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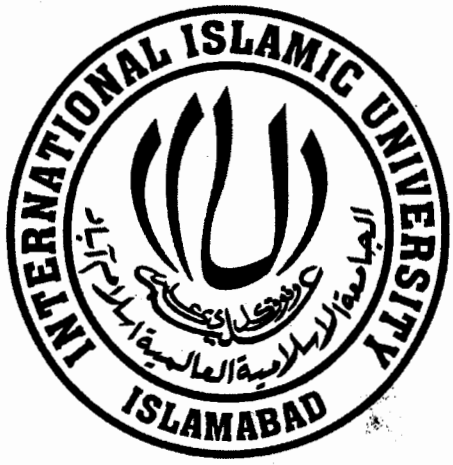

INTERNALIZATION OF TREATY LAW: EXECUTIVE COMMITMENT AND CONSEQUENT LEGAL PROBLEMS IN PAKISTAN

Supervised by:
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Submitted by:
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Reg. No. 47-FSL/LLMIL/F05

A thesis submitted in partial fulfillment of the requirement of the degree of
MASTER OF LAWS (INTERNATIONAL LAW)
International Islamic University, Islamabad
(Faculty of Shariah and Law)

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INTERNATIONAL ISLAMIC UNIVERSITY
ISLAMABAD
FACULTY OF SHARIAH & LAW

It is certified that we have read the thesis submitted by Mr. Zubair Ahmad titled as "Internalization of Treaty Law: Executive commitments and Consequent legal Problems in Pakistan" as partial fulfillment for the award of degree of LLM (International Law). We have evaluated the thesis and found it up to the requirement in its scope and quality for the award of the degree.

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Muhammad Mushtaq Ahmad

Examiners: (External) _____
Imran Ahsan Nayzee

TABLE OF CONTENT

ABBREVIATIONS

1.	IROP	Islamic Republic of Pakistan
2.	VCLT	Vienna Convention on Law of Treaties
3.	ROB	Rules of Business 1973
4.	NATO	North Atlantic Treaty Organization
5.	SAARC	South Asian organization for Regional cooperation
6.	B.Y.BIL	British Year Book of International Law
7.	ILR	International Law Report
8.	All ER	All England Law Reports
9.	ICJ	International Court of Justice
10.	PCIJ	Permanent Court of International Justice
11.	CLC	Civil Law Cases
12.	ILO	International Labor Organization
13.	ILC	International Law Commission
14.	UN	United Nation
15.	MLD	Monthly Legal Decision
16.	NGO	Non Governmental Organization
17.	NWFP	North West Frontier Province
18.	PCrLJ	Pakistan Criminal Law Journal
19.	PLD	Pakistan Legal Decision
20.	USA	United States of America
21.	UK	United Kingdom
22.	SCMR	Supreme Court Monthly Review
23	UNESCO	United Nation Economic Social and Cultural Organization
24	IBRD	International Bank for Reconstruction and Development
25	IDBP	Industrial Development Bank of Pakistan
26.	SC	Supreme Court
27.	DFAT	Department of Foreign Affair and Trade

DEDICATED

To,

All the scholars and students of Islam, of past, of present and of the future, who have, who are and who will work for the betterment of Ummah.

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First and the foremost, I wish to express my humble thanks in the honour of Almighty Allah who awarded me with this life and bestowed on me His countless blessings. All of good qualities I have are what He has granted me and what I have earned is the long list of deficiencies. May Almighty Allah enable me to develop myself into a better and caring human being and a competent Professional, to assist the helpless people for acquiring their rights from the encroachers, Aamin.

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ABSTRACT

The topic of this research work is "Internalization of Treaty Law: Executive Commitments and Consequent Legal Problems in Pakistan". The research is an academic one and therefore appreciates all the procedure, limitation, methodology and restriction required for the academic research. The research contains and depends upon codifications, commentaries, analysis on codifications and views of noted jurists along with appropriate study of case law.

Treaty making and its implementation has become vital nowadays for any nation. Pakistan is a growing country with an aim to participate in international relations effectively and influentially. This is what Pakistan can attain through strengthening its ties with other countries, which can be best achieved through negotiating treaties with them. Pakistan in this context needs a good and effective system of treaty making and implementation. Otherwise an ineffective system will only lead Pakistan to an embarrassment in its international affairs. This is if Pakistan has not adopted and resorted to a treaty law compatible to international law of treaties, Pakistan has to face a lot of problems in its external affairs. With this point in mind the primary focus of the thesis was to address and sort out the practice, laws and procedure of treaty making and implementation, adopted by Pakistan.

The research conducted with the above mentioned aim is divided in four chapters. The first chapter is specifically focused on introduction of basic concepts of international law of treaties. The chapter reveals certain important aspects of the frame work of treaty law. It became evident in the first chapter that apart from procedural issues international law has granted states full authority to regulate their own behavior under their own laws.

Second chapter of the thesis focuses on the law and requirements of treaty making. An elaborate study carried out in the second chapter evidently revealed an overall competent and efficient treaty making mechanism of Pakistan. Pakistan as a state has no less capacity in concluding any type of treaty which any sovereign country of world can

conclude and Pakistan also has a good working system to exercise the said capacity. The treaty making system of Pakistan is quite able, efficient and can help Pakistan conclude treaty of whatever type and at whatever level, it feels necessary.

Third chapter is solely dedicated to the study of laws and procedures Pakistan has adopted for implementation of any applicable treaty. The issue of implementation of a treaty is some what complicated in Pakistan. The power to implement treaties is mainly vested in legislature and residuary implementation of treaties is vested in executive. Furthermore Courts in Pakistan have no role in implementation of treaties unless some legislation specifically requires them to implement a treaty.

The fourth chapter of the thesis sums all the research of the previous three chapters and contains summary, results; their comparative analysis and suggestions for the sorted out problems.

The research presents a general overview of the complete treaty laws and procedure of Pakistan, with a hope that a new dimension for research will open up and the further researchers will find a substantial help from the thesis and will find it as platform for working on any specific subtopic or issue of treaty law of Pakistan.

CHAPTER: I

INTRODUCTION TO THE LAW OF TREATIES

This chapter is an introduction to the law of treaties and is aimed at explaining the basic concepts, rules and the procedure of international treaty law. This chapter will help by providing a general introduction of treaty making and implementation issues, and will also provide us with a role model for the study of the treaty law making and implementation issues in Pakistan. The main issues discussed in this chapter will be the introduction and explanation of the term "treaty"; the role of authorized representation and consent; the issue of binding obligations; the implementation of a treaty; and the procedure of treaty making.

1.1.1 Background

Treaties are agreements[1] concluded by states and historically states have been dependent on treaties for their mutual relations[2] long before any other field of international law.[3] Treaties have continuously been concluded since as early as 5th century B.C. One of the first examples of a treaty concluded by exchange of letters between "*Egyptian Pharaoh and Haitian King*" also establishes that from the very beginning, treaties were concluded in different forms.[4] This diversified continuous practice and dependency of states on treaty making yielded in a large body of international customary law,[5] regarding treaties. Though the law was uncertain and ambiguous initially but by the passage of time work was done to concise this customary law and after passing through a number of development phases,[6] law relating treaties was some what codified in form of the two Vienna Conventions on Law of Treaties, of 1969 and 1986, by International Law

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[1] Oppenhiem's International Law, 9th edition, ed. Sir Robert Jennings and Sir Arthur Watts, Universal Law Publishing Co. 2003, pg. 1197.
[2] Public International Law in the Modern Word, David. H. Ott, Pitt Man Publishing, 1987 pg. 190.
[3] Oppenhiem's International Law, 9th edition, ed. By Sir Robert Jennings and Sir Arthur Watts, Universal Law Publishing Co., 2003, pg. 1197.
[4] Introduction To Law Of Treaties, Paul Reuter, Printer Publisher, 1989, pg. 1.
[5] Public International Law In The Modern Word, David. H. Ott, Pitt Man Publishing, 1987. pg. 190.
[6] For detail study of reasons and prospects of different stages of development of law of treaties see. Introduction to Law of Treaties, Paul Reuter, Printer Publisher, 1989, pg. 1-13.

Commission (ILC).[7] These two Conventions,[8] at present governs all written treaties in international legal system and will also provide core information for this chapter.

1.1.2 Defining Treaty

In international law a precise statement[9] which describes what exactly treaties are has yet not been developed. A number of definitions though exist but all are deficient to a certain degree this is because of the presence of a vast number of treaties in various forms.

Vienna Convention On Law Of Treaties (VCLT) 1969, when defining treaties states that, "*An international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation*". [10] The definition simply explains that any international agreement in written form which is concluded between states and is governed by international law can be termed as a treaty. However, on a critical analysis the two deficiencies are self evident in the definition given by VCLT 1969. Firstly the term "international agreement" is too wide to be precise and secondly the word "in written form" excludes all non written treaties from the scope of the definition.

The definition gives an idea that treaty is a sort of "international agreement", but as the word agreement is used in international system for so many other international transactions[11] and any agreement in and under international law can prove to be a treaty after passing an objective test;[12] the deficiency that which agreement is a treaty and which is not remains. Furthermore, the definition given by VCLT 1969 when defining treaty also misses that in international law unwritten treaties are also concluded and as such they do not fall out of the scope of treaties and are as much enforceable as written

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[7] Oppenhiem's International Law, 9th edition, ed. Sir Robert Jennings and Sir Arthur Watts, Universal Law Publishing Co. 2003, pg. 1198.

[8] First being is Vienna Convention on the Law of Treaties, 1969, and second is Vienna Convention on the Law of Treaties between States and International organizations or between International Organizations, 1986.

[9] Introduction to Law of Treaties, Paul Reuter, Printer Publisher, 1989, pg. 22.

[10] Article2 (1) (a). Vienna Convention on Law of Treaties (VCLT, 1969) (See Appendix C, pg. 128.)

[11] Year book of International law commission, vol ii, 1966, pg. 188.

[12] International Law, 1st edition, Malcolm D Evans, Oxford University Press, 2003, pg. 174.

ones.[13] All this conclude but one thing that any statement which tries to define treaty in present international law only defines its certain aspect and is unable to cover the all types and forms of a treaty.

Academics like Lord McNair, Paul Reuter and N.A Maryan usually, for the above mentioned reason, like and prefer a generic concept of treaties instead of specifically defining treaty with one statement. The treaty as explained by the academics contains three essential elements. Which when present in an international agreement confirm a status of treaty for it. The three elements are:

1: That the agreement is between subjects of international law;[14]
2: That the agreement is defining obligatory relationship between subjects of international law;[15]
3: That the agreement is concluded under international law;[16]

These three elements ensure that an agreement can be credited as treaty and can be dealt under international system as treaty or not. Combining these elements, we can say that by "Treaty" we mean an international agreement, defining some obligatory relationship concluded between the subjects of international law and governed by international law. As international treaty law is a vast field and the term "Treaty" deals with a lot of rules and procedure of international law, so it would be quite better to take it in a generic sense as stated above and not to limit it with one precise definition.

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[13] Public International Law In The Modern Word, David. H. Ott, Pitt Man Publishing, 1987. pg. 23.
[14] Introduction To Law Of Treaties, Paul Reuter, Printer Publisher, 1989, pg. 25.
[15] Nature of agreement determines its status as treaty sees. Maritime Delimitation and territorial question between Qatar and Bahrain, jurisdiction and admissibility, Judgment ICJ Reports, 1994, pg. 112, para, 2. and also see) N. A. Maryan's statement, "whether an international instrument is a treaty can only be discovered by its contents and not by its name" International Law (Law of Peace), 2nd edition, N. A. Maryan, Macdonald and Evans, 1982 pg. 139.
[16] For detail discussion on essentiality of the agreement to be concluded under international law, see, The Law of Treaties, Lord McNair, Clarendon Press, 1986, pg. 4.

1.1.3 Classification of Treaties

Classification is necessary for it helps distinguish one type of treaty from other. Classification of treaties is done on basis of some specific aspect which can help contain treaties with that aspect in one group and can help in understanding the legal impact and obligations of a treaty.[17] To elaborate the purpose; exemplary classification will be done here on the base of effect of a treaty on international law. For further explanation classification will also be done on the basis of the execution of a treaty. To show diversified nature of treaties they are classified as follow:

1: Contractual treaties
2: Multilateral Treaties
3: Treaties constituting objective personalities

The above three types can be further sub classified in two types:
1: Executed treaties
2: Executory Treaties

1.1.3.1 Bilateral or Contractual Treaties

These are the treaties concluded in between two states or subjects of international law and are termed as contractual treaties. These treaties are limited in their legal effect and are binding only on Subjects party to them. Moreover in long term these treaties have very limited or no effect on international law.[18] These treaties though can help determine the practice and procedure of treaty making of a state.

[17] Introduction To Law Of Treaties, Paul Reuter, Printer Publisher, 1989, pg. 27.
[18] Public International Law In The Modern Word, David. H. Ott, Pitt Man Publishing, 1987.pg. 23.

1.1.3.2 Multilateral Treaties

These are the treaties which are concluded between more than two subjects of international law. These treaties can be informally referred to law making treaties. Though the reference as law making treaties is not true in any direct sense yet as post World War II Era has seen that much of international law is being codified through multilateral treaties. Moreover this type of treaties later on have great chance of yielding customary international law, and hence can have direct effect on international legal system.[19]

1.1.3.3 Treaties Constituting Objective Personalities

These are the treaties which when concluded gives birth to another subject of international law, specially an international organization. International organizations are created for some specific objective[20] mentioned in its Constitution, which is a treaty. This type is also known as legislative treaties.[21] These types of treaties have changed the structure and scope of international law to a great deal. As these are also the treaties which usually create international organizations so they directly or indirectly affect those states which have not joined them as a party.[22]

Sub Classification

The above classification was done on the base of the effect of treaties on international law. The above classified treaties can be furthered sub classified on the base of their mode of execution. On the said basis treaties can also be sub divided in two types. The types are;

1: Executed treaties: and

2: Executory Treaties:

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[19] ibid, pg. 23.
[20] International Law (Law of Peace), 2nd edition, N. A. Maryan, Macdonald and Evans, 1982, pg. 139.
[21] Public International Law In The Modern Word, David. H. Ott, Pitt Man Publishing, 1987, pg. 23.
[22] ibid, pg. 24.

1.1.3.A. Executed Treaties

These are the treaties which achieve their objective with the performance of one single act and after that they cease to have any further binding force. As regard to their operation they resemble to the executed contracts of municipal law.[23]

1.1.3. B. Executory Treaties

These are the treaties which require a series of continuous acts in order to achieve its objective. These types of treaties continuously effect the situations which fall under their objectives. This is because the subject matter of such treaties clearly indicates that they are "*intended to provide temporary basis for the adjustment of conflicting interests or for the promotion of common interests*".[24] The examples of this type of treaties are treaties of alliance, treaties of arbitration etc.

1.2.1 Doctrinal Issues

Paul Reuter in context of fundamental legal aspects of a treaty states that, "*Rules governing the conclusion of treaties are laid down partly by national Constitutions... partly by customary international law, recently supplemented by the 1969 convention (VCLT)*".[25] The statement marks an important point that is the treaties are the point where international law and municipal law comes in practical collaboration. This becomes especially more evident as in the process of treaty making; when it comes to the issue of giving consent; the municipal law of a state becomes operative and is acknowledged by international law.[26] Where as, when it comes to procedural matters[27] and governing legal

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[23] International Law, third edition, Charles. G. Fenwick, Appleton Century Crofts INC, pg. 675.
[24] Ibid, pg. 675.
[25] Introduction To Law Of Treaties, Paul Reuter, Printer Publisher, 1989, pg. 12.
[26] In Article7 (1) Vienna Convention on law of treaties, 1969 explicitly allows the state to give their consent by an authority which is competent under their own (municipal) legal system. (See Appendix C , pg.132.)
[27] Vienna Convention on Law of Treaties 1969

system [28](law governing the treaty) international law takes the lead. Furthermore in case of implementation of a treaty international law and national law comes in direct contact. So it is necessary to understand the operation of international law along with municipal law with regard to treaties. The theoretical aspect[29] of the relation between municipal and international law is represented by the clash of the doctrine of Monism and Dualism.

Which are:

1: Monism

2: Dualism

1.2.1.1 Monism: This doctrine purports that the international law and municipal law are part of one legal system.[30] This doctrine allows the application of rules and principles of international law in municipal courts.

1.2.1.2 Dualism: This doctrine states that international law and municipal law are two separate legal systems.[31] This doctrine does not allow any application of rules and principles of international law in municipal courts unless authorized by some national statute.

The question that which doctrine a state concluding a treaty is following is of considerable practical importance.[32] In monistic states as international law is considered a part of national legal system so there is much less conflict in the rules of treaty making and also once the treaty is concluded it becomes directly applicable in judicial and administrative system of the state. Where as in a dualistic state, the consent to conclude treaty is much dependent on national laws than international laws giving rise to conflicting situation at certain times and also further legislative measures are required to make a treaty applicable at municipal law of the state, once a treaty is concluded.

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[28] Article 2(1)(a), Vienna Convention on Law of Treaties 1969

[29] For theoretical aspects see, Principles of Public International law, third edition, Ian Brownlie, Clarendon Press Oxford, ch. ii, pg. 33.

[30] Public International Law In The Modern Word, David. H. Ott, Pitt Man Publishing, 1987.pg. 32.

[31] ibid, pg. 32.

[32] Introduction To Law Of Treaties, Paul Reuter, Printer Publisher, 1989, pg. 13.

Both doctrines have merits and demerits of their own. It is the legal and social setup of a state which determines that which doctrine will yield best results for the state.

1.3 Issue of Representation and Consent

No state is bound for any obligation unless it has consented to it. [33] Issue of consent is of utmost importance as without it state cannot be bound to follow any rule. The main reason for discussing the issue separately from other procedural rules is the sophisticate ness and importance of the issue.

Lord McNair noted about the issue that the issue was to be of little concern in the days of absolute monarchs, but in modern day states the matter is a much complex matter.[34] This is because the monarch were sole holder of absolute executive powers and as such they held the sole and absolute power to conclude treaties,[35] where as in modern governments, executive power is distributed to different organs of the state and unless the authority of the organ is proved under the law of that state the consent endorsed by that organ does not bind the state in a treaty. [36] Presently a modern state represents and consents to a treaty through three channels, 1 ;) head of states 2 :) governments 3 :) particular Ministers, or departments, or other agencies of state. though Lord McNair mentions "state" also in the list in context of the form of treaty making but in practical reality the "state" is no more being used as mode of concluding treaties.[37]

Furthermore, the VCLT (1969 and1986) have given explicit provision to discuss the issue of representation of state for the purpose of consent. Article 7(1) states that any person will be considered authorized to give consent on behalf of state if "*He produces appropriate full powers" or "it appears from the practice of the States concerned or from*

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[33] In Lotus Case(1927) on the question that whether a state action were limited without its consent, the PCIJ decided that "*rules of law emanate from their own free will as expressed in treaties or custom*", see Public International Law In The Modern Word, David. H. Ott, Pitt Man Publishing, 1987, pg. 16.
[34] The Law of Treaties, Lord McNair, Clarendon Press, 1986, pg. 59.
[35] Making of a treaty is executive act, International Law, F.A.Mann, Clarendon Press, 1973, pg. 329.
[36] The Law of Treaties, Lord McNair, Clarendon Press, 1986, pg. 60.
[37] Ibid, pg. 15.

other circumstances that their intention was to consider that person as representing the State for such purposes and to dispense with full powers". This full power can bound the state by treaty unless the state explicitly avails the provision of Article 14[38] and seeks to give its consent by ratification.

In absence of an explicit law or an ambiguous law granting executive authority to an organ for conclusion of treaty the representative mentioned in Article7(2)[39] will be considered authorized to provide consent or their consent will be considered authorized for binding state with treaty . Once the authorized consent is given the state can not escape from the obligations on its own discretion.

1.4 Obligations and Implementation

Treaties are concluded with certain objectives, which give rise to certain obligations, in mind and once a state becomes bound by a treaty it has to comply with its share of obligations to achieve that objective. [40] In international law the issue is dealt under the principle of "pacta sunt servanda" stated in Article 26 of VCLT (1969). The principle literally means "in good faith" which makes it clear that a state is bound to obey the obligations, imposed upon it under a treaty, in fair and just way. This Article is further followed by Article 27 which further ensures that no state is allowed to hide behind its national laws as a reason for non compliance.[41] Moreover international law even does not allow a state to take any unilateral measure which defies a treaty obligation. [42]

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[38] Article 14(1) (c & d). VCLT (1969) (See Appendix C , pg. 131.)

[39] ibid, Article 7(2) (See Appendix C , pg.129.)

[40] In Alabama claim Arbitration case on the issue of breach of British obligations as neutral the Tribunal rejected the British plea of insufficiency, of legal means at national law, to avoid the violation of its international obligation. See. Cases and Materials, sixth edition, D. J. Harris, Sweet & Maxwell, 2004, pg. 69.

[41] Article 46 VCLT (1969), (See Appendix C , pg.140.) The state bound by a treaty still can use its municipal law to avoid international obligations by proving that the consent it gave to be bound by treaty was not in accordance to its municipal law.

[42] As decided in an advisory opinion in, Reservation to Genocide Convention, I.C.J reports, 1951, pg. 21.

