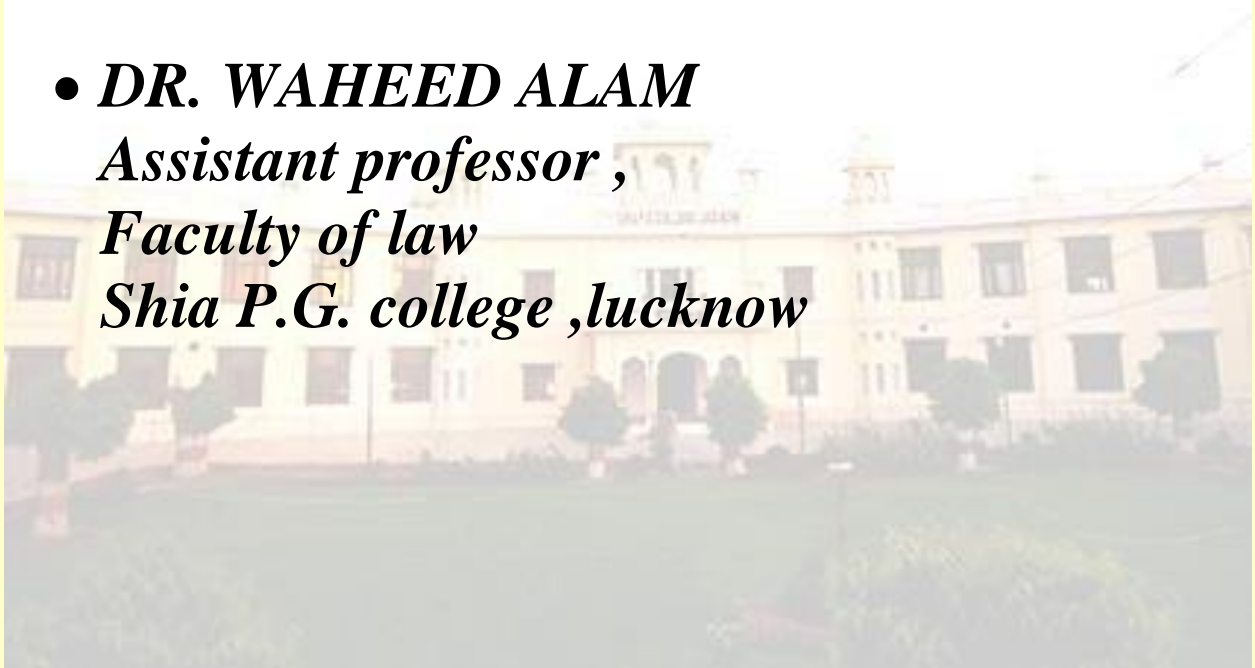


SHIA COLLEGE OF LAW

INTERNATIONAL SHORT NOTES

MODULE-4

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WAR

Use of force for self interest is an animal instinct. This instinct is dormant in human beings and when it becomes active, it is unparalleled in devastation, conflict, rivalry, hostility and enmity. Fights are closely associated with human society. With progress of human groupings, the emergence of nation state was an important event. Human nature also carried with it the progressive use of violence. This violence on an extensive and concerted scale by one nation against the other, with the object of imposing its will, is war.

Definition of war

War may be defined as an extended coercion with violence by a state against the other state for imposing its will on the latter. Oppenheim defines war as a contention between two or more states, through their armed forces, for the purpose of overpowering the other and imposing such conditions of peace as the victor pleases.¹

A similar view is expressed by Starke when he says that “ war in its most generally understood sense” is “ a contest between two or more states primarily through their armed forces, the ultimate purpose of each contestant or each contestant group being to vanquish the other and impose its own conditions of peace”.²

Declaration of war

State practices as to the commencement of war have not been uniform. Grotius was of the opinion that a declaration of war was necessary. But in practice this was not done in many cases. The Hague Convention of 1907 provided for such declaration. In the post-UN period also, no uniform practice has been witnessed in various armed conflicts. It is clear that in view of various legal measures, no State can wage war against another State at pleasure by issuing a declaration of war. It may, however, claim to fight in exercise of the right of self-defence. It will then have effect on belligerent rights.