1.4.1 When Obligations Become non Binding

Till the treaty is operative no state can escape its obligations, but as soon as a treaty proves to be invalid, [43] is terminated, or ceases to be operative,[44] all states party to it are free from any obligation under it. [45]

1.4.2 Remedies in Case of Breach of Obligations

Obligations under a treaty are binding and no state is allowed a breach. In case if a party violates its obligation international law provides certain remedies for the effected party. The effected party as a remedy can; i) unilaterally abrogate the treaty; ii) suspend performance; iii) can ask for reparation and take certain non-forcible measures to secure reparation; iv) institute arbitral or judicial proceedings; v) in certain conditions can prosecute individuals and vi) can seek any other remedy as provided with in the provisions of the treaty. [46]

1.4.3 Implementation

When a state becomes party to a treaty it becomes its duty to implement it in every required domain. That is the treaty either requires to be implemented in the municipal jurisdiction or in external affairs of the state or both, as required by the treaty. [47] When the matter is of external affairs the implementation is not a problem as the executive authority to carry out such affairs is usually vested in the same organ of the state that is

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[43] Invalidity is to be proved, when consent given by a state is unauthorized, or when there is a case of fraud, coercion or when the treaty is concluded against a norm of international law. For detail see, VCLT (1969) Part iv section 2. (See Appendix C , pg.140.)

[44] Termination or cessation of a treaty with consent of parties, change in fundamental circumstances, impossibility of the objective or obligations of treaty, are some of the issue. For detail see, VCLT (1969) Part iv section 3. (See Appendix C , pg.142.)

[45]Part iv section 5 VCLT (1969), For status of obligations of invalid, terminated or suspended Treaties (See Appendix C , pg.146.)

[46] For detail see The Law of Treaties, Lord McNair, Clarendon Press, 1986, pg. 539-586.

[47]Ibid, pg. 78.

competent to conclude treaties.[48] On the other hand when it comes to implementation in municipal jurisdiction there are two issues;[49] for monistic states the matter is simple as soon as treaties are concluded they become a part of their legal system and they do not require a special legislative measure to implement the treaty. Where as a dualist state has to take certain legislative and executive measures before the treaty can be implemented in its municipal system.[50]

1.4.4 Modes of Ensuring Compliance

In international law there are certain measures available to ensure that a party to treaty will comply with it. The measures are; creating a charge, securing a guarantee of other state, adopting monitoring procedures, taking international enforcement actions, taking retaliatory actions and so on.[51]

1.5 Procedure of Treaty Making

For the formal treaty making process the Vienna Conventions (1969 & 1986) are followed. These Conventions provide rules for all procedural matters covered under a treaty and in case of any deficiency the Conventions themselves allow the use of customary rules of treaty making (under international law) to be applied to fill the gap.[52] The formal procedure that is followed in treaty making can be described in the steps given below:

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[48] Ibid, pg. 79 these types of treaties are usually treaty of alliance, neutrality etc.
[49] It depends which doctrine a state is following under its law as certain (monistic) state pass a general law enabling all international rules (weather from customary international law or from treaties) to be followed in municipal system. see Ibid, pg. 80.
[50] For a detailed study of municipal action in implementing treaties see
The Law of Treaties, Lord McNair, Clarendon Press, 1986, part 1, chapter 4, pg. 78-110.
[51] For detailed study see. Oppenhiem's International Law, 9th edition, ed. By sir Robert Jennings and Sir Arthur Watts, Universal Law Publishing Co. 2003, pg. 1257.
[52] Preamble of VCLT 1969 (Appendix C, pg. 127.)

1.5.1.1 Conclusion of Treaties

The conclusion of treaties involves three major steps. [53] They are form; reservation; and consent.

1.5.1.2 Form

The parties can decide the form of the treaties i.e. whether the treaty is oral or written one, and if written one than in which language. In case of written treaty the authentication of text is also ensured

1.5.1.3 Reservation

If allowed under the treaty a state before giving final consent can make reservations. Reservations are in fact unilateral objections to those Articles of a treaty which are unacceptable to the contracting states. Reservations are made to exclude or modify the legal effect of some of the provision of a treaty with respect to the reserving state only. Generally, international law has not been that lenient towards reservations but in order to avoid rejection of complete treaty by states, international law gradually gave way to reservation. This was done so as to facilitate more and more countries, which are hesitant for one or other reason, to join a treaty, by bypassing that hesitation, through a reservation on the concerned issue and join rest of the text. In contemporary law of treaties (VCLT 1969), the rules about making reservation are simple and clear Article 19 to 23 describes all relevant issues of reservation.[54] Under the Convention, apart from certain limitations any state becoming party can make reservation on an article of law. The limitations on reservation given by VCLT 1969 are three; The first one being that the reservation made is not allowed by the treaty itself. Second is that the treaty only allows a number of negotiated reservations and any other reservation than those which are allowed

[53] The procedure is governed under Part ii Sect. 1 of VCLT (1969). (See Appendix C, pg. 129.)
[54] Article 19-23 VCLT 1969, (See Appendix C, pg. 132-134.)

are prohibited.[55] Thirdly any such reservation, which defies the main objective of the treaty, is prohibited. Apart from mentioned reservation states can make any reservation, and such reservation secures binding force as soon as they are accepted by other state party or parties to the treaty. [56]Making reservation is not completely a unilateral issue. The VCLT 1969 has also maintained that for any reservation, apart from negotiated one, to have legal effect it is necessary that other states party to the treaty should also allow such reservation. Otherwise any such reservation will have no effect under VCLT 1969.

1.5.1.4 Modes of giving Consent

When it comes to consent, states have to adopt a number of modes to give their consent for joining a treaty. For different characteristic and legal effect the modes of consent are being discuss below.

1.5.1.4.1 Signature

After the authentication of text of treaty the negotiators sign the draft of the treaty. Here if the treaty requires so and the state law has no reservations about further consent the treaty becomes concluded i.e. binding on contracting states. [57]

1.5.1.4.2 Ratification

If the law of a state seeks further consent from the highest degree and it is evident or if the treaty requires so the ratification becomes necessary to make treaty applicable on a state. [58] Once a state ratifies a treaty it in true sense it gives binding consent to the treaty.[59] Ratification is a formal process of the executive by which a state, which has

[55] Article19, VCLT (1969) (See Appendix C, pg. 132.)
[56] The procedure is governed under Part ii, Sect. 2 of VCLT (1969) (See Appendix C, pg.132.)
[57] Article 12, VCLT (1969) (See Appendix C, pg.130.)
[58] Article 14, VCLT (1969) (See Appendix C, pg.131.)
[59] Principles of Public International law, third edition, Ian Brownlie, Clarendon Press Oxford, pg. 604.

concluded a treaty become binding on it.[60] The difference between signature and ratification is that signature only concludes a treaty, the treaty may not be binding on the state as yet, but as soon as a state ratifies a treaty legally the treaty becomes binding and applicable on that state,[61] unless the treaty itself provides otherwise.[62] In simple words signature is conclusion of treaty by an authorized representative, where as ratification is sanction of that conclusion of treaty by an authority on whose behalf the treaty has been concluded. The legal prospect of the ratification has two aspects national and international. On national level ratification, also known as Constitutional ratification means the procedural act by which the appropriate authority acknowledges the "*willingness of the state to be bound by a treaty.*"[63] Where as, in international sense ratification is meant to be the "*procedure whereby a treaty enters into force,*"[64] Summarizing all the views, in fact ratification is the procedure which brings a treaty in force and makes it binding and applicable on the ratifying state.

1.5.1..4.3 Accession

When a state which has not been a contracting state wishes to become a party to a treaty and the treaty allows so it can do so by accession. Accession in fact is giving consent; a consent which is equivalent to ratification in respect of its effect under Article 15 of VCLT (1969).[65]

After the above process if no other procedure is mentioned the treaty comes into force for bilateral treaties and becomes binding on parties of a multilateral treaties.

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[60] Law Among Nations, fifth edition, Gerharld Von Glenn, Macmillan Publishing Co. inc., 1986, pg. 495
[61] ibid, pg. 495.
[62] Principles of Public International law, third edition, Ian Brownlie, Clarendon Press Oxford, pg. 604.
[63] The Law of Treaties, Lord McNair, Clarendon Press, 1986, pg. 129.
[64] ibid, pg. 129.
[65] Ibid, pg. 604.

1.5.2 Amendments

If there is a need the parties to a treaty can amend a treaty. The procedure to amend a treaty is usually provided in it. In case the amendment can also be brought about in shape of a subsequent treaty. [66]

1.5.3 Interpretation

When interpreting a treaty the preference is to be given to the plain meaning of the words being interpreted. Apart from it when interpreting a considerable importance is given to the intention of parties and to prove the intention any pre treaty agreements preamble annexure is considered. Once intention is proved it is also required to interpret the word in some special meaning. In case of multilingual treaty the meaning is taken which suits both the texts or the meaning of that text is taken which is given priority by parties[67].

1.5.4 Invalidity of Treaty

Any treaty concluded and in force can be declared invalid if it is proved that the state party to it has given its consent with out authority or the consent obtained is through fraud, coercion, corruption or the treaty was concluded against or has become against jus cogen of international law. [68]

1.5.5 Termination and suspension

A treaty can be terminated as according to the provisions provided in it. A part from it a treaty can be terminated by mutual agreement, or when the performance of a treaty proves to be supervening impossibility or when there is a fundamental change in the

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[66] Article 40-41, VCLT (1969) (See Appendix C, pg. 138-139.)
[67] Article 31-32 and 33 VCLT (1969) (See Appendix C, pg. 136-137.)
[68] Article 46-53 VCLT (1969) (See Appendix C, pg. 140-42.)

circumstances or there is material breach from one party the other party gets the right to terminate the treaty. Some times the operation of treaty is suspended for a brief period and resumes after that period as during wars. [69]

The effect of termination and invalidity is that the obligations under a treaty becomes non binding and loses any force of law.

[69] Article 54-64, VCLT (1969) (See Appendix C, pg. 142-145.)

CHAPTER II

TREATY MAKING AND RELEVENT ISSUES

This chapter is meant to deal with the theoretical aspects of laws and procedure of treaty making, with regard to states and in particular Pakistan. The focus of the chapter will be to establish Pakistan, as a sovereign state and member of international community and as such its ability to conclude treaties with any restriction or limits on exercise of that sovereignty. The chapter will further focus on the issue of representation, that is which organ can conclude treaty on behalf of Pakistan and to what extent that organ can bind Pakistan in an international obligation under a treaty. This chapter will discuss the issues of treaty making capacity of Pakistan under international law; representation of state by executive; distribution of executive power; Constitutional limits on the executive's power to conclude treaties and rest of the procedural issues of treaty making, faced by Pakistan.

2.1 SOVEREIGNITY OF A STATE TO CONCLUDE A TREATY

In international legal system the basic actors which conclude treaties are states. International law determines the capacity and limitations of a state to conclude treaties that is whether a state can sign a treaty or not and if a state can sign a treaty than to what extent it can under take obligations. Basically there are three issues which play significant role in determining the capacity of state, under international law, to conclude treaties. First and foremost issue is sovereignty of a state, second issue is the structure of state (determining the practice of sovereign power vested in state under international law), thirdly the internal limitations placed on the state by its own actions (more evident in Federal states practicing dualist doctrine; where the Constitution may grant either partial, full or no capacity to constituent of a federation). In fact second and third issues are two aspects of one same point that is who is to exercise the sovereignty, in case there is amalgamation of two or more than two states.

The codified law of VCLT 1969 confers every state with a general power to conclude treaty. Article 6 of Vienna Convention clearly states the words "*Every State possesses*

capacity to conclude treaties" conferring every state with unrestricted power to conclude treaty,[70] however in fact the issue is not that simple. Paul Reuters, while explaining the scope of the said Article notes "*Any state may renounce this capacity, either completely and irrevocably, thereby ceasing to be a state, or provisionally, or partially, as in the case of protectorates and Federal unions ranging from confederacies to Federal states.*"[71] In simple words if the principle "*Every state can sign treaty*" is accepted than the rule that state can surrender its treaty making power becomes nullified. On the other hand if we consider the rule that a state can surrender its capacity to conclude treaty is true (in which case a state cannot sign an independent treaty, examples might be of protectorates like Andorra, principalities like Monaco, dependent dominions and dependent states) than the rule that every state can sign treaty becomes meaningless. In such case the proper answer determining the capacity comes from customary international law, where the treaty making capacity of a state is attributed to its sovereignty. Lord McNair notes under the authority of Permanent Court of International Justice (PCIJ) (Wimbledon's case), "*The right of entering into international engagements is an attribute of state sovereignty*".[72] Though if we try to understand the capacity to conclude treaty only to unprecedented sovereignty we might face complexities and might not be able to understand all cases of treaty making by a state. So it is rather convenient and convincing to take the capacity of treaty making power of a state as proportional to its sovereignty, that is the treaty making capacity of a state is restricted and limited to that degree or cases to which the state has surrendered its sovereignty, either by express undertaking or by undertaking some other international obligations.

The issue of sovereignty is not the only question related to the capacity of a state to conclude treaty under international law. The second issue which directly can be dealt under the scope of capacity is that, who is to represent and practice that sovereign power attributed to the state. In fact, the structure of a state usually determines that who will practice the sovereign power in international affairs. To understand; in a Federal state, the full capacity is granted to central body under international law because the constituent of

[70] Article 6, VCLT (1969) (See Appendix C, pg. 129.)
[71] Introduction to law of treaties, Paul Reuter, Printer Publisher, 1989, para118, pg. 56.
[72] The Law of Treaties, Lord McNair, Clarendon Press, 1986, Annexure 1, pg. 754.

a federation vests all sovereign power in center or Federal Government; [73] in con-federation all confederating states retain their full capacity of treaty making, because the con-federating state do not surrender their sovereignty to center, they only agree and vest a limited power to the confederation.[74] The main point in the issue is that, the international law determines the capacity to conclude treaty, by considering and applying customary rules of international law practiced for such type of states.

The third aspect of the issue which helps in determining the capacity of a state to conclude treaties is not followed under international law; rather it is national law which helps determining the capacity of a state to conclude treaty. Paul Reuter on the issue, in the context of capacity to conclude treaty, gave his attention in the words "*In pure theory, however, Federal unions had to set apart. According to dualist thinking, it was up to domestic Constitutional law of Federal states to grant powers for the conduct of foreign relations, possibly maintaining some limited 'Provincial' or 'cantonal' capacity.*"[75] The words are self explanatory, Federal states are unions of state under one binding Constitution. This Constitution in fact is the Law instead of international law, which determines the capacity of states in a federation to conclude treaties.

The second and third points are quite similar. Both points are related to the structure of a state and are explaining that when two or more than two states join together than, who will determine the capacity of state to conclude treaties. As noted above particularly in case of, Federal state, practicing dualist doctrine (practicing a doctrine based on separation of national and international legal system in two spheres), the national law, which generally is Constitution, determines the capacity of a state to conclude treaty and if such Constitution does not determine the capacity than the customary international law will be applied to determine the capacity of the state. Where as, in general, it is customary international standards (of that particular type of state on base of structure) which are to be followed in determining the capacity of a state.

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[73] ibid, pg. 37.
[74] ibid, pg. 39.
[75] Introduction to Law of Treaties, Paul Reuter, Printer Publisher, 1989, para 119, pg. 56.

The main reason for the above discussion was to prepare a context for discussing the capacity of Pakistan to conclude treaties. Pakistan is a sovereign state practicing a Federal structure under dualist doctrine. So the issues which help determine the capacity, to conclude treaties, of Pakistan are:

1: Pakistan as a Sovereign State;
2: Pakistan as A Dualist State; and
3: Pakistan as a Federal State

2.1.1 Pakistan as a Sovereign State

Pakistan secured its independence, though as an independent dominion, on 14 august 1947. The independence was secured under Indian Independence act of 1947 from the British Rule. Though a dominion from the very beginning of its creation Pakistan was granted Sovereign rights in exercise of any of its territorial or extra territorial activities, and as such was fully capable of concluding treaties in all matters.[76]

The insignificant link present between Pakistan and Britain was weakened by the adoption of objective resolution in 1949, and further was severed by adoption of the Constitution of 1956. Under the 1956 and later under the 1962 Constitution, Pakistan adopted a Federal Parliamentary, and then Federal Presidential form of government, respectively and instead of a dominion, though independent, fully accredited itself as a sovereign state; fully capable to conclude treaties with international community as an independent state. This status of Pakistan continued till 1971, when territories of East Pakistan parted away to form a new state of Bangladesh. This fact was acknowledged in the Constitution of 1973 of Pakistan in which territories, to remain part of Pakistan were redefined under Article 1(2).[77] This Article determines the territories over which Pakistan exercises full sovereign power and has a competent capacity to conclude treaties, on the behalf of those territories. This status is till now enjoyed by Pakistan and hence apart

[76] Indian Independence Act of 1947, section 1, 6, 7 and 8.
[77] Article 1(2), Constitution of Islamic Republic of Pakistan, 1973 (See Appendix A, pg. 89.)

from the limitations imposed, by international law due to international obligation, and National limitations imposed by Constitution, Pakistan can conclude any treaty with any subject of international law.

2.1.2 Pakistan as a Dualist State

In Pakistan; the power to conclude treaties and to implement the relevant non legislative and non judicial matters is vested in the executive, allowing executive to participate in development of international law and in other words admitting international law as a governing legal system. However on the same time the legislative and judicial domain is left under the sole influence of the national legislature; protected from any legal effect arising even from the treaties and consequent obligations under taken by the executives. This is done by following a strict dualist doctrine in Pakistan.

Constitution of Islamic Republic of Pakistan (Pakistan), in context of executive power[78], has well defined that, who is going to exercise what power and how that power is to be exercised. Article 90[79] of the Constitution as stated "*The executive authority of the federation shall vest in the President and shall be exercised by him, either directly or through officers subordinate to him, in accordance with the Constitution*" makes it clear that all the executive authority of the federation of Pakistan is to be exercised by its President. Furthermore, as Article97[80] defines that "*Subject to the Constitution, the executive authority of the federation shall extend to the matters with respect to which Majlis-e-Shoora (Parliament) has powers to make laws, including exercise of rights, authority and jurisdiction in and in relation to areas outside Pakistan*", clarifying extent of executive authority and that is to be each and every executive act regarding the issues mentioned in Federal Legislative List and the issue of treaties is well covered under section 3 of part1 of the Federal Legislative List which states as "*External affairs, the implementing of treaties and agreements, including educational and cultural pacts and*

[78] Executive power or authority; J. Muhammad Munir has defined it as "*To imply the residue of governmental functions that remain after legislative and judicial functions are taken away*". The Constitution of Islamic Republic of Pakistan, J. Muhammad Munir, ed. Zubair Saeed, PLD Publishers,1999, pg. 257.

[79] Article 90 (1), Constitution of Islamic Republic of Pakistan, 1973 (See Appendix A, pg. 90.)

[80] ibid, Article 97 (See Appendix A, pg. 92.)

agreements, with other countries; extradition, including the surrender of criminals and accused persons to government outside Pakistan.". [81] The mentioned laws when read together give President all the executive powers; to negotiate and conclude treaties; to implement the treaties when they require no specific protection in domestic legal affairs; and to take any executive measures relevant for implementation of treaties, in case the treaties requires legislative action.[82] Thus, the specified law lays down a clear picture of the executive power regarding treaties and as treaties are to be concluded under international law so as such Constitution admits international law as a legal system and allows it to govern all matters of foreign relations and treaties.

Though the executives are given a free hand in those affairs of treaties which require no legal protection in domestic jurisdiction but when the treaties, to be implemented, are affecting legal affairs or are seeking remedies in domestic courts the treaties need the help of the legislature. The point is proved when we read section 3 part1 of the Federal Legislative List which clearly authorizes the legislature to make laws to implement treaties. The issue of implementation by legislative action is only feasible when the matter is above or beyond the scope of the executive authorities. This attitude is further confirmed by the Article 175 (2) of Constitution States as "*No courts have any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law.*",[83]Further under the scope of the Article, in the case of Hitachi ltd. v Rupali Polyester, Supreme court of Pakistan held that " *Principles of English common law or equity and good conscience cannot confer jurisdiction on the courts in Pakistan which has not vested in them by law.*"[84]

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[81] Section 3, Part1 Federal Legislative List, Fourth Schedule Constitution of Islamic Republic of Pakistan, 1973

[82] Section 3, part, 1 of Federal Legislative List, asks the executive under context of Article 90 to take; executive measures necessary for implementation where as on the same time it vest the powers in legislature to legislate in order to implement a treaty. Thus as per where the executive action, in case of implementation of treaties, is shared by legislature the executive has the only duty of carrying out the relevant executive measures for implementation of treaties. See section 3 part1 of Federal Legislative List of Constitution of Islamic republic of Pakistan.

[83] Article 175 (2), Constitution of Islamic Republic of Pakistan, 1973 (See Appendix A, pg. 96.)

[84] 1998 SCMR 1618

All this makes the jurisdiction of the court subject to a legislative act not an executive act[85]; that is, if the implementation of treaties in judicial sphere or legislative issues is required the executive authority cannot do any thing on its own in national jurisdiction. All this under the Constitution of Islamic republic of Pakistan give rise to two points; First; International law is taken as a governing legal system for any treaty signed. Secondly, international law is not allowed to be applied directly with in national jurisdiction. This attitude is but a dualistic one.

Summarizing the above discussion we can say the Constitution of Pakistan certifies an effective role of executive in treaty making admitting international law as a legal system; where as on same time, municipal jurisdiction is separated and protected from any legal effect or influence of international law thus confirming the dualist attitude of the state. On practical side on one hand the attitude confirms that no rule of international law, even arising from treaties to which Pakistan is a party, effecting legal rights of persons can be enforced in Pakistan's jurisdiction without a proper legislative measure by law making bodies in Pakistan. That is any treaty regarding the legal and judicial sphere need the approval of legislature, more than it requires the approval of executive, in Pakistan. Secondly, it also confirms that the final authority to determine whether the territories in federation of Pakistan will have the capacity to conclude treaties, remains with the Constitution of Pakistan. Furthermore, it is also evident from the above study that, in absence of a specific law or state practice for a specific issue, state of Islamic Republic Pakistan will be deemed to behave, as a dualist state behaves.

2.1.3 Pakistan as a Federal State

The system of government a state practices, though not uniform but still, gives a good and significant insight in judging the authority and capacity of its representative to conclude treaties.[86]

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[85] The Constitution of Islamic Republic of Pakistan, J. Muhammad Munir, ed. Zubair Saeed, PLD Publishers, 1999, pg. 343.
[86] The Law of Treaties, Lord McNair, Clarendon Press Oxford, 1986, pg. 36.

The Constitution of 1973 of Islamic Republic of Pakistan, under Article1 (1) stated as "*Pakistan shall be a **Federal Republic** to be known as Islamic Republic of Pakistan, hereinafter known as Pakistan*" practices a Federal system of government,[87] over those territories which are mentioned in Article1 (2). The Article state the territories as, "*the territories of Pakistan shall comprise;*

(a) the Provinces of Baluchistan, the North West Frontier, the Punjab and Sind;

(b) Islamabad capital territory, hereinafter referred to as Federal capital;

(c) The Federally Administered Tribal Areas; and

Such states and territories as are or may be included in Pakistan, whether by accession or otherwise".[88] The issue of system of government is of practical importance for it gives a basic idea about the status of the state and also stipulates that who is to represent and conclude treaties on behalf of the state.[89]

In a Federal state generally the power is divided between the executive and legislative bodies of center (Federal Government) and constituting units (Provinces, States, Units, Cantons what ever the name may be), under a Constitution. The Federal Government has some exclusive executive and legislative authority in some matters whereas in some matters, the constituent of federation are guaranteed to exercise executive and legislative authority, in their territorial jurisdiction, free of any interruption from the center. In this distribution generally the issue of treaties is left with the Federal executive and legislature and the constituent units have no power whatsoever to make any international agreement equal to the status of a treaty. This is what Lord McNair states about Federal state "*Normally, it is the Federal Government that exercises the totality of international capacity to conclude treaties and it is the exception to find any of the member states being permitted to participate in this function.*"[90] The view is quite clear that in a Federal state the treaty making power is in central hands, that is Federal Government and the states or Provinces part of that federation have no capacity to participate in a treaty. Though the Constitution of the Federal state can allow states or Provinces or units (what

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[87] Article1 (1) Constitution of Islamic Republic of Pakistan, 1973 (See Appendix A, pg. 89.)
[88] ibid
[89] For detail study of the impact of status of a state on its treaty making capacity see; The Law of Treaties, Lord McNair, Clarendon Press Oxford, 1986, part 1, chapter 2, pg. 35- 57.
[90] The Law of Treaties, Lord McNair, Clarendon Press Oxford, 1986, pg. 37.

ever may be the constituent of Federation) a limited power to conclude treaties,[91] but in general Provinces states or units with in a Federal state have no such power.[92] The Constitution of Pakistan do stands on a strict Federal footing and exclusively grants the power to the Federal executive to conclude treaties and the legislature to implement treaties in whatsoever matter. The Provinces are granted no authority to conclude any international agreement which has an equal status to a treaty. Though the Provinces can seek agreements with foreign powers in discharge of their executive power but such agreements, unless allowed by the Constitution, are never to be equivalent to the status of a treaty if they are they are invalid.

2.2 Limitations on the Sovereign Capacity to Conclude Treaties

International law has given the states free and unlimited power to conclude treaties, but recent times, have seen quite few changes in international law. The expanding globalization trends want more and more security, in form of continuity in international rules and certainty and compliance to the international obligations, from states. For the reason, International law imposes some restriction on the unrestricted concept of sovereign capacity of states, to conclude treaties.[93] That is, in exercise of their capacity to conclude treaties, states parties to a certain treaty, have to take care of certain norms

[91] ibid, pg. 38, one such example is of the Constitution of Switzerland. Which though a Federal state allows its constituent a limited power to enter into certain kinds of treaties.

[92] Lord McNair notes the example of United States of America, Dominion of Canada and common wealth of Australia as pure Federal states for vesting the Federal Government's complete and total authority to conclude treaties. ibid, pg. 37.

[93] International law places two types of limitations on a capacity, to conclude treaties, of a state. First kind of limitations is those which are due to the defect of sovereign capacity of state, such as, the limitations on protectorate. Where as the second kind consist of those limitations which are equally applicable on a fully sovereign state. Pakistan is a fully sovereign state, so for practical reasons I have discussed only those limitations which do apply on a fully sovereign state. For details on types of limitations see comments of H.Lauterpacht on Capacity of state. See International Law, volume 4, Hersch Lauterpacht, ed, E.Lauterpacht, Q.C., Cambridge University Press, 1978, pg. 245-256.

before they can make the treaty valid and binding on each other. [94] Lord McNair state that, " *In every civilized community there are some rules of law and some principles of morality which individuals are not permitted by law to ignore or to modify by their agreements.... The society of states which acknowledges obedience to the rules of international law forms no exception to the principles stated above*".[95]

The main reason for discussing the topic is its practical importance. Pakistan is a sovereign state and has to abide by legal restriction placed by international law on all states. Furthermore, when we are going to decide that which obligation Pakistan can undertake and which it cannot under take, we will certainly have to look on the topic.

The main explanation of the idea, of limitations on the independent capacity of states to conclude treaties, can be given in the words of Lord McNair, he notes about the concept of sovereignty, in relation with treaty obligation, "*Sovereignty or independence is the reflection of the hard fact that states (and their governments) have in present form of world society no earthly superior, in the sense that every individual human being, either as a national or in some other capacity, must acknowledge some state (and its government) as his superior. From this fact it is sometime inferred superficially that because a state is sovereign or independent, it can in the last resort use force, break agreements, and generally do what it likes with out being answerable to anyone. The idea is completely erroneous, not only morally and politically, but also legally.*"[96] In simple words Lord McNair has tried to explain that the states cannot escape their responsibilities, they cannot avoid or by pass some certain rules and obligation and if states do so they commit a legal breach. For such restriction on states, Lord McNair has forwarded a simple reason, "*Every state upon recognition of its state hood by other states, is deemed to have accepted the body of customary international law recognized by the society of states, which include the rule pacta sunt servanda.*"[97] This reason gives justification through a stipulation that every state is accepted by other states so every state

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[94] For details see, The Law of Treaties, Lord McNair, Clarendon Press Oxford, 1986, pg. 213-223 on essential validity of treaties, also, International Law, volume 1, third edition, Georg Schwrzenberger, Stevens & Sons Limited, 1957, chapter 26, pg. 472-487. see also, International Law, volume 4, Hersch Lauterpacht, ed, E.Lauterpacht, Q.C., Cambridge University Press, 1978, pg. 252.

[95] The Law of Treaties, Lord McNair, Clarendon Press Oxford, 1986, pg. 214.

[96] ibid, Appendix A, pg. 757.

[97] ibid, Appendix A, pg. 758.

should honor the commitments arising after such recognition and should abide by some general principles or in other words limitations on their independence, sovereignty.

Though Lord McNair on the issue has divided such rules of international which restrict or limit the validity of treaties in four specific categories,[98] yet in fact, these limitations or restrictions on independence or sovereign capacity, to conclude treaty, of state can be termed in two broad categories. First is that, the subject matter of the treaty is not against any fundamentally established principal of international law, in this case the treaty is ipso facto invalid or void. Secondly that, the state should not defy any of its previous obligations by a new treaty, in this case the treaty may be void, void able or may be provisionally applicable.

The two categories can be listed as;

1: Limitations Due to settled principles of international law: and

2: Limitations Due to other International Obligations:

2.2.1:1: Limitations Due to Settled Principles of International Law

No state can sign any treaty which is against jus cogen. In other words any international obligation violating jus cogen is invalid one. The term Jus Cogen stands for those established principles of international law, which are accepted by international community as binding and beyond doubt. Article 53, of the VCLT 1969, define and describes the importance of jus cogens in the words, "*A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character*".[99] The words of the Article are quite clear and authoritative, if any thing contradicts the established principles or preemptive norms of international law the preemptive norms prevails.

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[98] ibid, pg. 213-223.

[99] Article 53, VCLT (1969) (See Appendix C, pg. 142.)

Lord McNair has covered the issue, under customary international law, by categorizing the principles of international law.[100] In first instance, he has discussed those rules of international law which arise from customary international law and are of fundamental importance. In example the noted author has stipulated the example of piracy and clarified that no two states can sign any treaty which can allow piracy and still be deemed as valid.[101] That is in such case the power of states to conclude treaty is limited. Secondly Lord McNair has noted general principles of international law. These are those principles which are generally accepted by international community, one example of such principles is the 'principle of renunciation of war'.[102] No state can sign any treaty, which defies such principle, ensuring another limitation on its independent or sovereign capacity to conclude treaties. Thirdly the main limitation which may stop states from concluding treaties is United Nations.[103] In fact in present modern world it is United Nation which in one or other way is affecting the capacity of states to conclude treaties. Here for the effect of United Nations as limiting the capacity of states only one Article noted by Lord McNair needs to be quoted, the Article 103 of charter of United Nations clearly states, "*In case of conflict between the obligations of the members of the United Nations under present charter and their obligations under any other international agreement, their obligations under the present charter will prevail*".[104] The Article clarifies that what ever comes with in the limit of United Nations Charter no, at least member, state can pledge itself against the charter and Pakistan also, as a member of United Nation, has to abide by the Charter. If Pakistan signs any treaty against the charter the treaty is simply un applicable.

If any treaty is signed against the first two mentioned categories, the treaty is ipso facto invalid. Where as in the third case of United Nation, in exact sense the treaty is un applicable between the member states and in implied sense the treaty signed, by the members of UN, in violation of UN charter the treaty is rejected in the first instance and has a status equal to void treaties.

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[100] The Law of Treaties, Lord McNair, Clarendon Press, 1986, pg. 213.
[101] ibid pg. 214.
[102] ibid pg. 214.
[103] ibid pg. 215.
[104] The Law of Treaties, Lord McNair, Clarendon Press, 1986, pg. 216.

Shwarzenberger in the case notes, that the issue is rather of priority between obligations, settled to be under the rule of jus aequuem;[108] the rule is intended to minimize the conflict between the two conflicting treaties, "*The rule enjoins to interpret and apply each treaty in a spirit of reasonableness and good faith*".[109] Once, the resolvable conflicts between conflicting treaties are resolved the remaining conflict in between the treaties give way to that treaty which is more specified in its provisions. Thus any same states member to a treaty have to be more specified, in the provisions of subsequent treaty, if they wish to give authority to it.

C: Treaties Giving Rise to Conflict between Different Parties

When a state has obligations under a treaty with one state, it cannot defy the said obligations by signing a new treaty, with another state. In fact if a state does so it gives rise to quite conflicting situation. Georg Schwarzenberger notes about the fact as, "*It is hard to see why the other party to either the prior or subsequent treaty should not be able to demand full compliance with its treaty obligations from the party which has put itself into such an embarrassing position.*"[110] The idea is clear that the other parties might have no concern with the problem of the common party in conflicting treaties, which the common party might not be able to fulfill leaving the state in form of a violation of the principle of pacta sunt servanda.[111]

A treaty which can defy a previous obligation does not follow a uniform rule of validity. Such a treaty can be void, void able, provisionally un applicable, partially void, or acceptable as modification to previous obligation. In fact it is the nature of the conflict, which arise in case of undertaking a subsequent conflicting obligations, that determines the effect and scope of the violation of previous obligation.

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[108] International Law, volume 1, third edition, Georg Schwrzenberger, Stevens & Sons Limited, 1957, chapter 26, pg. 477.
[109] Ibid, pg. 474.
[110] Ibid, pg. 475.
[111] The Law of Treaties, Lord McNair, Clarendon Press, 1986, pg. 220, Lord McNair has discussed the various issue involved in detail.

2.3 Representation and Authority to Conclude Treaties on Behalf of Pakistan

In scope of Article 7, of Vienna Convention on Law of Treaties; Pakistan can define the authorities which can represent and conclude treaties on behalf of Pakistan. VCLT 1969 has originally granted the authority to states to decide its own representatives for treaty making. Under Article 7 (1) the Convention speaks out the words, "*A person is considered as representing a State for the purpose of adopting or authenticating the text of a treaty or for the purpose of expressing the consent of the State to be bound by a treaty if: (a) he produces appropriate full powers; Or (b) it appears from the practice of the States concerned or from other circumstances that their intention was to consider that person as representing the State for such purposes and to dispense with full powers.*"[112] Pakistan in scope of these words has a quite developed system to perform all the functions relevant to treaty making and its different phases.

Under the Constitution of Islamic Republic of Pakistan, in Article 90, 97 and 99 of the Constitution, the authority to conclude treaties is vested in President and he can and has to exercise this authority directly or through officers subordinate to him. An elaborate explanation of how this authority of the President is to be exercised is provided in the Rules of Business of 1973 (ROB 1973) made in pursuance of Article 99 (3) of the Constitution of Islamic Republic of Pakistan. Thus to sort out the issue that who at subordinate level is authorized to conclude treaties, we first have to look at the administrative setup of the Federal Government under the Constitution and the rules.
Generally the President is given the help of a Cabinet of Ministers, with Prime Minister as their head, to deal with the executive administration of the state. [113] Where, each Minister of the Cabinet is entrusted with the charge of a separate one or more administrative Federal Ministry (Ministry), with full authority over that Ministry.[114] These are the Ministries which are responsible for the executive administration of the

[112] Article 7, VCLT (1969) (See Appendix C, pg. 129.)
[113] Article (91, 92), Constitution of Islamic Republic of Pakistan, 1973 (See Appendix A, pg. 90-91.)
[114] Rules of Business 1973, Government of Pakistan, (as amended up to 6-7-2004), Rule 3(4), (See Appendix B, pg. 100.)

state.[115] Where, a Ministry is responsible for carrying out business of only that affair of the state, which is entrusted to it; and in certain cases the Ministries are even authorized to negotiate and conclude treaties while discharging their responsibilities, for the state. So with respect to treaty making capacity, this administrative setup leads to a four fold setup. Firstly, the President himself has the capacity, and all the respective Ministries exercise the executive authority in name of the President. Secondly, Prime Minister as head of all Ministers has all the capacity, including the capacity to negotiate and conclude treaties, which all his Ministers have. Thirdly the Ministries and their respective Ministers are capable of negotiating and concluding treaty. A part from above mentioned cases President, Prime Minister and Parliament on request of Federal Government has also the authority to entrust full powers, to an officer subordinate to President, to negotiate and conclude treaties, for the state. This flexibility in exercise of authority, to conclude treaties has allowed the state to make, conclude treaties on diversified levels. These will be discussed in detail now.

1: By President;
2: By Prime Minister;
2: Departmental or Ministerial Treaties; and
3: Delegations with Full powers:

2.3.1: By President

President is the inherent owner of the power to conclude treaties for Pakistan. Under Article 90 of the Constitution of 1973 of Islamic Republic of Pakistan all the executive power is vested in him and he is capable to conclude treaties on all subject matters, except those bared by Constitution of Islamic Republic of Pakistan.
In the context Pakistan has signed a number of treaties which were directly negotiated and signed in the name of President of Pakistan. Examples of such Treaties can be given

[115] ibid, Rule 2 (14), (See Appendix B, pg. 99.) defines relation of a Ministry and a Ministry in the words *"Ministry means a Ministry or group of Ministry as constituted as Ministry". The term clarifies that the two, Ministry and Ministry are not separate entities, but a same one"*

through, the treaty of March 17 1967 between President of Pakistan and External Aid Office of Her Majesty the Queen in Right of Canada. The treaty was signed by an officer in the name and on behalf of President. Another example of a treaty negotiated directly in name of President is the Loan agreement between, President of Pakistan and Agency for International Development. The examples do prove a consistent practice of Pakistan to conclude treaties in name of its President.[116]

2.3.2: By Prime Minister

As stated earlier to aid the President, in exercise of his functions, Constitution formulates a Cabinet of Ministers with Prime Minister at its head. Prime Minister is in charge of all the executive machinery that is in form of different Minister and Ministries and as such is responsible of allocating or changing of business to different Minister and Ministries.[117] Furthermore all Ministries are held responsible for their actions and their actions are ratified in Cabinet, with Prime Minister as the head of the cabinet. This all renders but one thing that is Prime Minister is the head of the government and as such is capable of performing all those functions which fall with in the per view of the executive power of President. [118] This capability includes the ability to conclude all those treaties which President can conclude.

2.3.3 Ministerial or Departmental Treaties

The Cabinet controls and receives the help of Ministries (comprising one or more Divisions and created under scope of Article 99 (3), of the Constitution of 1973 of Islamic Republic of Pakistan), in discharge of its functions which it has to perform to aid President in exercising his executive authority. Under ROB 1973, (the rules) a, ""*Division" means a self-contained administrative unit responsible for the conduct of*

[116] Pakistan Treaty Series, 1967 by Foreign Affair Division Government of Pakistan
[117] Rules of Business 1973, Government of Pakistan, (as amended up to 6-7-2004), Rule 3, (See Appendix B, pg. 100.)
[118] ibid, Rule 16 (2) , (See Appendix B, pg. 109.)

business of the Federal Government in a distinct and specified sphere and declared as such by the Federal Government",[119] and as a Ministry comprises of one or more division so; This is a Ministry which represents administration of a certain department of government and performs all the functions of the government, as allocated to it by the Prime Minister, with the help of Divisions incorporated in it, as under schedule 2 of the rules.[120] Though there are a total of thirty nine ministries controlling forty three Divisions, only certain Ministries are allocated the authority to conclude treaties but only in specified and in certain matters. The Ministries having the authority in certain issues to conclude treaties can be proved by some of the examples of treaties signed by different Ministries and departments. The examples are; the treaty signed by IDBP (Industrial Development Bank of Pakistan) with Kreditansult Fur for a loan and administration of that loan in 1967. Another supplement agreement signed in 1967 with U.S government by an acting Secretary on behalf of his department. The mentioned treaties confirm the attitude of signing treaties on Ministerial level.[121]

2.3.4 Delegation and Envoys with Full Powers

The President and on his behalf Federal Government of Pakistan has the authority to specially vest in an officer the full powers to negotiate and conclude a treaty, though subject to the instruction issued along with the power, to negotiate and conclude a treaty for Pakistan. The officers which can be delegated the Full powers to conclude a treaty on behalf of President are mentioned in schedule 4 of ROB 1973. The officers are; "*Secretary, Special Secretary, Acting Secretary, Additional Secretary, Joint Secretary or Deputy Secretary to the Government of Pakistan or to the Cabinet or Section Officer, or an officer who is granted one of these ranks ex-officio, or an Officer on Special Duty authorized by the Division concerned.*"

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[119] ibid, Rule 2 (6), (See Appendix B, pg. 99.)
[120] ibid, Rule 3, (See Appendix B, pg. 100.) 'asks for allocation of business to Ministries and Schedule 2 of the Rules give detail of the business allocated to these Ministries'
[121] Pakistan Treaty Series, 1962 and 1967 by Foreign Affair Division Government of Pakistan

In respect to authorizing and granting the mentioned officers full authority; though there are a number of rules which specify and deal the issue of full powers to delegations and envoys; the Original authority flows from Article 99 of the Constitution of 1973 of Islamic Republic of Pakistan. The clause 1 and 2 of the Article read together gives the President to authorize any officer to conclude treaty on his behalf.[122] Apart from that under rule 4(5) of ROB 1973, Prime Minister has the authority to determine and vest a business in an officer other than a regular officer of a Ministry. Furthermore the Ministry of Foreign Affair is authorized to issue instructions to delegation sent outside Pakistan on international conferences, in foreign countries and on international agreements.[123] The most important authority comes from Article 98 of the Constitution of 1973 of Islamic Republic of Pakistan. The said Article reads as "*On the recommendation of the Federal Government, Parliament may by law confer functions upon officers and authorities subordinate to Federal Government.*"[124] This Article allows the Federal Government to request Parliament to allow and vest in a Federal officer or subordinate authority the authority (mentioned above) to conclude a treaty; a treaty even on a matter which is beyond the capacity of executive to negotiate or the executive under a Constitutional limitation is barred to negotiate on that matter. The cultural treaty signed in 1967 with Morocco by Begum Shaista Ikramullah as special ambassador and Plenipotentiary of Pakistan is one such example. The case of guarantee agreement with IBRD (International Bank for Reconstruction and Development) in 1967 signed by the representative of President of Pakistan on his behalf is another example of the conclusion of treaties by specially authorized agents. The quoted examples confirm the attitude that it is not only in the law of Pakistan but it has also been customary practice of Pakistan to conclude treaties through authorized representatives.[125]

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[122]Article 99 (1) (2), Constitution of Islamic Republic of Pakistan, 1973 (See Appendix A, pg. 92.)
[123] Rules of Business 1973, Government of Pakistan, (as amended up to 6-7-2004), Rule 4(4), 7 (3) and 16 (2) , (See Appendix B, pg. 100, 103 and 109.)
[124]Article 98, Constitution of Islamic Republic of Pakistan, 1973 (See Appendix A, pg. 92.)
[125] Pakistan Treaty Series, 1967 Published by Foreign Affair Division (Government of Pakistan)

2.4 Procedure of Treaty Making

The procedure of Treaty making signifies the involvement and due care required to conclude treaties. The procedure adopted for treaty making by a country is important for it determines the levels of complications to be faced by a country after concluding a treaty. This is what; Rules of business of 1973 provide, they not only provide the authority of treaty making in detailed manner but they also provide the procedure of treaty making on national level in a clear way.