Legal effects of outbreak of war and of armed conflict

With the outbreak of war, the relations between belligerents and with third States are regulated by different rules. The belligerents, being each other's enemy, acquire such character. Friendly relations are adversely affected which also affects treaties. Non-war armed conflicts such as the Korean Conflict, 1950-1953, the Suez Crisis, 1956 or the Indo-Pak hostilities, 1965, 1971 and 1999 reveal divergence in State practices in this regard. Generally, diplomatic relations are maintained at low level and treaty relations are not interrupted. However, necessary adjustments are made as are required under the circumstances. The effects of the outbreak of war are as under.

1. Diplomatic relations

Diplomatic relations are an indicator of friendship and on the outbreak of War, such relations are broken. But the receiving State is bound to grant facilities it orders to enable the diplomatic agent and staff to leave at the earliest possible moment. This rule applies to armed conflicts also.³ the property and premises of the mission with archives are to be protected by the receiving State. The sending State, with the approval of the receiving State, may entrust the custody of such premises and archives to a third State.⁴

2. Consular relations

Consular relations are also severed on the outbreak of war or armed conflict. The receiving State is under an obligation to protect the consulate, both under customary international law and under the Vienna Convention on Consular Relations, 1963. Consular premises, furnishings and property are immune from requisition.⁵ The consular personnel are to be allowed to leave the receiving State's territory as soon as possible.⁶

3. Treaties

One view was that war automatically terminates treaties. But this is not followed in State practice. Geneva Convention, 1949, for example, survives during war or armed conflict. The Vienna Convention on the Law of Treaties, 1969 also does not provide for such an eventuality [Arts. 73 and 75]. State practice is not uniform. Some treaties are terminated, some are suspended and some remain operative. The general practice is as under:⁷

- 1. Treaties of friendship and alliance between the belligerent States are abrogated.**

2. Treaties intended to set up a permanent state of things; for example, treaties fixing boundaries are not affected and remain in force. Article 62 of the Treaty Convention, 1969 also provides that fundamental change of circumstances (and war and armed conflict amounts to such change) may not be invoked, if the treaty establishes a boundary [Art. 62(2) (a)].
3. Treaties which regulate the conduct of armed conflict, for example, the Hague Conventions of 1899 and 1907 remain in force.
4. Multilateral Conventions of "law-making" character relating to health, Drugs, etc. are either suspended or revived on the cessation of armed conflict.
5. If the treaty makes an express provision or there is an intention that the treaty will remain suspended during war or armed conflict, the treaty will be suspended.
6. Treaties in the nature of extradition treaties are suspended during war or armed conflict.
7. A State will suspend a treaty if it is incompatible with the UN Security Council resolution dealing with threats to peace, breach of peace or act of aggression.

4. Commercial relations

On the outbreak of war or armed conflict, all trade and commerce with the belligerents come to an end. Belligerent States enact special legislation to this effect. The belligerent States also prohibit their citizens and corporations from trading with the enemy. India has enacted the Trading with the Enemy (Continuation of Emergency Provisions) Act, 1947 and this Act has been invoked in case of non-war armed conflicts. In practice, States make a difference between the executory contracts and the executed contracts. In the former case, the contract comes to an end while in the latter case; the operation of the contract is suspended.

5. Enemy public property

Such property can be confiscated. Movable property can be appropriated, if it is Useful for local military purposes. Immovable public property can be used but cannot be disposed of. In case of military necessity, immovable property such as roads, forts, bridges can be destroyed. Warships and other public vessels can be seized. But vessels engaged in discovery, exploration, scientific research, religious activity or hospital duty are exempt from seizure.

6. Enemy private property

The general practice followed by the States is to seize such property temporarily and deal with it in peace treaties. There is no rule prohibiting confiscation of such property and authorities on international law are not unanimous on this point. But in a territory under belligerent occupation, private property cannot be taken except for local military purposes. But enemy private ships including cargoes at the sea are liable to be confiscated.

REFERENCES

1. Oppenheim, International Law, vol. II (7th Edn.) 202.
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7. Strake, Introduction to International Law (10th Edn.) 545- 46.

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