There are a number of procedural steps, described under the ROB 1973 which are involved in treaty making. They are:

1: Initiation of a Treaty;
2: Consultations;
3: Permission from Cabinet;
4: National Interest Analysis;
5: Communication;
6: Negotiation;
7: Signature; and
8: Ratification.

2.4.1 Initiation of a Treaty

When ever a treaty is required to be concluded a raw proposal for it is initiated at very beginning. In Pakistan the concerned Ministry or Division is responsible to prepare initial proposal for a treaty. The Ministry in three cases can initiates a proposal for a treaty; first, when ever the Ministry thinks it appropriate;[126] secondly, when a recommendation is made from higher a authority, that is Cabinet or Prime Minister; and when a suggestion is

[126] Rules of Business 1973, Government of Pakistan, (as amended up to 6-7-2004), Rule 5 (8) and Schedule 2, (See Appendix B, pg. 101.)

provided by an international organization or a foreign country, the concerned Ministry can initiate a treaty.

If a foreign country or an international organization wants to enter into a treaty and they communicate a proposal of a Treaty then the procedure starts from the next step.

2.4.2 Consultations

Right after the proposal is initiated by the concerned Ministry (the Ministry which has the subject matter allocated under ROB 1973), or is conveyed to concerned Ministry, in case if the initiator is foreign Government or an international organization; the proposal is required to be sent for consultation. The consultations with any Ministry (which has an interest in the treaty), along with compulsory consultations with , Ministry of Foreign Affair, Ministry of Law, and with Ministry of Finance, are to be held under inter-Ministerial consultation procedure.[127] The consultation is necessary to seek the approval of all concerned Ministries, for without it the proposed treaty cannot be submitted for Cabinets approval.[128]

Secretaries committee: There is a secretaries committee which consists of representation of all Ministries at secretary's level. If the subject matter of the proposed treaty is of general importance or concerns the affairs of a number of Ministries than presenting it in meeting of Secretaries committee is quite beneficial and it in one episode tries to get approval of all present and concerned Ministries.[129]

Compulsory Consultations: Apart from general process of consultation, ROB 1973 requires specific and compulsory consultation and approval of some ministries. The consultations with ministries which are obligatory are described below.

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[127] ibid, Rule 8, (See Appendix B, pg. 103.)
[128] ibid, Rule 8 (1), (See Appendix B, pg. 103.)
[129] ibid, Rule 9, (See Appendix B, pg. 104.)

A. Consultation with Concerned Ministry: If any specific Ministry has a specific and definite interest in the subject matter of the proposed treaty, it is compulsory to consult that Ministry and seek its approval first.[130]

B. Consultation with Finance Ministry: If the proposed treaty has any concern with the finances of the country, it is compulsory that, the Finance Ministry is to be consulted and its approval is to be endorsed on the proposal of the treaty.[131]

C. Consultation with Law, Justice and Human Right Ministry: To make it sure that the proposed treaty is not against any present law of the country it is to be consulted with the Ministry and any draft of a treaty is to be checked by the Ministry.[132]

D. Consultation with Foreign Affair Ministry: On all matters including treaties, which affect foreign policy of Pakistan, the consultation with the Ministry becomes essential.[133]

As soon as all the consultations are made the proposal of the treaty can be sent to Cabinet for its approval.

2.4.3 Permission from Cabinet

Once all consultations are finalized the original proposal along with recommendations and comments of consulted Ministries are to be forwarded to Cabinet. Under rule 16 (h) of ROB 1973, a proposal of a treaty should first be submitted to Cabinet for approval before any negotiations are done. The rule about such a proposal states that "*...be submitted to the cabinet for approval in principle and actual negotiations shall be initiated only after the proposal has been approved by the cabinet*" If the Cabinet, after

[130] ibid, Rule 8, (See Appendix B, pg. 103.)
[131] ibid, Rule 12, (See Appendix B, pg. 106.)
[132] ibid, Rule 14, (See Appendix B, pg. 107.)
[133] ibid, Rule 13, (See Appendix B, pg. 106.)

due procedure,[134] sanction the proposal the proposal can be negotiated as a treaty with the foreign country or international organization. The Cabinet can approve the issue directly or can dispose it of through one of the standing or special committee formed for the purpose of disposing of the business of a specified class. The approval of Cabinet directly or through a committee is essential for no proposal can be negotiated as a treaty prior to the approval of Cabinet.[135]

2.4.4 National Interest Analysis

The prime question concerned with every treaty is that what Pakistan will gain from the proposed Treaty; that is what is the National Interest of Pakistan regarding the proposed treaty. Every proposed treaty at initiation contains and describes that why it is necessary to conclude the treaty and as such; National interest of the country regarding the proposed treaty becomes quite evident during consultation process but apart from that in Pakistan, when a proposal of a treaty comes for the approval of cabinet, it can refer the matter for further analysis of National Interest. For the purpose; special institutions are present in Pakistan. In the previous context; For any proposal, if it falls in certain described categories, it can be recommended for National Interest analysis to three available forums and the issue can be recommended to any of them in respect of the subject matter; the process of submission of any proposal for consultation is in the same manner as is followed by the submission of proposals, for consultation and approval of Cabinet. The forums are,

1: National Security Council: When ever the proposed treaty is on any of the matters, which may affect sovereignty, integrity, democracy, governance, inter-Provincial harmony and security of the state, cabinet may refer the matter to National Security Council provides consultation under the chairman ship of President.[136]

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[134] ibid, Rule 16 to 20; rule 16 determine the cases for Cabinet's approval and rest of the rules 17, 18, 19 and 20 describe the procedure. That how the cases are to be presented and how they are to be disposed off. , (See Appendix B, pg. 109-111.)
[135] ibid, Rule 16 (h), (See Appendix B, pg. 109.)
[136] ibid, Rule 20(A), (See Appendix B, pg. 113.)

2: National Economic Council: On all Economic or issues considered necessary, if further consultation is required the help of National Economic Council can be looked for. The council with Prime Minister in chair has the support of Federal Minister, Provincial Ministers and concerned Ministries at its disposal for providing the required consultations directly or through a subordinate committee.[137]

3: Inter-Provincial Conference: Prime Minister is to preside over a conference of Federal and Provincial Ministers, officials of concerned Ministries and Provincial governments. This conference directly or through a subordinate committee is to decide all the cases mentioned in Rule 21 (2) which are, *"...only cases of major importance which require policy decision and mutual discussion between the Federal and Provincial Governments..."*[138]

Once a proposal for a treaty has been consulted for all requirements and the approval, of the Cabinet, or any required consultation of the above mentioned forums is acquired the concerned department receives the green signal to negotiate the treaty under the approved agenda. [139]

2.4.5 Communication

After the approval of the proposal of a treaty by Cabinet, the concerned Ministry can communicate the proposal of the treaty to concerned foreign country or countries or international organization (who ever the other proposed party is) for further negotiation. The communication has two aspects; if the proposal is about a treaty on economic matter or technical matter the communication is always to be conducted through Economic Affair Ministry.[140] In the above case; the Economic Affair Ministry can also allow direct communication between the proposing Ministry and the other proposed party. Where as

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[137] ibid, Rule 22, (See Appendix B, pg. 113.)
[138] ibid, Rule 21 (2) , (See Appendix B, pg. 113.)
[139] By approved agenda it is meant that the Ministry has to negotiate the proposed treaty with in any limitations or amendments proposed during consultation process. See, ibid, Rule 24, (See Appendix B, pg. 114.)
[140] ibid, Rule 56 (2), (See Appendix B , pg.127.)

in all other matters and exclusively in matters concerning foreign policy the Foreign Affair Ministry acts as mediator for communication between propose and the proposed party. In this case the Foreign Affair Ministry also has the authority to allow direct communication.[141] Apart from that under secretariat rules further detailed instructions about the procedure of communication, for Ministries, Delegations and foreign delegations present in Pakistan, are given in detail.

2.4.6 Negotiation

As soon as communication is established negotiations start between the supposed parties of the treaty. The Ministry which has initiated the treaty has to retain itself only to those limits of the treaty which are approved during consultations. If the treaty is agreed to the said limits the Ministry can sign the treaty. Otherwise the negotiated draft or proposal of the treaty is to be re consulted by the concerned departments and Cabinet. All other relevant matters like authentication of negotiated text, verification of text are also reconfirmed from the concerned Ministry, especially Law and Justice Ministry. In case of a multilateral treaty if there is a direct conflict between a provision of treaty and National Law or National Interest, reservation are also suggested during negotiations. The rule about negotiation and all relevant issues is but one and that is the negotiating Ministry has to abide by the recommendations proposed during consultations.[142]

2.4.7 Signature

Who ever has initiated the treaty has to sign it. If the treaty was initiated on behalf of President or Prime Minister they will sign the treaty. Where as, if the treaty was initiated by a Ministry in discharge of its business, the Minister in Charge or the Secretary of that Ministry has to sign the treaty.[143]

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[141] ibid, Rule 56 (1), (See Appendix B, pg. 125.)
[142] ibid, Rule 24, (See Appendix B, pg. 114.)
[143] ibid, Rule 4 (2) and 5 (8), (See Appendix B, pg. 100-101.)

2.4.8 Ratification

President of Islamic republic of Pakistan, as stated earlier, is vested in with all the executive power of the federation and all such powers are to be exercised in his name. The issue certifies one thing that is, it is the President who represents all the country and as such is able to give binding consent to a treaty through an instrument of ratification.

When ever Pakistan has signed a treaty and its ratification is required; Prime Minister is to present it like all cases of major importance, approved by the cabinet, in front of President. Rule 15 (5) (a) of ROB 1973 speaks on the duty of prime Minister and says that, "*The Prime Minister shall Communicate to the President all decisions of the Cabinet relating to the administration of the affairs of the Federation and proposals for legislation.*"[144] Furthermore the Rule 15 A further states that, "*Notwithstanding the Provisions made in these rules, where in terms of any provision of the Constitution any function is to be performed or any orders have to be issued by the President or his specific approval is required, the Division concerned shall incorporate a paragraph to this effect in the summary entitled as "Summary for the Prime Minister". The Prime Minister shall render his advice and submit the case to the President. After the President has seen and approved the case, it shall be returned to the Prime Minister...*".[145] In short, the instrument of ratification about the signed treaty is tabled before President, with the advice of prime Minister and as such cabinet, for his approval and if the president thinks it fit to bind Pakistan in a treaty it duly signs the instrument; ratifying the treaty.

2.5 Special Procedure Regarding Delegates Negotiating Treaty Abroad

In case of delegates and envoys vested with the power to negotiate treaty for Pakistan special set of instruction is provided by Ministry of Foreign Affair.[146] Rule 7 (3) of ROB 1973 clears the issue in following words, "*Instructions regarding the manner of*

[144] ibid, Rule 15 (5) (a), (See Appendix B, pg. 107.)
[145] ibid, Rule 15 A, (See Appendix B, pg. 107.)
[146] ibid, Rule 7 (3), (See Appendix B, pg. 103.)

authentication of orders and instruments in connection with the representation of Pakistan in Foreign countries or at International conferences and of international agreements and treaties, shall be issued by the Foreign Affair Division.(under Ministry of Foreign Affair)." The delegates have to abide by those instructions. Under VCLT 1969 if a delegate does not comply with the instructions provided to him when the instructions were also conveyed to other parties, or the non compliance is due to coercion or corruption; Pakistan can even invalidate the treaty concluded by such delegate.[147]

2.5. A. Relaxation in Procedural Rules

President of Islamic Republic of Pakistan has the authority to relax procedural or any other rules in individual cases. Rule 57 of ROB 1973 states on the issue, "*The President may (on the advice of Prime Minister) permit, where he considers necessary, relaxation of the provision of these rules (Rules of Business 1973) in individual cases*" [148]this relaxation is general and as such is valid for all spheres of rules regulating treaty making.

2.6 Constitutional Limitations

The Constitution of Islamic Republic of Pakistan is the highest authority which distributes and grants powers and functions among different organs of state as the power to conclude treaties is granted to the executive, under the Constitution. Exercise of any power, by any organ needs a direct or indirect proof from the Constitution; otherwise exercise of any such power is deemed to be in violation to the limits defined for the exercise of any such power for that organ, of the state. Same rule is applicable on the exercise of executive power of treaty making. That is all the issues involved in treaty making should be covered up under the Constitution or they will be termed to be against the Constitution.

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[147] Article 47, and 49-51, VCLT (1969) (See Appendix C, pg. 141.)
[148] Rules of Business 1973, Government of Pakistan, (as amended up to 6-7-2004), Rule 57, (See Appendix B, pg. 126.)

The treaty making involves sanction of the Constitution on two steps;[149] who can under the Constitution, represent and consent on a treaty on behalf of Pakistan and on what issues and purpose a treaty can be concluded. The first issue has been discussed in detail earlier and it is the second issue which will be the main focus of the topic. That is the limitations imposed by the Constitution which exclude certain issues from the general capacity of executive to conclude treaties. The executives have not received unlimited powers to conclude treaty under Constitution of Pakistan. Under Article 97 (1)of the Constitution states that, "***subject to the Constitution,*** *the executive authority of the federation shall extend to the matters with respect to which Majlis-e-Shoora (Parliament) has powers to make laws, including exercise of rights, authority and jurisdiction in and in relation to areas outside Pakistan. Provided that the said authority shall not, save as expressly provided in the Constitution or in any law made by Majlis-e-Shoora (Parliament), extend in any Province to a mater with respect to which the Provincial assembly has also power to make laws*" [150]. Under this Article the executive authority, including treaty making, exclusively extends to all the matters present in Federal Legislative List, but the said Article starts with the words "*subject to the Constitution*" placing the limitation in the first instance on extent of executive authority before even it grants it. Further the Article 90, granting the right to exercise the executive powers of Article 97, uses the words "*in accordance with the Constitution*"[151] ensuring the exercise of executive to be retained under the provisions of the Constitution. While explaining the words "*in accordance with the Constitution*" J. Muhammad Munir notes two different implications of the words. First construction of the word implies that the executive should do only what he is described to do under the Constitution. Whereas second construction implies that executive, apart from the authority vested in other bodies like legislature judiciary and Federal service commission can do any act.[152] Whether first or second construction is taken one thing is clear, the executive cannot go against the Constitution and any act of the executive which can or can have a modifying effect on Constitution is

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[149] The Law of Treaties, Lord McNair, Clarendon Press, 1986, pg. 62.
[150] Article 97, Constitution of Islamic Republic of Pakistan, 1973 (See Appendix A, pg. 92.)
[151] Article 90 (1), Constitution of Islamic Republic of Pakistan, 1973 (See Appendix A , pg. 90.)
[152] The Constitution of Islamic Republic of Pakistan, J. Muhammad Munir, ed. Zubair Saeed, PLD Publishers,1999, pg. 257.

in excess of its authority. Under the stipulation we can determine the limitations imposed on executive in five broad categories. They are;

1: Islamic Provisions:

2: Fundamental Rights:

3: Modification in Judiciary:

4: Modification in Legislative Domains: and

5: Modification of Territory:

2.6.1: Islamic Provisions

Pakistan is an Islamic republic, practicing Islam as its state religion. The influence of Islam in state affairs is self evident and is present in an authoritative tone in the Constitution of Islamic Republic of Pakistan. There are a number of Islamic provisions in the Constitution and to assess the role of Islam, in placing limitations upon the scope of treaty making. The most important of the provision which affects the state matter directly and practically is Article 227 (1) and Article 2(A) of the Constitution of Pakistan. The Article 227 (1) of the Constitution of Pakistan states as, "*All existing laws shall be brought in conformity with the injunctions of Islam as laid down in the Holy Quran and Sunnah, in this Part referred to as the injunctions of Islam, and no law shall be enacted which is repugnant to such injunctions.*"[153] Where as Article 2(A) of the Constitution incorporates the preamble as effective part of the Constitution and the first Para of the preamble runs as, "*whereas sovereignty over the entire Universe belongs to Almighty ALLAH (SWT) alone, and the authority to be exercised by the people of Pakistan within the limits prescribed by Him is a sacred trust.*"[154]

The two Articles stipulate one thing that is the limits of exercise of any authority; whether legislative, executive or judicial by the state is to remain within the limits of Islam (under Article 2(A) of The Constitution) and any authority which proves to be in contradictory to Islamic injunctions is void (Article227 (1) of the Constitution of IROP).

[153] Article 227 (1), Constitution of Islamic Republic of Pakistan, 1973

[154] ibid, Article 2 (A) (See Appendix A, pg. 89.)

In the case of **Muhammad Shabbir Ahmad v Federation of Pakistan**, Supreme Court of Pakistan, on an application of leave to appeal, in a case of division of property under customary law interpreted the above mentioned Articles. The supreme court held that "... *in the Constitution, the Holy Quran and Sunnah have become the supreme law of Pakistan and the courts are obliged to enforce the existing laws with such adaptations as are necessary in the light of the Holy Quran and Sunnah to uphold the Holy provisions thereof... every organ of the state is duty bound to act and implement the Islamic principles as enshrined in the Holy Quran and Sunnah*".[155] Under the scope of the decision it is very much clear that the executive are also supposed to follow the said guideline i.e. to follow principles enshrined in Quran and Sunnah. If the executive does not follow the above mentioned guide line i.e. violates any provision of the Quran or Sunnah; the case mentioned above also states about the legal validity of any such violation. In the words of the honorable Supreme court of Pakistan " ... *where existing laws or any provision thereof, on examination by the Federal Shariat Court are declared repugnant to the injunctions of Islam, such laws or provision thereof cease to have effect on tile day on which the decision of the court takes effect.*" [156]

This statement resolves one thing clearly and that is, when any law granting authority to the executive proves to be void under the provisions, it consequently invalidates the executive authority being derived from it and vice versa executive has no authority, in a matter which is in violation of the Islamic injunctions, in the Constitutional sense. Hence, any treaty which is against injunctions of Islam is not to be signed by the executive if executive signs it; he exceeds the limits placed on him by the Constitution.

2.6. 2: Fundamental Rights

The Constitution of Islamic republic of Pakistan has granted some basic securities to general public in form of fundamental rights. These rights are the primary protection available to citizens of Pakistan as their private rights. To clarify, the idea of relation of rights with the executive acts including treaty making, its better to assess a statement of J.

[155] 2001 PLD SC 18
[156] ibid

Muhammad Munir who states as, "*There are thus many functions, which the executive has to perform without being a law to guide it; but whenever a private right is involved, its infringement can only be excused if there be a law authorizing it.*".[157] This gives us a general stipulation that the executive can defy a private right only under a law, and the executive has to be very careful when the issue is of a fundamental right, for it can in no ordinary case undermine any such right by taking any executive action.

The importance of these rights is evident from Article 8 (1) (2) of the Constitution which certifies the authority of these rights by invalidating any other law which is contrary to or is defying these rights. Under the authority of J. Muhammad Munir it can be noted that "*Executive and Judicial action if taken under a law which is void by reason of its being conflict with a fundamental right and not otherwise, is open to challenge in a court of law*".[158] The above discussion leads to but one conclusion that is the executive cannot undermine the fundamental rights by any of its executive act, (including the capacity to conclude a treaty) ensuring a limitation on its executive capacity in the matter relevant to fundamental rights.

2.6.3: Modification in Judiciary

Pakistan follows a doctrine of trichotomy of powers, under the doctrine the higher judiciary (including Supreme Court, Federal Shariat Court and High courts) is supposed to remain separate independent organ, free from any influence or impact of executive.[159] The rule is incorporated in Article 175 (3) which states as "*The judiciary shall be separated progressively from the executive within fourteen years from the commencement*".[160] The main reason for separating judiciary is to create an independent judiciary which is helpful in guaranteeing access to justice to every one,[161] but, this

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[157] ibid, pg. 71.
[158] The Constitution of Islamic Republic of Pakistan, J. Muhammad Munir, ed. Zubair Saeed, PLD Publishers,1999, pg. 88.
[159] ibid, pg. 343.
[160] Article 175 (3)Constitution of Islamic Republic of Pakistan, 1973 (See Appendix A, pg. 96.)
[161] The Constitution of Islamic Republic of Pakistan, J. Muhammad Munir, ed. Zubair Saeed, PLD Publishers,1999, pg. 344.

separation and independence of judiciary has another impact, the executive has no longer any role to play in judicial sphere. Furthermore, the situation becomes more clear and evident that, if we see the case of **Mehmood Khan Achakzai v. Federation of Pakistan**, any enactments which place judiciary in a subordinate position to executive or limit the independence of judiciary are against the '*in-built limitations in the Constitution*'.[162] In the above said case, supreme court of Pakistan further noted that, the executive cannot be conferred a position from where he can have any altering effect upon Constitution and as such executive by no act, whether national or international (in form of a treaty), has the power to effect the Constitutional place granted to higher judiciary. Summarizing; Executive has no executive authority to affect or undermine the judicial capacity or jurisdiction of courts as granted under Constitution, in part 7 from Article 175 to Article 212, and hence cannot sign any treaty to that effect. If executive does so it is in violation of the authority granted to him under the Constitution.

2.6.4 Modification in Legislative Domains

The authority to legislate and formulate law for a country is vested in its legislative organ. Legislative is usually the highest representative of the sovereign capacity of a state. In Pakistan, similarly, it is the legislative organ (Majlis-e-Shoora or Parliament) which contains the highest authority of amending and framing of Constitution[163] and in fact through this authority it can limit the executive and judiciary and even itself. This situation rather places executive in a subordinate position and leaves the issue of limiting the legislative capacity through an executive act beyond the scope of any of the executive power granted under the Constitution. In simple words the executive neither can limit the legislative capacity of the legislature nor can it bind the legislature under an international obligation without the consent of the legislature. So any treaty, signed by an executive, which limits the scope, extent and capacity of legislative authority of a Parliament, falls under the violation of the Constitutional limits placed on the executive capacity.

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[162] ibid, pg. 89.

[163] Article 238, Constitution of Islamic Republic of Pakistan, 1973, states as "*subject to this part, the Constitution may be amended by act of [Majlis-e-Shoora (Parliament)]*"

Simply, executive cannot surrender the sovereign capacity of Pakistan without prior permission of Parliament. That is, any such treaty is beyond the authority of the executive, to conclude. Furthermore, Pakistan is a strict Dualistic state and as such its national domain is completely protected under the legislative capacity of the Parliament, so even if the executive commits itself to some issue under a treaty and the treaty is vary much valid under international law, the legislature still can reject the implementation of treaty.

2.6.5: Modification of Territory

Article 1(2):[164] the Article defines the territories of Pakistan. The Article states "*the territories of Pakistan shall comprise;*

(d) the Provinces of Baluchistan, the North West Frontier, the Punjab and Sind;

(e) Islamabad capital territory, hereinafter referred to as Federal capital;

(f) The Federally Administered Tribal Areas; and

(g) Such states and territories as are or may be included in Pakistan, whether by accession or otherwise"

The Article further notes in 1(3):" Majlis-e-shoora (Parliament) may by law admit into the federation new states or areas on such terms and conditions as it thinks fit."

The mentioned law represents two aspects, one present territory and secondly any new territories. For the first issue J. Muhammad Munir concludes that no change is to be made in the name and territorial limits without an amendment in the Constitution.[165] In the case, if executive cedes a territory, part of Pakistan as in the mentioned Article, and agrees on new territorial limits for Pakistan it will be something like agreeing to a contrary Constitution. Secondly in case of accession, the law is self evident; it is the Parliament who has the power to settle terms and conditions for admitting new territories to the federation of Pakistan (Article 1 (3) as mentioned above). Combining both issues lead to one conclusion that is the executive, without the prior consent of legislature, has

[164] Article1 (2) (3) Constitution of Islamic Republic of Pakistan, 1973 (See Appendix A, pg. 89.)

[165] The Constitution of Islamic Republic of Pakistan, J. Muhammad Munir, ed. Zubair Saeed, PLD Publishers,1999, pg. 63.

no capacity to sign any treaty of Accession or Cessation. If he signs any such treaty without the prior approval of the Parliament, he does so in excess of his authority and gives rise to a treaty signed against the Constitutional limits.

2.6.6 Effect of Constitutional Limitations

Once it is decided that a treaty is concluded on behalf of a state, in violation or in excess of a limitation of its Constitution, the only issue which matters is the validity of the treaty. Traditionally, International law holds two views about the issue.[166] First idea takes the conclusion of any such treaty, which is against the Constitution of a state as internal matter of the state and so violation of Constitutional law has nothing to do with the validity of the treaty,[167] this view takes the treaty, concluded against the limitations of Constitution, to be binding and valid under international law.[168] Second view,[169] is contrary to the first one and proposes that, any treaty concluded against the restrictions imposed by the Constitution of a state "*will be the act of an incompetent organ and as such void of legal value*".[170] Both views are of extreme, and for the reason, VCLT 1969 in fact and in practical sense has taken a moderate view. That is it has neither taken such a treaty, concluded against Constitutional limits, as void and neither it has accepted such treaty as valid, in first instance. The exact position of any such treaty is evident from Article 46(1) of VCLT 1969. mentioned Article states as, "*A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent* ***unless that violation was manifest and concerned a rule of its internal law of fundamental importance.***

(2). A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith."[171]

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[166] The Law of Treaties, Lord McNair, Clarendon Press, 1986, pg. 66.
[167] ibid, pg. 66.
[168] International Law, volume 4, Hersch Lauterpacht, ed, E.Lauterpacht, Q.C. , Cambridge University Press, 1978, pg. 258.
[169] ibid, pg. 259.
[170] The Law of Treaties, Lord McNair, Clarendon Press, 1986, pg. 67.
[171] Article 46, VCLT (1969) (See Appendix C, pg. 140.)

The Article depicts but one thing any treaty which is concluded against the Constitutional limitations of the state, is void able at the instance of that state. The state can either accept any such treaty by any subsequent act[172] or can repudiate such treaty without any consequential legal affects.

2.7 Registration of treaties

Pakistan is member of United Nation, and hence has to abide by its Charter. One of the formal requirements of the U.N charter (the charter) is the registration of treaties. Article 102 (1) of the charter requires that, " *Every treaty and every international agreement entered into by any member of the United Nations after present charter comes into force shall as soon as possible be registered with the secretariat and published by it*". The requirement of registration is further reinforced by Article 80 of VCLT 1969 which require the depositary state to register a treaty in force with U.N, the Article 80 (1) follows as, "*Treaties shall, after their entry into force, be transmitted to the Secretariat of the United Nations for registration or filing and recording, as the case may be, and for publication.*"[173] Thus whenever Pakistan concludes a treaty, the treaty has to be registered with U.N secretariat. On the issue that, whether the registration of treaties is binding or compulsory for ascertaining its application or is just a formality, the views are divided, a host of scholars take the registration of treaties as binding obligation under international law where as a number of other scholars do not consider the issue to be that important. Whatever the case may be the ground reality and facts suggest that the registration of treaties a part from formal requirements is now becoming a customary practice which is required to be kept on. Furthermore subsequently if a treaty is not registered with the secretariat, the charter of U.N under Article 102 (2) makes it clear that such treaty at least can not to be invoked against any of the United Nations organs. The words of the said Article are, "*No party to any such treaty or international agreement which has not been registered with the provisions of paragraph 1 of this Article (Article*

[172] Introduction To Law Of Treaties, Paul Reuter, Printer Publisher, 1989, pg. 134.
[173] Article 80 (1), VCLT (1969) (See Appendix C , pg.153.)

102(1)) may invoke that treaty or agreement before any organ of United Nation." So it is quite essential for Pakistan to register every concluded treaty with U.N secretariat under the procedure as regulated by the secretariat from time to time.

Scope and Purpose of Registration: There are two main reasons for the registration of treaties. Firstly, the registration is meant to make clear the intention and dealings of the member states.[174] Secondly registration is necessary to keep a uniform record of the previous obligation of a state.

[174] Law Among Nations, fifth edition, Gerharld Von Glenn, Macmillan Publishing Co. Inc., 1986, pg. 501.

CHAPTER III

Application and Implementation of Treaties in Pakistan

As soon as a treaty becomes applicable to a state, the state has to implement the treaty in all required fields. This is the time when the system of a state is placed on a check; that is whether the state has a sound system to comply with all those obligations which it has undertaken by consenting to a treaty. In this context, the chapter is mainly aimed to research the international requirements and obligations of a treaty applicable to Pakistan and the modes ensured by laws and procedure of Pakistan to implement such applicable treaties. The main issues to be discussed in this chapter are; the scope of application of treaties; the implementation of treaties in Pakistan; the scope and power of different organs for implementing treaties; and as to when implementation of a treaty can be suspended or revoked.

3.1.1: Observance and Application of Treaties

In international law the treaty becomes applicable, on the states party to it, as soon as it comes into force.[175] By application we mean the extent to which the treaty requires to be performed by the states party to it. In other words, the application of a treaty emphasizes that the state now has to observe and implement the treaty where ever it has become applicable.[176]

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[175] The decision of the Arbitral award in the case of A. A Megalidis v Turkey, where Turkey tried to justify its act of seizing contents of claimant from his safe, under the treaty of Lausanne which was signed but not ratified and as such was not in force. The Arbitral award held the act of Turkey was invalid on the base that due to non ratification treaty was not active and as such any act under it was not justified. Deciding the rule that unless the treaty is in force whether by signature or by ratification it is not applicable on the state. See, The Law of Treaties, Lord McNair, Clarendon Press, 1986, pg.. 202.

[176] Introduction To Law Of Treaties, Paul Reuter, Printer Publisher, 1989, pg. 73. para 136

3.2: Scope of Observance and Application

The extent to which a treaty requires to be applied or implemented is usually provided and decided by the provisions of a treaty itself but to ensure certainty in performance international law has ascertained certain rules which along with the text of the treaty help to determine the application of a treaty on a state.[177] Generally the issues which determine that what is expected from the state in respect of the obligations it has undertaken are:

1: Pacta Sunt Servanda
2: National Law not as a Bar
3: Pacta Tetris, and
4: Territorial Application

3.2.1: Pacta Sunt Servanda

The principle means in good faith as stated in Article 26 of VCLT.[178] The principle clarifies that a state should not degrade any of its obligation by any of relevant act and should adopt best measures for implementation of a treaty. In fact the principle not only secures best efforts for implementation of a treaty but is also a primary safeguard against unilateral non performance or termination of a treaty by a state party to that treaty.[179]

3.2.2: National Law not as a Bar

Once a valid consent of a state is established, the national law is no more relevant to the law of treaties. International law does not allow a state to hide behind its national law for non implementation of a treaty obligation. It is the responsibility of the state to bring all

[177] Article 26 to 29, VCLT (1969) (See Appendix C, pg. 135.)
[178] ibid, Article 26 (See Appendix C, pg. 135.)
[179] The Law of Treaties, Lord McNair, Clarendon Press, 1986, pg. 493.

of its national laws in conformity to its international obligations undertaken by it.[180] Apart from codified law of VCLT 1969 the issue has received same treatment under customary international law. In **Alabama Claims Arbitration Case**, on the issue of breach of British obligations as neutral in the event of American Civil War, the Tribunal rejected the British plea of insufficiency of legal means at national law to avoid the violation of its international obligation.[181]

3.2.3: Pacta Tetris

No treaty obligation is applicable to a state to which it has not consented; that is international law does not bind a state to any such obligation to which it has not consented in an appropriate way. This is what is contained and implied by the principle of *Pacta Tetris* which literally means no pact is applicable on a party which has not consented to it.[182] To this general rule there is one important exception which is recently being developed in international law. This is the concept of crimes of universal jurisdiction or crimes against humanity. Michael P. Scharf an eminent academic, on the issue clearly has established that when a crime effecting humanity is established by a treaty or international custom the states are eligible to prosecute citizens of a third state (which has not joined any such treaty in the case of a crime validated by a treaty), when the third state has not even signed the treaty.[183]

3.2.4: Territorial Application

If the treaty itself does not provide a specific sphere of application it is considered to be applicable on the whole territory of the country. That is the state party to a treaty will be considered to implement the treaty where ever it has territorial jurisdiction. The

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[180] Article 27, VCLT (1969) (See Appendix C, pg. 135.)
[181] U.S v G.B, Moore, 1872, International Arbitration pg. 656.
[182] Introduction To Law Of Treaties, Paul Reuter, Printer Publisher, 1989, para 153, pg. 78.
[183] New England Law Review, vol 35:2, 2001, Article on "Application of Treaty Based Universal Jurisdiction to Nationals of Non-Party States", by Michael P. Scharf, pg. 363.

implementation requires and includes any action whether executive, judicial or legislative to be taken to implement the treaty.[184]

3.3: Implementation of a Treaty in Pakistan

The treaties are of two categories with respect to their effect and as such implementation; those which effect only states and those which effect private rights of individuals of that state.[185] So to implement both types of obligations; usually the states have two responses. In some states like, United States treaty becomes a part of law as soon as binding consent is given and as such it is implemented as national law and is enforced as such. Where as in some states like United Kingdom (UK) there are two rules, in the case of treaties not effecting private rights, treaties are acknowledged and implemented by executive and the courts have jurisdiction to entertain any implementation measure under such treaties. That is, such treaties are enforceable in national domain without any national legislation. Where as when a treaty is affecting private rights it is to be implemented only through legislation and the UK courts simply do not give effect to any such treaty in absence of legislation.[186] Pakistan as such follows the second example of UK, though in a much strict manner. In fact in Pakistan like in UK Federal Government can implement only those treaties without legislation which are not affecting private rights or vital state interest. Where as same like UK, in Pakistan, any treaty affecting private right requires legislation for its implementation. However unlike UK, Pakistani courts have no jurisdiction in any matter arising under the two types of treaties as mentioned above unless legislature has specifically allowed them some jurisdiction.

In Pakistan, whenever a treaty is required to be implemented in national Domain, it is duty of the Federal Government to implement it. The matter usually initiates with or is referred to the Ministry which covers up the subject matter of the treaty in its portfolio of

[184] Article 29, VCLT (1969) (See Appendix C, pg. 135.)
[185] Oppenhiem's International Law, 9th edition, ed. Sir Robert Jennings and Sir Arthur Watts, Universal Law Publishing Co. 2003, pg. 1253.
[186] International Law, F. A .Mann, Clarendon Press Oxford, 1973, pg. 229.

business allocated to it under ROB of 1973. The Ministry after studying the case is responsible for taking any relevant measure. Generally the measures taken by a Ministry can be concluded in three categories, first the Ministry can take and recommend an executive act to implement a treaty; secondly it can request and propose legislation for the implementation of a treaty; and it can if it thinks fit recommend for an action on Provincial level to implement the treaty. The modes are:

1: Executive Action
2: Legislative Action
3: Recommendation for implementation of a treaty by a Province

3.3.1 Executive Action

When the implementation of a treaty is subject only to the requirement of an executive action by Federal Government; the required Ministry takes the appropriate action and executes any such order as necessary for implementation of that treaty. The implementation action by a Federal executive can be divided in to two spheres, which are implementation of minor issues and implementation of issues of major importance.

In all minor issues not dealing with any policy matter the required Ministry is to implement the treaty with help of the Minister and secretary of the Ministry.[187] The secretary of the Ministry can and has to ensure the implementation of the treaty by authorizing and vesting function and duties on a subordinate officer through issuance of standing orders.[188] Where as in all issues where a policy matter is involved or a previous policy is supposed to be altered the matter is sent for the approval of Prime Minister by first and then any executive action is to be taken.[189] Furthermore, if the issues of implementation of a treaty involve any vital political, economic and administrative act

[187] Rules of Business 1973, Government of Pakistan, (as amended up to 6-7-2004), Rule 4 (2) and 5 (8) & (9) in context of Rule 3 (3) , (See Appendix B, pg. 100. 101. 104.)
[188] Secretariat Instructions, as up to 2004, Pakistan Public Administration Research Center Establishment Ministry, 2004, Instruction 3 to 5
[189] Rules of Business 1973, Government of Pakistan, (as amended up to 6-7-2004), Rule 15 (1) (See Appendix B, pg. 108.)

the required Ministry is to refer the case to Prime Minister, who if thinks fit can suggest the matter to the cabinet for its approval.[190] Minister of the relevant Ministry and in his absence secretary of the relevant Ministry is responsible for submission of any above mentioned case for final orders of cabinet. When ever a decision or direction from the cabinet or Prime Minister is issued the Ministry is to implement and execute the implementation of the treaty in the spirit of such order or direction.[191] Furthermore, if the help, assistance or concern of another Ministry is required it can also be achieved through the cabinet's decision.

3.3.2: Legislative Action

In certain cases when the implementation of a treaty is beyond the scope of the executive authority, legislation becomes necessary. For this reason, the Ministry concerned with the implementation of treaty is to propose a law and recommend it to cabinet so that a law from Federal Legislature is secured for the proper implementation of the treaty. Apart from ordinances and money bills proposed law by ministries are of two types, official and non official bills. The official bills are supposed to pass through a procedural channel and owe its drafting to Ministry of Law and Justice. Where as non official bills are drafted by the concerned Ministry and are only consulted by Ministry of Law, Justice and are presented to cabinet summarily. The legislative action as described in Rules of Business for Official Bills is to be carried in following steps.[192] Which are: official bills; non official bills; and ordinances.

A. Official Bills

That is describing the issues which are to be legislated. Furthermore, on the proposed issues of legislation, the concerned Ministry is also supposed to consult all other concerned and those Ministries which are considered necessary. Once the process of

[190] ibid, Rule 16 (1)(j) , (See Appendix B, pg. 109.)
[191] ibid, Rule 5 (4) and 24, (See Appendix B, pg. 101 and 114.)
[192] ibid, Rule 27, (See Appendix B, pg. 116.)

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[190] ibid, Rule 16 (1)(j) , (See Appendix B, pg. 109.)
[191] ibid, Rule 5 (4) and 24, (See Appendix B, pg. 101 and 114.)
[192] ibid, Rule 27, (See Appendix B, pg. 116.)

consultation is complete the Ministry can further the proposal to cabinet for its approval. [193]The cabinet after due procedure takes decision on such proposal and if it seems fit approves the proposal with or without any change. The decision of the cabinet is binding and if any recommendations are made and any changes are suggested the changes are to be followed. This approved proposal of official bill is in next step sent to the Law and Parliamentary Affair Ministry for Drafting. Ministry of Law is vested with the duty to reduce the proposal in form of a Draft with all necessities and with an advice about the competence of Parliament to legislate on the matter.[194] The prepared draft, from the proposal, is re-submitted to cabinet for re-approval along with recommendations of Ministry of Law, if any. After the re approval by cabinet the signature of prime Minister are secured and if required the signature of President are also obtained.[195] The approved draft is again sent back to Law Ministry which after assurance of the fact that every thing is going in accordance with law, sends it to Parliamentary Affair Division. From where, it is sent to Parliament for legislation.[196]

B. Non Official Bills

Non official bills are submitted under a bit different and in a summary procedure. For the bills the concerned Ministry is to propose the issues of legislation and after due consultation, with all Ministries including Law Ministry (on all legal issues and for legal advice on all relevant matter), the proposal is sent to cabinet. The cabinet along with certain issues have to decide the proposal. If the decision is affirmative the proposed Bill is to be signed by Prime Minister and if required by the President, for introduction of the bill in Parliament.[197]

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[193] ibid, Rule 16 (1) (a) and (b), (See Appendix B, pg. 109.)
[194] ibid, Rule 27 (2) and (3), (See Appendix B, pg. 116.)
[195] ibid, Rule 27 (4), (5) and (6) , (See Appendix B, pg. 116.)
[196] ibid, Rule 27 (8), (See Appendix B, pg. 117.)
[197] ibid, Rule 28, (See Appendix B, pg. 118.)

C: Ordinances

All the ordinances are presented in a manner as specified for the official bills. The ordinance is to be promulgated by Law, Justice and Human Right Ministry after the assent of President is obtained.[198]

These three types of bills and ordinance are available at disposal of Federal Government for implementing a Treaty by law.

3.3.3: Recommendations for Implementation of a Treaty by a Province

The Federal Government and as such the Federal Ministries of the Government though have full capacity to enter in a treaty on behalf of all Pakistan including Provinces. However, normally for any implementation in Provincial matters, it is duty of the Province and the Province has to bear the responsibility of implementing a treaty.[199] Furthermore, in a case when despite the fact that the prime responsibility to implement a treaty is of Federal Government; yet due to any reason such implementation of a treaty is beyond the executive capacity of Federal Government or the implementation requires specific action from a Province by a Provincial authority; the Ministry concerned, can recommend for an appropriate action by a Province, for implementation of the treaty. The recommended actions are to be categorized in two categories. The Ministry can either ask for an executive performance by a Province or can seek legislation for conferring duties and any powers for implementation of a treaty by the Province. The actions are;

a. Proposing Legislation for Implementation of a Treaty in Province
b. Recommendation of an Executive Performance by a Province

[198] ibid, Rule 30 (See Appendix B, pg. 118.)
[199] ibid, Rule 49 (3) (See Appendix B, pg. 120.)

A. Proposing Legislation for Implementation of a Treaty in a Province

When ever the Ministry concerned, with implementation of a treaty, think it fit that a Province is to be imposed with certain duties and granted certain powers as it can propose legislation, [200] under Article 146 (2) of the Constitution of 1973, which states as, "*An act of Majlis-e-shoora may, not withstanding that it relates to the matter with respect to which Provincial assembly has no power to make laws, confer powers and impose duties upon a Province or officer and authorities thereof.*" Any such proposed legislation is first to be approved by Prime Minister specifically and then all due procedure of a legislation normally.[201] Once such legislation is secured it becomes a duty of the Province with Constitutional sanction to abide by that law.

B. Recommendation of an Executive Performance by a Province

When implementation of a treaty in a Province or in a Provincial field is sanctioned by a national law the Federal executive is authorized under the power of Article 149 of the Constitution to give directions to Province.[202] The Province is bound and supposed to act in accordance with the direction given by the Federal Executive under Article 148 (1) of the Constitution of 1973. For the purpose any such directions to Provincial Authorities are to be given by the appropriate Ministry. Such directions are first of all to be submitted to cabinet for its approval along with the approval by Prime Minister.[203] Once such approval has been obtained the concerned Ministry is to communicate the directions to Provincial government for appropriate action.

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[200] ibid, Rule 50, (See Appendix B, pg. 124.)
[201] ibid, Rule 50, (See Appendix B, pg. 124.)
[202] ibid, Rule 49 (1), (See Appendix B, pg. 123.)
[203] ibid, Rule 16 (g) and 13 (1) (b), (See Appendix B, pg. 109 and 106.)

3.4: Implementation through Municipal Courts: Scope of Judicial Jurisdiction

Pakistan, as discussed in previous chapter, follows a strict dualist doctrine and as such no treaty obligation is directly enforceable in judicial jurisdiction of Pakistan unless so authorized by a national law.[204] If a treaty is incorporated in form of National Law, Pakistani courts will resolve only those implementation issues which are covered and subject to the explicit provisions of that national law. This attitude of the courts to take jurisdiction only under national law has left a little scope for the implementation of an international obligation directly through a court of law in Pakistan's jurisdiction. Under the present legislation the Pakistani courts have jurisdiction to entertain and impose any foreign judgment or award in Pakistan, which falls in scope of the act. The history of the stand taken by our courts in case of implementation of international obligations starts from and is evident in the case of,

Yangtez (London) v Barlas Bros Karachi.[205] In the said case the Yangtez tried to implement an award in Pakistan though obtained in London. Though Sindh chief court accepted the case initially but at a later stage the high court of West Pakistan rejected the implementation of award in Pakistan for the reason of the award being made by an authority not recognized as competent and thus out of scope of the Arbitration (Protocol and Convention) Act of 1937. The trend carried on and was further evident in the case of **Hitachi v Rupali Polyester**, where Supreme Court opted for the strict interpretation of the Arbitration Act 1937 and decided to keep its jurisdiction strictly in those issues where the act expressly allowed.[206] . The case further lead to an important conclusion that is in the words of the honorable court, *"The principles of common law or equity and good conscience cannot confer jurisdiction on the courts in Pakistan which is not been vested in them by law"*. Till recently in the case of **S.G.S v Federation of Pakistan** Supreme Court again clarified and choose the limited scope of jurisdiction. The court in its

[204] Article 175 (2), Constitution of Islamic Republic of Pakistan, 1973, (See Appendix A , pg.97.)
[205] 1961 PLD 573
[206] 1998 SCMR 1618

decision eminently described that it has jurisdiction, only in those matters which are expressed clearly in law.[207]

In scope of the above decisions the point is clear; that whether the treaty is affecting private rights of individuals in Pakistan or the treaty is only asking executive implementation it can not be implemented through Municipal courts in Pakistan, unless it has been granted sanction by a legislative act.

3.5: Scope and Powers of Legislature and Executives to Implement a Treaty

The power to implement a treaty has been bestowed to different organs of state. The Federal Legislature, Federal Government and the Provincial government are the main organs which play an effective role in implementation of treaties. The Constitution of Islamic republic of Pakistan has well defined the scope, powers and sphere of action of the said organs in clear words. To clarify, which organ can do what and to what extent, they will be discussed in detail.

3.5.1: Scope and Authority of Legislature

The legislative authority of Pakistan is divided between Federal and Provincial legislature. For the role played by each of the legislature they will be discussed in detail separately.

3.5.1.1 Scope and Authority of Federal Legislature

The Federal Legislature consists of Senate, National Assembly and President in his capacity to promulgate ordinances. The above mentioned branches are responsible for implementation of any treaty obligation through a legislative action.

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[207] 2002 SCMR 1694

The Constitution of Pakistan defines and vests power to make law in Federal legislative and Provincial legislative in hierarchical order.[208] The Constitution further provides a clear picture by categorizing legislate able issues in three clear lists. The lists are, the first is Federal Legislative List, second is Concurrent Legislative List and thirdly though not defined, in material terms, is the list containing residuary issue (the issues which do not fall in any of the list).[209] In the mentioned categories, in the cases which are covered by Federal Legislative List, the Federal Legislature has an exclusive jurisdiction where as it shares legislative power with Province in the matters present in Concurrent Legislative List. Where as the Provinces hold the power to legislate exclusively in residuary matters and shares the matters present in Concurrent Legislative List with federation. Furthermore, in case a conflict arises between a Federal legislation and Provincial legislation on a same matter, the Provincial legislation is supposed to give way to the extent of the conflict.[210]

In the context of above discussed powers, as the Constitution provides for legislation for implementation of treaties only in Federal Legislative List so the authority to implement a treaty under law is vested in Federal legislative organs exclusively.[211]

The Federal Legislature under Article 141 of the Constitution of 1973 has been authorized to legislate on behalf of all or any part of Pakistan.[212] The Article 141 of the constitution read with section 3 of part1 of Federal Legislative List in second schedule of the Constitution yields a general presumption that Federal Legislature can frame laws for general implementation of a treaty in all territorial and extraterritorial jurisdictions of Pakistan or can make specific laws to ensure implementation in a specific part or area. To this general presumption there is however an exception and that is given in Article 247 (3). The said Article states as, "*No act of Parliament shall apply to Federally Administered Tribal areas or to any part thereof unless the president directs so*" which allows the laws and as such the implementation of a treaty through it, subject to the approval of president and governor respectively in case of F.A.T.A (Federally

[208] Article 141, Constitution of Islamic Republic of Pakistan, 1973, (See Appendix A, pg. 93.)
[209] ibid, Article 142, (See Appendix A, pg. 93.)
[210] ibid, Article 143, (See Appendix A, pg. 93.)
[211] ibid, Fourth Schedule, Part 1, Section 3.
[212] ibid, Article 141, (See Appendix A, pg. 93.)

Administered Tribal Areas) and in case of P.A.T.A (Provincially Administered Tribal Areas).[213] Apart from that application of any law of Federal Legislature in F.A.N.A (Federally Administered Northern Areas) the implementation of a treaty through a law is subject to the notification of Ministry for Kashmir and Northern Areas.[214]

The Federal Legislature in case of a treaty can further confer general power in other organs to continuously implement and give effect to any obligations even arising in future, under a treaty. Furthermore if there is a conflict in between a Federal law and Provincial law implementing a treaty (with a subject matter falling in concurrent Legislative List or residuary issues) in a Province, the law implementing the treaty will prevail. In context of above discussion, it can be said that Federal Legislature can implement a treaty and comply with any obligation arising so, by legislating under the Constitution.

The scope of the legislative power can be seen through the; **The United Nations (Security Council) ACT, 1948 (The Act)**

The Act is one of the best examples of scope and action of national legislation for implementation and compliance of a treaty obligation. The act passed by legislature has only two sections. The first section deals with the title of the act where as the second section confers power on Federal Government. The second section of the Act states that, "*If, under Article 41 of the Charter of the United Nations signed at San Francisco on the 26th day of June 1945, the Security Council of the United Nations calls upon the Central Government to apply any measures, not involving the use of armed force, to give effect to any decision of that Council, the Central Government may, by order published in the official Gazette, make such provisions (including provisions having extra-territorial operation) as appear to it necessary or expedient for enabling those measures to be*

[213] ibid Article 247 (3), (See Appendix A, pg. 97.)
[214] Rules of Business 1973, Government of Pakistan, (as amended up to 6-7-2004), schedule 2, Ministry 19, Section 1and 3

effectively applied, and without prejudice to the generality of the foregoing power, provision may be made for the punishment of person offending against."[215]

The act, as stated in above section, confers upon Federal Executive the authority to comply with any obligation placed by Security Council of United Nation upon government of Pakistan in present, (apart from use of force) and even in case of any obligation arising in future, by only notifying it in official Gazette and by making any rules as necessary.[216]

3.5.1.2: Provincial Legislature

Provincial legislature has no direct authority to give effect to a treaty obligation undertaken by federation. Yet, Provinces can legislate in order to grant power and duties to Provincial authorities to facilitate performance of any obligation placed on Provincial government in pursuance of a treaty.[217]

3.5.2: Scope and authority of Executive Measure and Territorial Application of Treaties

Whenever a legislative act is not required; the implementation of a treaty falls exclusively in the domain of executive and the executive are empowered to implement the treaty in the way the law requires or in the way they will.

3.5.2.1: Scope and Authority of Federal Executive

In accordance with Article 90, 97 and 99 the Section 3 of Part1, Schedule 4 of Federal Legislative List demands from Federal Executive to take any step with in executive domain to implement a treaty. For the purpose, the executive is provided with certain

[215] Section 2, The United Nations (Security Council) ACT, 1948
[216] ibid, Section 2.
[217] Article 138, Constitution of Islamic Republic of Pakistan, 1973

authorities to ensure implementation. Federal executives as contained in the chapter of Federal Government includes President, Prime Minister, Ministers and any other authority as defined in rule of business, under the scope of Article 99 of the Constitution. The acts which these Federal executive can perform to implement treaties are;

A: The Federal executive can pass executive orders and can take any executive measure, in the issues to which Federal Legislature has the power to legislate, to implement a treaty.[218]

B: The Federal executive can ask Federal Legislature to grant such powers under law which are required to implement a treaty, in a matter where executive have no authority.[219]

C: The Federal executive can confer and delegate its executive powers to a Province to implement the treaty in any required domain.[220]

D: The Federal executive can issue directions to Provinces and ask them to comply with a law requiring implementation of a treaty in the Provincial domain. Furthermore, the Federal executive can also demand from Provincial executives not to act in a way which defies or defects implementation of a treaty by Federal executive in Provincial territories.[221]

E: The Federal executive by order of Prime Minister can under take to implement a treaty, which in usual process is to be implemented by Provincial authorities.[222]

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[218] ibid, Article 90, 97 and 99, (See Appendix A, pg. 90-92.)
[219] ibid, Article 98, (See Appendix A, pg. 92.)
[220] ibid, Article 146, (See Appendix A, pg. 94.)
[221] ibid, Article 149, (See Appendix A, pg. 95.)
[222] Rules of Business 1973, Government of Pakistan, (as amended up to 6-7-2004), Rule 15 (1)(c) , (See Appendix B, pg. 107.)

3.5.2.1.1 Territorial Implementation

In respect of Federal territories, Federal executive has exclusive power and duty to implement a treaty. Where as Federal executive can, in respect of duties assigned to him, execute certain activities in Provincially administered territories but they do not simply fall under the domain of Federal executive.

A. Federal Capital and Federally Administered Tribal Areas

When ever, a treaty is to be implemented in territorial boundaries of Federal Capital, and Federally Administered Tribal Areas. Federal Government has the sole power to implement a treaty.[223]

B. F.A.N.A

The Federally Administered Northern Areas; the authority to make rules and all administration for Northern Areas is vested in the Federal Ministry of Kashmir and Northern Areas and as such any obligation under taken to be implemented in the said territory is in the sole power and responsibility of the Federal Government.[224]

3.5.2.1.2 Implementation in Extra-Territorial Jurisdiction

The extra territorial jurisdiction is also vested completely and exclusively in Federal executive. Where, extra territorial jurisdiction means jurisdiction of a state beyond its territorial boundaries. So the matters involving the implementation of a treaty in extra territorial jurisdiction are to be taken care off by Ministry of Foreign Affair and as such by Federal Government.[225]

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[223] Article 247 (3), Constitution of Islamic Republic of Pakistan, 1973, (See Appendix A, pg. 97.)
[224] Rules of Business 1973, Government of Pakistan, (as amended up to 6-7-2004), schedule 2, Ministry 19, Section 1and 3
[225] ibid, Schedule 2, Ministry 13, section 6

3.5.2.2: Scope and Powers of Provincial Executive

As a Federal state in Pakistan, Constitution of 1973 assigns specific matters to Provinces to deal with. In the Constitution, Concurrent Legislative List and any matter, which is not mentioned in the concurrent list or Federal Legislative List, describe all those functions which fall in the Provincial domain. In the above context, the Provinces can and have to play an efficient role in all treaties which are relevant to the issues present in Concurrent Legislative List or are relevant to the Residuary Issues.

The Provincial executive structure consists of Chief Minister, Provincial Ministers, Provincial officers and Governor at the head of all machinery. The Provincial executives can and has to perform following acts to ensure implementation of a treaty when required.

A: The Provincial executive can execute all orders and can perform all functions which are vested in them inherently, to implement a treaty.[226]

B: The Provincial executive Have to oblige all the law s passed by Federal legislative in due course and as such has to implement any treaty if a Federal law requires so from a Province.[227]

C: The Provincial Government has to oblige any directions, requiring compliance to a national law, provided by Federal Government. Any such rule is very much valid when directions are given under a national law implementing a treaty.[228]

D: The Provincial Government can confer its powers to Federal Government and hence can give a free hand to Federal executive in matters of implementation of a treaty.[229]

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[226]Article 129, 137 and 139, Constitution of Islamic Republic of Pakistan, 1973
[227] ibid, Article 148, (See Appendix A, pg. 94.)
[228]ibid, Article 149, (See Appendix A, pg. 95.)
[229]ibid, Article 147, (See Appendix A, pg. 94.)

3.5.2.2.1 Territorial Scope of Implementation by Province

The territories which fall under the scope of executive authority of a Province and the Provincial Government is responsible for their executive administration are:
A: Provincial Territory; and
B: P.A.T.A

A: Provincial Territory

The territory prescribed within the boundaries of a Province fall in the sphere of Provincial executive and hence Provincial executive plays a consider able role in implementing all those treaties which does not fall with in the sphere of Federal Legislative List (Second Schedule Constitution of Islamic Republic of Pakistan) .

B: P.A.T.A

Provincially Administered Territories are to be administered exclusively by Governor of a Province, and as such Provincial government is responsible for implementation of a treaty with in P.A.T.A.[230]

3.6: Suspension and Revocation of Treaties

When ever applicability or implementation of a treaty falls beyond the scope of treaty, the states and as such Pakistan is allowed to either suspend the treaty or in extreme case revoke the treaty. So the two responses when implementation and compliance with a treaty is not feasible are:

1: Suspension of Treaty
2: Revocation of treaty

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[230]Article 247 (3) Constitution of Islamic Republic of Pakistan, 1973, (See Appendix A, pg. 97.)

3.6.1: Suspension of Treaties

In relevancy to the matter of application of treaties, international law has not left it with the discretion of a state even to temporarily suspend the application or implementation of a treaty. International law both under codified law of VCLT 1969 and under customary International Law has provided with some circumstances in which a party to a treaty can suspend the performance of a treaty. The reasons are:

A: Under Provisions of Treaty or by Mutual Consent

When a treaty contains some specific provisions which lead to a leave in implementation of the treaty, the provision can be used to suspend application of the treaty in Pakistan.[231] Pakistan can also settle by mutual agreement and by mutual consent of other parties if the treaty is to be suspended in any case.[232] In case of a multilateral treaty Pakistan with some of the other parties to that treaty by a mutual agreement can also suspend application of the treaty in between them.[233]

B: By a Subsequent Treaty

When ever a treaty is signed between two or more states any previous treaty if any stands modified. If this modification is up to the effect that where the parties have signed the consequent treaty with an intention to apply for a limited scope or purpose and the previous treaty is supposed by party to be maintained; the previous treaty stands suspended up to that effect.[234]

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[231] Article 57 (a) VCLT (1969) (See Appendix C, pg. 143.)
[232] ibid, Article 57 (b), (See Appendix C , pg.143.)
[233] ibid, Article ,58 (See Appendix C, pg.143.)
[234] ibid, Article 59. (See Appendix C, pg.143.)

C: Miscellaneous Cases

In certain matters where VCLT has provided leave for revocation of a treaty, the leave for suspending application is also present. As for in the case of change in any fundamental circumstance, if the change is of permanent nature the treaty is supposed to be revoked but when the change is temporary and reversible VCLT only allows suspension of a treaty.[235] Pakistan so when ever faces a fundamental change in circumstance, can suspend the application of treaty till the changes are reversed. Furthermore if for a short period it becomes impossible for Pakistan to ensure application of a treaty Pakistan can suspend it.[236] Pakistan on base of reciprocity can also suspend performance of a treaty in relation to a party which is not complying with the treaty.[237] Apart from above reason in case a hostility including a war breaks out between two countries the VCLT leaves the issue with the countries and opts not to judge any case of revocation or suspension of treaties in between hostile countries. That is the hostile countries are to decide whether the want the treaties to stay applicable or their performance is suspended for the time being or even if the treaty stands revoked;[238] what ever the case may be VCLT will not judge any such decision.[239]

3.6.2 Revocation or Withdrawal from a Treaty

When it becomes impossible for a state to comply with its international obligations under the treaties which are operational or are in force for that state; this is the time when states opt for withdraw from a treaty or termination of a treaty. The main difference between revocation and withdraw is that in case of revocation or termination the treaty is outdone by party to that treaty. Where as, in case of withdraw the treaty remains, only the state ceases to be a party to it. Either revocation or withdraw, whatever the case may be the

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[235] ibid, Article 62 (3) (See Appendix C, pg. 144.)
[236] ibid, Article 61 (1) (See Appendix C, pg. 144.)
[237] ibid, Article 60 (1) and (2) (See Appendix C, pg. 143.)
[238] Principles of Public International law, third edition, Ian Brownlie, Clarendon Press Oxford, ch. ii, pg.. 614.
[239] Article 73, VCLT (1969) (See Appendix C, pg. 148.)

effect is one and that is the treaty ceases to apply any further binding obligations on a state.

As treaties do not rely on the will of a state, the state cannot reject a treaty unilaterally. That is, whenever, whatever the state likes it is not allowed to do it is only under certain reason and certain procedure that a state is allowed to withdraw from the obligations it has previously undertaken. Like the formulation of treaty, international law in VCLT 1969, has specified some rules and procedure for revocation of a treaty in force. These rules contain the reasons which are justifiable for a state while it decides to revoke or withdraw from a treaty. Apart from the reasons these rules contain the procedure which is to be followed before a treaty terminates fully. One thing is noticeable about the revocation of treaties, which is the non involvement of municipal law, apart from the issue of Article 46 of VCLT. Without the mentioned exception no state can reason any of the provision of its internal law for revocation of a treaty. The valid reasons for which Pakistan can revoke a treaty or withdraw from it are;

A: Invalid Consent
B: Mutual Agreement
C: Denunciation or by Provision of Treaty
D: Subsequent Treaty
E: Consequentially in Case of Breach of a Treaty
F: Impossibility of Performance, and
G: Fundamental change in Circumstances

A: Invalid Consent

If at any time it is proved that the representative of Pakistan has not validly consented to the treaty signed it is at disposal of Pakistan to either withdraw from the treaty or maintain it.[240] The cases where the consent is considered invalid by international law are; the treaty was signed in access of the authority vested in the representative or was in

[240] ibid, Article 45 (See Appendix C, pg. 140.)

breach of a municipal law of fundamental importance,[241] or; the consent was obtained by fraud or error,[242] or; the representative gave consent due to corruption.[243] In all mentioned cases the state can, after proving the fact, revoke or withdraw from a treaty.

B: Mutual Agreement

The second option available to Pakistan as a state is to withdraw or revoke a treaty under its own provisions. That is, if the treaty grants withdraw than, taking the benefit of that provision. The treaty can also be revoked by Pakistan by negotiating an agreement, with the states party to a treaty, aimed at termination of the treaty.[244] The treaty terminated by mutual consent and agreement can be exemplified by the case of termination of the Treaty of Alliance of 1945 between United Kingdom and Hashmite Kingdom of Jordan in 1957.

C: Denunciation or by Provision of Treaty

When there is no explicit provision but the treaty may have intended to allow withdrawal from a treaty completely or partially, Pakistan can opt out by giving 12 months notice before its final withdraw from the treaty.[245] For example, United States of America in 1965 initiated the process of denunciation from Warsaw Convention of 1929 though finally it refrained from its action in 1966 but it was by its on will. An example of partial Denunciation is that of Iran who denounced only one Article 6 of the Iran USSR Treaty of friend ship in 1980.

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[241] ibid, Article 46 (See Appendix C, pg. 140.)
[242] ibid, Article 48 & 49 (See Appendix C, pg. 141.)
[243] ibid, Article50 (See Appendix C, pg. 141.)
[244] ibid, Article 54 (See Appendix C, pg. 142.)
[245] ibid, Article 56 (See Appendix C, pg. 142.)

D: Subsequent Treaty

Pakistan can replace its previous treaties by subsequent treaties. The conditions for such replacement are that the subsequent treaty is to be on the same matter by the same members and should be more elaborate and specific in terms.[246] The validity of such termination is evident from **Walder v Sociale Verzekeringsbank** 1973, where it became evident that a regulation of EEC (European Economic Council) "*replaced earlier social security treaties concluded between member states*".[247]

E: Consequentially in Case of Breach of a Treaty

The VCLT clearly provides hat when one party to a treaty does a material breach,[248] that is it does not performing the treaty in its full or required capacity then the other party has the right to revoke the treaty. The rule applies in two different aspects with respect to bilateral and multilateral treaties. For bilateral treaties any material breach of the treaty by one party entitles the other party to the right of unilaterally revocation. Where as in case of a multilateral treaties, when a breach is committed by one party the other effected party has the right to revoke the treaty only in the case when such breach is severely affecting the state.[249] For example, UK took consequential actions in 1986, when Syria denied the performance of UK-Syria air service Agreement.[250]

F: Impossibility of Performance

When there is a manifest and fair reason of the impossibility of achieving the objective of the treaty, Pakistan can revoke it. The impossibility might be related to the performance, subject matter or any other condition, but one thing is necessary that is the nature of any

[246] ibid, Article 59 (See Appendix C, pg. 143.)
[247] Oppenhiem's International Law, 9th edition, ed. By Sir Robert Jennings and Sir Arthur Watts, Universal Law Publishing Co. 2003, pg. 1300.
[248] For detailed discussion on what constitutes and what is meant by breach of a treaty. See The Law of Treaties, Lord McNair, Clarendon Press, 1986, pg. 539.
[249] Article 60, VCLT (1969) (See Appendix C, pg. 143.)
[250] Oppenhiem's International Law, 9th edition, ed. By Sir Robert Jennings and Sir Arthur Watts, Universal Law Publishing Co. 2003, pg. 1301.

such impossibility should be permanent. If any such impossibility is temporary the treaty though can be suspended but can not be revoked.[251]

G: Fundamental change in Circumstances

A treaty is signed by a state in certain circumstances; these circumstances determine the interest and agreement of the state. So if there is any change in the circumstances under which the treaty was signed and this change is of the nature that if it would have occurred at the conclusion of treaty the state would have not consented to the treaty or the obligations under the change circumstances becomes radically different Pakistan as a state can withdraw from such treaty.[252] An explicit example of such a case may be that of withdrawal of France from NATO (North Atlantic Treaty Organization) in 1966 on the basis of changed circumstances.

3.6.3 Procedure of Revocation or Withdrawal

VCLT has given a simple procedure for withdrawing of a state from a treaty. Apart from the procedure of withdraw or revocation mentioned inherently in a treaty, VCLT 1969, requires any party, intending to withdraw from the treaty, to issue a notice to other parties of the treaty.[253] The notice is to be in written form, containing all the reason of withdrawing of a state from the treaty and duly signed by foreign Minister, head of government or head of state or any other person having full powers.[254] Except in case of urgency the respondent states have three months to answer to that notice. At this step there are two options either the respondent states object to withdraw or they accept it. If a state has objected to the withdrawing of a state, the VCLT 1969 requires the objection to be resolved under Article 33 of U.N Charter first.[255] Once any such conflict is resolved or no other state party to the treaty has any objection to the withdrawing of the state than,

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[251] Article 61, VCLT (1969) (See Appendix C, pg. 144.)
[252] ibid, Article 62 (See Appendix C, pg. 144.)
[253] ibid, Article 62 (See Appendix C, pg. 144.)
[254] ibid, Article 67 (See Appendix C, pg. 146.)
[255] ibid, Article 62 (See Appendix C, pg. 144.)

after the specified period of three months, the notification is given effect and the state is held discharge from any of its duty under that treaty. Though any time before the notice is given effect a state can repudiate its decision of withdrawing from the treaty.[256]

[256] ibid, Article 68 (See Appendix C, pg. 146.)

CHAPTER IV

CONCLUSION ANALYSIS AND SUGGESTIONS

This is the final chapter and as such is a concluding one. The chapter is aimed at sorting out results from the previous chapters and then comparatively analyzing those results with the closet practical system of treaty making and implementation being practiced in the world. This comparative study will be done to disclose and sort out problems in Pakistan's treaty making and implementation mechanism and to give any appropriate suggestions which might help make the mechanism work better. The chapter will deal with the issues of summary; results of the research; comparative analysis; and conclusion with suggestions.

4.1 Summary

In response to the needs of present international system, Pakistan has a quite developed system of treaty making. Pakistan is a Federal state where representation with respect to the conclusion of treaties is solely vested in Federal Government. Federal Government for the conclusion of treaties represents Pakistan through a clearly defined and quite flexible system under national law; that is the issue that who can and how can a treaty be concluded is answered in clear words in the law. Pakistan's law clearly assures that Federal Government can conclude treaties through different channels; that is it can conclude a treaty in the name of president, prime Minister, different ministries and fully empowered envoys or delegates. This flexible and clearly defined structure has enabled Pakistan to conclude any treaty in the interest of Pakistan with any country and international organization at any level. However, there still remains one reservation about the treaty making procedure adopted by Pakistan. During the consultation process, both before signature and ratification, no mechanism has been adopted for the participation of other interest holders. Only different ministries are consulted for the purpose of ascertaining the usefulness and social and legal impact of a treaty. Other interest groups in Pakistan like public at large, industrial stake holders, non governmental organizations

(NGO), legal experts etc. all remain unaware of the treaties concluded by the Government of Pakistan. This fact not only reduces the chance of negotiating a better deal for Pakistan but also when implementation of a treaty becomes necessary certain complexities become inevitable (the legislature very often refuses to implement a treaty by a law which is discriminating to any of the interest holder). This deficiency in the treaty making procedure of Pakistan can be removed by introducing a consultation mechanism on Australian model. For the purpose of analysis of national interest; Australia has a wide range of options at its disposal. Apart from holding normal consultations with in Government Departments for the purpose of a treaty, Department of Foreign Affairs and Trade (DFAT) holds meeting with NGOs twice a year for ascertaining State's stand on humanitarian issues.[257] Whereas to ensure participation of all interest groups seminars and conferences are also conducted by DFAT. Furthermore, for securing comments on a treaty from all fields of life Australia has devised an ingenious system. A central digital library has been built where the proposed text of all the proposed treaties is kept under the care of separate officials; any person in Australia can access these proposed drafts, can consult the drafts with officials and can comment on them. This process ensures the collection of enough comments for ascertaining the usefulness of a treaty along with the National Interest of Australia.[258] These formal (consultation with in Government departments) and non-formal (consultations with non Government interest groups) ensures that the Australian Government is not only able to secure a better deal for Australia but also is able to convince Legislature to ratify and enforce a treaty by legislation at a later. If Pakistan adopts the non-formal consultation process on Australian model; it will not only augment Pakistan's negotiating position but will also help in development of an excellent legal attitude in masses, (public at large) in the long run.

Pakistan though has a good overall mechanism of treaty making, yet its mechanism for implementation of any applicable treaty is quite under developed. Like treaty making implementation of a treaty is primarily the duty of the Federal Government but unlike treaty making the power to implement treaty is not vested solely in Federal Government.

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[257] Australian Treaties Information, Department of Foreign Affairs and Trade, Australia (electronic version of the document from http://www.dfat.gov.au)

[258] ibid

The true power to implement a treaty is vested in the Federal Legislature. The Federal Government can only suggest and request the Federal Legislature to help it implement a treaty and if the Federal Legislature refuses, the Federal Government has no option but to default on its international obligation of implementation of a treaty. Furthermore, in Pakistan there is no such thing like implementation of treaties through Municipal courts; that is there is no remedy in municipal courts in case of non implementation of a treaty by Federal Government. In simple words, whether a treaty is affecting private right not protected under any national law or it just defaults a required executive action for its performance; there is no remedy available at the courts of Pakistan. This is because the Constitution of Islamic Republic of Pakistan has expressly limited and attached the jurisdiction of courts to an express provision of national or municipal law. In fact Pakistan is practicing a doctrine of transformation, which according to David. H. Ott means that, no rule of international law is applicable in municipal legal system unless incorporated by the legislature.[259] The doctrine holds simply that Pakistani courts will not follow and entertain implementation of a treaty unless it is implemented through provision of a law.

This attitude has rather left Pakistan with an isolationist position, in respect of implementation of a treaty. Whether, the Federal Government is willing or not, the implementation of a treaty requiring a legislation or judicial protection in Pakistan can not be guaranteed. This leaves the implementation mechanism of Pakistan subject to many necessary changes.

4.1.1 Results

The research of this thesis as summarized above reveals certain key points of the Pakistan's handling of treaty making and its implementation. The points can be summarized as following results;

[259] Public International Law In The Modern World, David. H. Ott, Pitt Man Publishing, 1987.pg. 34.

A: Pakistan is a sovereign country with out any extra ordinary limitation on its sovereignty and as such Pakistan is fully capable to enter in every type of treaty.

B: Pakistan practices a federal system of government, where Federal Government has been vested with sole power to represent Pakistan for conclusion of treaties.

C: Pakistan has a good, flexible and robust system of treaty making, which is fully competent to help Pakistan steer smoothly in its international relations.

D: Though the consultations from different Government departments is ensured yet the consultation with other stake holders (public at large, industrial groups, commercial organizations, NGOs etc.) in national interest holders is evidently missing in Pakistan's treaty making procedure.

E: The Federal Government has not been granted an unchecked authority to conclude treaties, Constitution of Islamic Republic of Pakistan has clearly provided with certain restrictions to be obeyed by Federal Government when concluding a Treaty.

F: Pakistan has a rather isolationist system in case of implementation. Where there is no guarantee of implementation of a treaty in National jurisdiction in case of an unwilling Parliment.

G: Power and duty to implement treaties, though centered on Federal Government, has been divided between Federal Legislature, Federal Government and Provincial Government.

H: The prime authority to implement a treaty is vested in Federal Legislature through a legislative act. Where as, Federal Government is conferred power to take all executive measures not against law, to implement a treaty. Provincial Governments are also conferred powers to implement a treaty in those affairs which fall in their domain.

I: The Municipal Courts of Pakistan have no jurisdiction apart from that which is granted specifically by law. Thus no treaty which has not been incorporated in national law can be enforced in Pakistani courts.

These are the results which are concluded from the overall research on Pakistan's treaty making and implementation laws and procedures. These results help us to summarily understand the attitude and response of Pakistan on the said issues of treaty making and implementation.

4.2 Comparative Analysis

For the relevant issue of treaty making and implementation in Pakistan the supreme authority is vested in Federal Government and Federal Legislature respectively. That is, Federal Government is allowed to act independently free of any legislative influence, for the purpose of treaty making. Where as in national domain the legislature holds the supreme position and is not obliged at all to agree with executive, when a law is required for implementation of a treaty. So to ascertain the core problems faced by Pakistan's treaty making and implementation mechanism a critically analysis is being conducted on base of a comparative study of Pakistan's system with the closet developed and practical system of treaty making and implementation in the world.

In the world a number of countries have well developed treaty making and implementation mechanisms. United States of America has one of the best system of treaty making and its implementation. America is a Federal state, where though the negotiation of a treaty is the responsibility of the executive, yet under Article 2 of the American Constitution the power of ratification is vested in the Congress and once a treaty is ratified it automatically becomes the highest law of the land.[260] Like America, Australia is also a Federal state has also an excellently developed treaty making and

[260] Article 2, sec 2, of the American constitution makes it clear that America will accept only those International Agreements as treaties which are Ratified by two third majority of it's Senate. Further more once a treaty has been concluded under the Constitution of America it becomes supreme law of the land and in Article 6 of American Constitution judges are held bound to honor the provision of a treaty over any other law of the State. See. Public International Law In The Modern Word, David. H. Ott, Pitt Man Publishing, 1987.pg. 41-42.

implementation system.[261] Even in Australia Ratification is vested in Parliament. As in Pakistan Ratification is an executive act and legislature has no concern with it and as such with treaty making so American or Australian model for an overall comparative study is unsuitable because ratification of a treaty by legislature yields a completely different legal impact on a country. In this scenario the closet system which resembles to the system adopted by Pakistan and is in practice is of United Kingdom. Before we make any comparison it is necessary to have a brief overview of United Kingdoms laws and practice of treaty making and implementation.

4.2.1 Review of United Kingdoms Treaty Law

The British law of treaty is to be covered under two rules. First rule is the supremacy of a municipal law. That is where there is a law of Parliament or common law nothing contrary to it should be admitted. The second rule, however, requires that if nothing is contrary to municipal law all the rules and principals of international law are part of British legal system and as such are enforceable in Britain.[262]

F.A. Mann notes about the first said rule of treaty law followed in United Kingdom, in the words of Lord Atkin who in the case of **Attorney General for Canada v Attorney General of Ontario 1937**, stated that, "*with in the British Empire there is well established rule that the making of a treaty is an executive act, while the performance of its obligations if they entail alteration of existing domestic law, requires legislative action.*"[263] In the same case Lord Atkins' view as noted by David. H. Ott was, "*While a treaty may bind the state as against the other contracting parties, Parliament may simply refuse to perform it and thus leave the state in default. The remedy for that default must then be obtained on international level.*"[264] The said case makes it clear that in U.K the rule is simple and it is that the executive can conclude a treaty and can also ensure executive implementation of the treaty but for the implementation of any treaty for which

[261] Australian Treaties Information, Department of Foreign Affairs and Trade, Australia (electronic version of the document from http://www.dfat.gov.au)
[262] Principles of Public International Law, third edition, Ian Brownlie, Clarendon Press Oxford, pg. 45.
[263] International Law, F. A .Mann, Clarendon Press Oxford, 1973, pg. 329.
[264] Public International Law In The Modern Word, David.H.Ott, Pitt Man Publishing, 1987. pg. 40.

a previous law or a rule of common law is present, legislation is necessary. Where as, if Parliament refuse to implement a treaty by law the treaty simply cannot be implemented in the municipal jurisdiction of Britain. This attitude reflects that in British legal system the supreme authority is British Parliament.

The greater thing present in British legal system as said in second rule though is that the Britain follows the doctrine of incorporation where ever no specific British law is present. The doctrine of incorporation means *"... the international and Municipal legal systems were interrelated in such a way that rules of customary international law were, where relevant, automatically part of English law without any action by courts, Crown or Parliament. This automatic inclusion of international law is known as incorporation."*[265] This rule of incorporation ensures that when ever a treaty is to be implemented in Britain and such implementation is not against or under a British law, it can be implemented under the doctrine of incorporation.

Summarizing the result of above two points; we can say that British Treaty law has three features.

A: Executive can conclude treaties, independent of any effect of legislature.

B: British Legislature has the supreme authority either to implement a treaty or reject a treaty.

C: If an explicit law is not present or is not prohibiting a treaty can be implemented in Britain under international law. For the purpose, British courts have full authority and jurisdiction to entertain any implementation issue even under international law.

4.2.2 Comparison and Framing of Issues

If we simply compare Pakistan's treaty law with British Treaty Law we will find that situation is quite similar. Both systems offer an independent role of treaty making to their executive; and both systems also uphold the supremacy of Parliament in national domain and allow the Parliament to reject or implement a treaty as it wills. These similarities

[265] ibid pg. 34.

enable Pakistan like Britain to enjoy and practice the advantages of a protected municipal jurisdiction and as such securing all the private rights from any influence of international law or international obligations.

With advantages come consequences, as Britain due to its strict rule of supremacy of domestic laws is finding it difficult to cope with its international obligation. Some times Britain rather faces embarrassing situation as David. H. Ott states, "*... persons in Britain whose rights under that Convention (European Convention on Human Rights) have been violated are compelled to raise their cases before European Human Rights Commission, in the process expending a great deal of time and money and embarrassing the United Kingdom before the European public opinion.*"[266] This in fact is the situation faced by Britain and what else can be embarrassing when your own citizens prefer some other legal system for protection of their rights. Pakistan on the same footing is facing severe problems as international firms, companies, foreign nationals and even Pakistani nationals and companies are finding it more feasible to bring their suits in other countries rather than Pakistan. This is not only harming the business and legal process in Pakistan but is also causing a considerable loss to national prestige and reputation.

Furthermore, their is a great difference between Pakistan and Britain's law of treaty and that is the non acceptance of international law by Pakistani legal system unlike the British legal system. Whether in favor or with all relevancies the international law cannot simply confer any jurisdiction to Pakistani courts and as such Pakistani courts are helpless in implementing a treaty. This has left Pakistani courts and as such pleaders in Pakistani courts with out option. Even when the right of a pleader is there and is prime facie established and can and will be implemented through an international tribunal or court the National courts simply refuse the case for the lack of jurisdiction; bringing severe discontent and mistrust among the pleader and other observers, about Pakistani legal system.

All this analysis along with previous research helps to sort out certain concerns about the treaty law of Pakistan. These concerns can be summarized in three broad issues.

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[266] Ibid, pg. 40.

A: The treaty making is vested completely in executive, there is no interference from any other organ of state and as other parties (NGOs, Industrial and Commercial groups etc) concerned with national interest are given no heed so the chances of securing a treaty which is in the best interest of all are minimized. This factor also leads to implementation problems at a later stage.

B: Courts in Pakistan are lacking jurisdiction to entertain any case under a treaty particularly and under international law generally. This position is harming Pakistan a lot and in near future and in the long term if the situation is not cured the legal system of Pakistan will be left far behind the rest of the world and will severely affect the credibility of Pakistan and its seriousness to implement treaties.

C: The third most important issue which is being faced by Pakistan and Britain alike is the issue of remedy. Subjecting a treaty law to a national law very often leaves lengthy strangled procedural issues and inappropriate remedies. This, in fact also leaves the Pakistani legal system as least preferable option for securing implementation of a treaty through it.

4.3 Conclusion and Suggestions

Pakistan is an active member of international community, for the time being Pakistan is member of a number of international and regional organizations. Pakistan has strong economic ties with western countries and also apart from economic ties Pakistan has quite strong cultural and religious relations with Muslim countries. Pakistan has been able to cope with all of its international ties due to a good and vigilant treaty making system. However nowadays, due to the increasing trend of globalization and more and more interaction between states the treaties between states are becoming more concerned and applicable on private rights and in such case isolation of municipal jurisdiction is no more an option. To cope with the new emerging responsibilities Pakistan not only has to adopt a more resolute system of implementation of treaty obligations but has also make it

sure that it agrees only to those terms which are best consulted (both with government departments and with other stake holders in National Interest), otherwise Pakistan will always have to face an embarrassment in its international affairs. For the betterment of its treaty making and implementation, certain steps have become necessary, evident and as such they are required to be taken by Pakistan. So I will like to suggest, in respect of my research certain steps which Pakistan can take and should take immediately to augment its treaty making and implementation mechanism.

A: Pakistan should promote and invite consultations; with Non Government Organizations; with major industrial and commercial groups; with legal experts at Supreme Court and High court Bars; and should conduct seminars at major public sector universities. It is also required that on Australian model a digital library should be created where any person from any field of life can comment and propose his suggestions on any proposed treaty. To conduct all the above consultations, an executive committee consisting of permanent members from Ministries of Law, Foreign Affairs, Economic Affairs and Finance and temporary members from the ministry which for that time is negotiating a treaty along with a representative of the Cabinet should be formed.

B: For the Federal executive it is also suggested that; the Cabinet should appoint a permanent committee with sole purpose of insuring implementation of all the treaties which have become applicable on Pakistan. The proposed committee of the Cabinet should under due procedure keep track of the implementation measures taken by any other executive authority and should facilitate and give recommendations if required for not only efficient executive implementation of a treaty but should also recommend legislation where ever necessary.

C: The Federal Legislature has the power to grant jurisdiction to a court in scope of Constitution. The third suggestion is that; the legislature by a general law should confer jurisdiction to the court to ensure implementation of all those treaty obligations by executive which are not in violation of any explicit provision of law and do not require

any sanction of law. This will at least ensure that the executives are compelled to do their share of work.

D: Where the Courts have been granted jurisdiction to entertain treaty obligations; the choice of law should also be granted to any suing party. That is whether, legal proceedings are to be initiated under a Pakistani law or the provisions of the treaty are to govern the case, should be left for the choice of the pleading party.

E: Finally, I will strongly like to suggest that in the present circumstances of international affairs the best option for a Federal and Dualist State like Pakistan is to vest the power of ratification of a treaty in the Parliament. So Pakistan should introduce a Constitutional change and should take the power of ratification from executive and should vest it in the Upper House of the Parliament (Senate).

With the above suggestions I will like to conclude my thesis; with a hope that the thesis proves to be useful for future studies and research; with a wish that this thesis is of any help in developing and augmenting the legal system of Pakistan; with a desire that Pakistan becomes a beacon and source of inspiration in the field of law; and with a pray to ALLAH (SWT) to bestow HIS blessing on all of us and on Pakistan.

APPEDIX: A

CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN 1973 (selected chapters)

PART I

Introductory

Article 1 The Republic and its territories

(1) *Pakistan shall be a Federal Republic to be known as the Islamic Republic of Pakistan, hereinafter referred to as Pakistan.*
(2) The territories of Pakistan shall comprise :-
(a) The Provinces of Baluchistan, the North-West Frontier, the Punjab and Sind;
(b) The Islamabad Capital Territory, hereinafter referred to as the Federal Capital;
(c) Federally Administered Tribal Areas; and
(d) Such States and territories as are or may be included in Pakistan, whether by accession or otherwise.
(3) Majlis-e-Shoora (Parliament)] may by law admit into the Federation new States or areas on such terms and conditions as it thinks fit.

Article 2 Islam to be State religion
Islam shall be the State religion of Pakistan.

Article 2A **The Objective Resolution to form part of substantive provisions.** *The principles and provisions set out in the objectives Resolution reproduced in the Annex are hereby made substantive part of the Constitution and shall have effect accordingly.*

PART III

The Federation of Pakistan

Chapter 3. THE FEDERAL GOVERNMENT

Article 90. Exercise of executive authority of the Federation.

(1) *The executive authority of the Federation shall vest in the President and shall be exercised by him, either directly or through officers subordinate to him, in accordance with the Constitution.*

(2) Nothing contained in clause (1) shall :-

(a) Be deemed to transfer to the President any functions conferred by any existing law on the Government of any Province or other authority; or

(b) Prevent the Majlis-e-Shoora (Parliament) from conferring by law functions on authorities other than the President

Article 91. The Cabinet.

(1) There shall be a Cabinet of Ministers, with the Prime Minister at its head, to aid and advise the President in the exercise of his functions.

(2) The President shall in his discretion appoint from amongst the members of the National Assembly a Prime Minister who, in his opinion, is most likely to command the confidence of the majority of the members of the National Assembly.

(2A) Notwithstanding any-thing contained in clause (2), after the twentieth day of March, one thousand nine hundred and ninety, the President shall invite the member of the National Assembly to be the Prime Minister who commands the confidence of the majority of the members of the National Assembly, as ascertained in a session of the Assembly summoned for the purpose in accordance with the provisions of the Constitution.]

(3) The person appointed under clause (2) [or as the case may be, invited under clause (2A) shall, before entering upon the office, make before the President oath in the form set out in the Third Schedule and shall within a period of sixty days thereof obtain a vote of confidence from the National Assembly.

(4) The Cabinet, together with the Ministers of State, shall be collectively responsible to the National Assembly.

(5) The Prime Minister shall hold office during the pleasure of the President, but the President shall not exercise his powers under this clause unless he is satisfied that the Prime Minister does not command the confidence of the majority of the members of the National Assembly, in which case he shall summon the National Assembly and require the Prime Minister to obtain a vote of confidence from the Assembly.

(6) The Prime Minister may, by writing under his hand addressed to the President, resign his office.

(7) A Minister who for any period of six consecutive months is not a member of the National Assembly shall, at the expiration of that period, cease to be a Minister and shall not before the dissolution of that Assembly be again appointed a Minister unless he is elected a member of that Assembly:

Provided that nothing contained in this clause shall apply to a Minister who is a member of the Senate.

(8) Nothing contained in this Article shall be construed as disqualifying the Prime Minister or any other Minister or a Minister of State for continuing in office during any period during which the National Assembly stands dissolved, or as preventing the appointment of any person as Prime Minister or other Minister or as Minister of State during any such period.

Article 92. Federal Ministers and Ministers of State.

(1) Subject to clauses (7) and (8) of Article 91, the President shall appoint Federal Ministers and Ministers of State from amongst the members of Majlis-e-Shoora (Parliament) on the advice of the Prime Minister:

Provided that the number of Federal Ministers an d Ministers of State who are members of the Senate shall not at any time exceed one-fourth of the number of Federal Ministers.

(2) Before entering upon office, a Federal Minister or Minister of State shall make before the President oath in the form set out in the Third Schedule.

(3) A Federal Minister or Minister of State may, by writing under his hand addressed to the President, resign his office or may be removed from office by the President on the advice of the Prime Minister.

Article 93. Advisers.

(1) The President may, on the advice of the Prime Minister, appoint not more than five Advisers, on such terms and conditions as he may determine.

(2) The provisions of Article 57 shall also apply to an Adviser.

Article 94. Prime Minister continuing in office.

The President may ask the Prime Minister to continue to hold office until his successor enters upon the office of Prime Minister.

Article 95. Vote of no-confidence against Prime Minister.

(1) A resolution for a vote of no-confidence moved by not less than twenty per centum of the total membership of the National Assembly may be passed against the Prime Minister by the National Assembly.

(2) A resolution referred to in clause (1) shall not be voted upon before the expiration of three days, or later than seven days, from the day on which such resolution is moved in the National Assembly.

(3) A resolution referred to in clause (1) shall not be moved in the National Assembly while the National Assembly is considering demands for grants submitted to it in the Annual Budget Statement.

(4) If the resolution referred to in clause (1) is passed by a majority of the total membership of the National Assembly, the Prime Minister shall cease to hold offce.

96.

96A.

Article 97. Extent of executive authority of Federation.

Subject to the Constitution, the executive authority of the Federation shall extend to the matters with respect to which [Majlis-e-Shoora (Parliament)] has power to make laws, including exercise of rights, authority and jurisdiction in and in relation to areas outside Pakistan:

Provided that the said authority shall not, save as expressly provided in the Constitution or in any law made by [Majlis-e-Shoora (Parliament)], extend in any Province to a matter with respect to which the Provincial Assembly has also power to make laws.

Article 98. Conferring of functions on subordinate authorities.

On the recommendation of the Federal Government, [Majlis-e-Shoora (Parliament)] may by law confer functions upon officers or authorities subordinate to the Federal Government.

Article 99. Conduct of business of Federal Government.

(1) All executive actions of the Federal Government shall be expressed to be taken in the name of the President.

(2) The President shall by rules specify the manner in which orders and other instruments made and executed in his name shall be authenticated, and the validity of any order or instrument so authenticated shall not be questioned in any court on the ground that it was not made or executed by the President.

(3) The President shall also make rules for the allocation and transaction of the business of the Federal Government.

Article 100. Attorney-General for Pakistan.

(1) The President shall appoint a person, being a person qualified to be appointed a Judge of the Supreme Court, to be the Attorney-General for Pakistan.

(2) The Attorney-General shall hold office during the pleasure of the President.

(3) It shall be the duty of the Attorney-General to give advice to the Federal Government upon such legal matters, and to perform such other duties of a legal character as may be referred or assigned to him by the Federal Government, and in the performance of his duties he shall have the right of audience in all courts and tribunals in Pakistan.

(4) The Attorney-General may, by writing under his hand addressed to the President, resign his office.

Part V

Relations Between Federation and Provinces

Chapter 1. DISTRIBUTION OF LEGISLATIVE POWERS

Article 141. Extent of Federal and Provincial laws.

Subject to the Constitution, [Majlis-e-Shoora (Parliament)] may make laws (including laws having extra-territorial operation) for the whole or any part of Pakistan, and a Provincial Assembly may make laws for the Province or any part thereof.

Article 142. Subject-matter of Federal and Provincial laws.

Subject to the Constitution-

(a) [Majlis-e-Shoora (Parliament)] shall have exclusive power to make laws with respect to any matter in the Federal Legislative List;

(b) [Majlis-e-Shoora (Parliament)], and a Provincial Assembly also, shall have power to make laws with respect to any matter in the Concurrent Legislative List;

(c)A Provincial Assembly shall, and [Majlis-e-Shoora (Parliament)] shall not, have power to make laws with respect to any matter not enumerated in either the Federal Legislative List or the Concurrent Legislative List; and

(d) [Majlis-e-Shoora (Parliament)] shall have exclusive power to make laws with respect to matters not enumerated in either of the Lists for such areas in the Federation as are not included in any Province.

Article 143.Inconsistency between Federal and Provincial laws.

If any provision of an Act of a Provincial Assembly is repugnant to any provision of an Act of [Majlis-e-Shoora (Parliament)] which [Majlis-e-Shoora (Parliament)] is competent to enact, or to any provision of any existing law with respect to any of the matters enumerated in the Concurrent Legislative List, then the Act of [Majlis-e-Shoora (Parliament)], whether passed before or after the Act of the Provincial Assembly, or, as the case may be, the existing law, shall prevail and the Act of the Provincial Assembly shall, to the extent of the repugnancy, be void.

Article 144. Power of [Majlis-e-Shoora (Parliament)] to legislate for two or more Provinces by consent.

(1) If two or more Provincial Assemblies pass resolutions to the effect that [Majlis-e-Shoora (Parliament)] may by law regulate any matter not enumerated in either List in the Fourth Schedule, it shall be lawful for [Majlis-e-Shoora (Parliament)] to pass an Act for regulating that matter accordingly, but any act so passed may, as respects any Province to which it applies, be amended or repealed by Act of the Assembly of that Province.

Relations Between Federation and Provinces

Chapter 2. ADMINISTRATIVE RELATIONS BETWEEN FEDERATION AND PROVINCES.

Article 145. Power of President to direct Governor to discharge certain functions as his Agent.

(1) The President may direct the Governor of any Province to discharge as his Agent, either generally or in any particular matter, such functions relating to such areas in the Federation which are not included in any Province as may be specified in the direction.

(2) The provisions of Article 105 shall not apply to the discharge by the Governor of his functions under clause (1).

Article 146. Power of Federation to confer powers, etc., on Provinces, in certain cases.

(1) Notwithstanding anything contained in the Constitution, the Federal Government may, with the consent of the Government of a Province, entrust either conditionally or unconditionally to that Government, or to its officers, functions in relation to any matter to which the executive authority of the Federation extends.

(2) An Act of [Majlis-e-Shoora (Parliament)] may, notwithstanding that it relates to a matter with respect to which a Provincial Assembly has no power to make laws, confer powers and impose duties upon a province or officers and authorities thereof.

(3) Where by virtue of this Article powers and duties have been conferred or imposed upon a Province or officers or authorities thereof, there shall be paid by the Federation to the Province such sum as may be agreed or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of Pakistan, in respect of any extra costs of administration incurred by the Province in connection with the exercise of those powers or the discharge of those duties.

Article 147. Power of the Provinces to entrust functions to the Federation.

Notwithstanding anything contained in the Constitution, the Government of a Province may, with the consent of the Federal Government, entrust, either conditionally or unconditionally, to the Federal Government, or to its officers, functions in relation to any matter to which the executive authority of the Province extends.

Article 148. Obligation of Provinces and Federation.

(1) The executive authority of every Province shall be so exercised as to secure compliance with Federal laws which apply in that Province.

(2) Without prejudice to any other provision of this Chapter, in the exercise of the executive authority of the Federation in any Province regard shall be had to the interests of that Province.

(3) It shall be the duty of the Federation to protect every Province against external aggression and internal disturbances and to ensure that the Government of every Province is carried on in accordance with the provisions of the Constitution.

Article 149. Directions to Provinces in certain cases.

(1) The executive authority of every Province shall be so exercised as not to impede or prejudice the exercise of the executive authority of the Federation, and the executive authority of the Federation shall extend to the giving of such directions to a Province as may appear to the Federal Government to be necessary for that purpose.

(2) The executive authority of the Federation shall also extend to the giving of directions to a Province as to the carrying into execution therein of any Federal law which relates to a matter specified in the Concurrent Legislative List and authorises the giving of such directions.

(3) The executive authority of the Federation shall also extend to the giving of directions to a Province as to the construction an d maintenance of means of communication declared in the direction to be of national or strategic importance.

(4) The executive authority of the Federation shall also extend to the giving of directions to a Province as to the manner in which the executive authority thereof is to be exercised for the purpose of preventing any grave menace to the peace or tranquility or economic life of Pakistan or any part thereof.

Article 150. Full faith and credit for public acts, etc.

Full faith and credit shall be given throughout Pakistan to public acts and records, and judicial proceedings of every Province.

Article 151. Inter-Provincial trade

(1) Subject to clause (2), trade, commerce and intercourse throughout Pakistan shall be free.

(2) [Majlis-e-Shoora (Parliament)] may by law impose such restrictions on the freedom of trade, commerce or intercourse between one Province and another or within any part of Pakistan as may be required in the public interest.

(3) A Provincial Assembly or a Provincial Government shall not have power to-

(a) make any law, or take any executive action, prohibiting or restricting the entry into, or the export from, the Province of goods of any class or description, or

(b) impose a tax which, as between goods manufactured or produced in the Province and similar goods not so manufactured or produced, discriminates in favor of the former goods or which, in the case of goods manufactured or produced outside the Province discriminates between goods manufactured or produced in any area in Pakistan and similar goods manufactured or produced in any other area in Pakistan.

(4) An Act of a Provincial Assembly which imposes any reasonable restriction in the interest of public health, public order or morality, or for the purpose of protecting animals or plants from disease or preventing or alleviating any serious

shortage in the Province of an essential commodity shall not, if it was made with the consent of the President, be invalid.

Article 152. Acquisition of land for Federal purposes.

The Federation may, if it deems necessary to acquire any land situate in a Province for any purpose connected with a matter with respect to which [Majlis-e-Shoora (Parliament)] has power to make laws, require the Province to acquire the land on behalf, and at the expense, of the Federation or, if the land belongs to the Province, to transfer it to the Federation on such terms as may be agreed or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of Pakistan.

PART VII

The Judicature

Chapter 1. THE COURTS

Article 175. Establishment and Jurisdiction of Courts.

(1) There shall be a Supreme Court of Pakistan, a High Court for each Province and such other courts as may be established by law.

(2) No court shall have any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law.

(3) The Judiciary shall be separated progressively from the Executive within [fourteen] years from the commencing day.

PART XII (contd)

Miscellaneous

Chapter 3. Tribal Areas

Article 246. Tribal Areas.

In the Constitution,

(a) "Tribal Areas" means the areas in Pakistan which, immediately before the commencing day, were Tribal Areas, and includes

(i) the Tribal Areas of Baluchistan and the North-West Frontier Province; and

(ii) the former States of Amb, Chitral, Dir and Swat;

(b) "Provincially Administered Tribal Areas" means
(i) The districts of Chitral, Dir and Swat (which includes Kalam), [the Tribal Area in Kohistan district,] Malakand Protected Area, the Tribal Area adjoining [Mansehra] district and the former State of Amb; and
(ii) Zhob district, Loralai district (excluding Duki Tehsil), Dalbandis Tehsil of Chagai District and Marri and Bugti tribal territories of Sibi district; and
(c) Federally Administered Tribal Areas includes
(i) Tribal Areas adjoining Peshawar district;
(ii) Tribal Areas adjoining Kohat district;
(iii) Tribal Areas adjoining Bannu district;
(iv) Tribal Areas adjoining Dera Ismail Khan district;
(v) Bajaur Agency;
(va) Orakzai Agency;]
(vi) Mohmand Agency;
(vii) Khyber Agency;
(viii) Kurram Agency;
(ix) North Waziristan Agency, and
(x) South Waziristan Agency.

Article 247. Administration of Tribal Areas.

(1) Subject to the Constitution, the executive authority of the Federation shall extend to the Federally Administered Tribal Areas, and the executive authority of a Province shall extend to the Provincially Administered Tribal Areas therein.
(2) The President may, from time to time, give such directions to the Governor of a Province relating to the whole or any part of a Tribal Area within the Province as he may deem necessary, and the Governor shall, in the exercise of his functions under this Article, comply with such directions.
(3) No Act of [Majlis-e-Shoora (Parliament)] shall apply to any Federally Administered Tribal Area or to any part thereof, unless the President so directs, and no Act of [Majlis-e-Shoora (Parliament)] or a Provincial Assembly shall apply to a Provincially Administered Tribal Area, or to any part thereof, unless the Governor of the Province in which the Tribal Area is situate, with the approval of the President, so directs; and in giving such a direction with respect to any law, the President or, as the case may be, the Governor, may direct that the law shall, in its application to a Tribal Area, or to a specified part thereof, have effect subject to such exceptions and modifications as may be specified in the direction.
(4) Notwithstanding anything contained in the Constitution, the President may, with respect to any matter within the legislative competence of [Majlis-e-Shoora (Parliament)], and the Governor of a Province, with the prior approval of the President, may, with respect to any matter within the legislative competence of the Provincial Assembly make regulations for the peace and good government of a Provincially Administered Tribal Area or any part thereof, situated in the Province.

(5) Notwithstanding anything contained in the Constitution, the President may, with respect to any matter, make regulations for the peace and good Government of a Federally Administered Tribal Area or any part thereof.
(6) The President may, at any time, by Order, direct that the whole or any part of a Tribal Area shall cease to be Tribal Area, and such Order may contain such incidental and consequential provisions as appear to the President to be necessary and proper:

Provided that before making any Order under this clause, the President shall ascertain, in such manner as he considers appropriate, the views of the people of the Tribal Area concerned, as represented in tribal jirga.

(7) Neither the Supreme Court nor a High Court shall exercise any jurisdiction under the Constitution in relation to a Tribal Area, unless [Majlis-e-Shoora (Parliament)] by law otherwise provides:
Provided that nothing in this clause shall affect the jurisdiction which the Supreme Court or a High Court exercised in relation to a Tribal Area immediately before the commencing day.

APPENDIX B

RULES OF BUSINESS, 1973

In exercise of the powers conferred by Articles 90 and 99 of the Constitution of the Islamic Republic of Pakistan, the Federal Government is pleased to make the following rules:

PART A.—GENERAL

Rule 1. Title and commencement.—(1) These rules may be called the "Rules of Business, 1973."
(2) They shall come into force on the fourteenth day of August 1973.

Rule 2. Definitions.—(1) In these rules, unless there is anything repugnant in the subject or context:
(i) "Assembly" means the National Assembly;
(ii) "Attached Department" means a Department which has direct relation with a Division and has been declared as such by the Federal Government;
(iii) "business" means all work done by the Federal Government;
(iv) "Cabinet" means and consists of the Prime Minister and the Federal Ministers;
(v) "case" means a particular matter under consideration and includes all papers relating to it and required to enable the matter to be disposed of, viz., correspondence and notes, and also any previous paper on the subject or subjects covered by it or connected with it;
(vi) "Division" means a self-contained administrative unit responsible for the conduct of business of the Federal Government in a distinct and specified sphere and declared as such by the Federal Government;
(vii) "Federal Secretariat" means the Divisions or the Ministries when referred to collectively;
(viii) "Gazette" means the official Gazette of Pakistan,
(ix) "Government" means the Federal Government;
(x) "Leader of the House" means the Minster appointed by the Prime Minister to regulate official business in the Assembly or the Senate or the Majlis-e-Shoora (Parliament) in joint sitting as the case may be;
(xi) "Local administration" means the agency through which the President administers a territory subject to his direct administrative control;
(xii) "Member" means a member of the Assembly or the Senate;
(xiii) "Minister" means the Federal Minister-in-Charge of the Ministry to

which a particular case pertains and includes a Minister without portfolio and a Minister of State;
(xiv) "Ministry" means a Division or group of Divisions constituted as a Ministry;
(xv) "Majlis-e-Shoora" (Parliament) means the National Assembly and the Senate;
(xvi) "Provincial Government" means the Government of a Province of Pakistan;
(xvii) "Schedule" means a Schedule to these rules;
(xviii) "Secretary" means the Principal Secretary, Secretary or Acting Secretary to the Government of Pakistan in charge of a Division or a Ministry, and where there is no Secretary, the Additional Secretary or Joint Secretary in charge of the Division or the Ministry;
(xix) "Section" means a basic working unit in a Division as determined by the Government;
(xx) "Subordinate Office" means a Federal Government office other than a Ministry, Division or an Attached Department.
(2) All words and expressions used in these rules but not defined, have the same meaning as in the Constitution of the Islamic Republic of Pakistan.

Rule 3. Allocation of Business.--(1) The Federal Secretariat shall comprise the Ministries and Divisions shown in Schedule I.
(2) The Prime Minister may, whenever necessary, constitute a new Ministry consisting of one or more Divisions.
(3) The business of government shall be distributed among the Divisions in the manner indicated in Schedule II:
Provided that the distribution of business or the constitution of the Division may be modified from time to time by the Prime Minister.
(4) The Prime Minister shall allocate amongst his Ministers the business of Government by assigning the several Divisions specified in Schedule I to the charge of a Minister:
Provided that a Division or a Ministry not so assigned shall be in the charge of the Prime Minister:
Provided further that more than one Division may be assigned to a Minister.

Rule 4. Organization of Divisions.--(1) Each Division shall consist of a Secretary to Government and of such other officials subordinate to him as Government may determine:
Provided that the same person may be Secretary in more than one Division.
(2) The Secretary shall be the official head of the Division and shall be responsible for its efficient administration and discipline and for the proper conduct of business assigned to the Division under rule 3 (3) and for the due execution of sanctioned policy.
(3) The Secretary shall organize the Division into a number of working units to be known as Sections:

Provided that a unit which does not conform to a Section may be organized otherwise than as a Section on a permanent basis, in consultation with the Establishment Division.

Note:- In the case of an extraordinary working unit such as a research cell or an Office of the Officer on Special Duty, it will be sufficient if the Establishment Division is informed of the composition of the unit.

(4) The Attached Departments as allocated to the various Divisions are shown in Schedule III.

(5) The business of Government, other than the business done in the Federal Secretariat or the Attached Departments, shall be conducted through such agencies and offices as the Prime Minister may determine from time to time.

(6) There may be a Special Assistant or Special Assistants to the Prime Minister with such status and functions as may be determined by the Prime Minister.

Rule 5. Transaction of business.--(1) No important policy decision shall be taken except with the approval of the Prime Minister.

(2) It shall be the duty of a Minister to assist the Prime Minister in the formulation of policy.

(3) The Minister shall keep the Prime Minister informed of any important case disposed of by him without reference to the Prime Minister.

(4) No decisions of policy taken by the Prime Minister shall be varied, reversed or infringed without consulting him.

(5) Subject to sub-rule (1), the Minister shall be responsible for policy concerning his Division.

(6) No officer other than a Secretary, Additional Secretary or Joint Secretary shall take the initiative in approaching a Minister in connection with the official business. If an Additional Secretary or Joint Secretary holds an oral discussion with his Minister, he shall communicate the points made during discussion to the Secretary at the first possible opportunity.

(7) The Head of an Attached Department [* may see] a Minister:

Provided that the Secretary of the Division concerned shall be informed of the proposed interview so that he can be present if he so desires.

(8) The business of the Division shall ordinarily be disposed of by, or under the authority of the Minister-in-Charge.

(9) The Secretary shall --

(a) assist the Minister-in-Charge in the formulation of policy;

(b) duly execute the sanctioned policy;

(c) submit all proposals for legislation to the Cabinet with the approval of the Minister.

(d) keep the Minister-in-Charge generally informed of the working of the Division and of any important case disposed of without reference to the Minister;

(e) be the principal accounting officer of his Division, its Attached Departments and Subordinate Offices, and ensure that the funds controlled by him are spent in accordance with the rules laid down

by the Finance Division;
(f) subject to the provisions of these rules and with the approval of the Minister-in-Charge issue standing orders laying down the manner of disposal of cases in the Division, including the distribution of work amongst the officers of his Division and such orders may specify the cases or class of cases which may be disposed of by an officer subordinate to him; and (g) be responsible for the careful observance of these rules and, where he considers that there has been any material departure from them, either in his own or any other Division, he shall bring the matter to the notice of the Minister-in Charge and, if necessary, to the notice of the Prime Minister or the Cabinet.
(10) When the Secretary submits a case to the Minister, the latter may accept the proposals or views of the Secretary or may over-rule him. The Secretary will normally defer to the decision of the Minister and implement it. In case, however, the Secretary feels that the decision of the Minister is manifestly wrong and will cause gross injustice or undue hardship, he may state his reasons and re-submit the case to the Minister. If the Minister still adheres to his earlier decision and the matter is important enough, the Secretary shall request the Minister to refer the case to the Prime Minister and the Minister shall so refer the case for orders of the Prime Minister. If the case is not referred to the Prime Minister, the Secretary shall submit it directly to the Prime Minister with observations of the Minister-in-Charge.
(11) The Minister-in-Charge shall be responsible for conducting the business of the Division in the Assembly.
(11A)Verbal orders given by a functionary of the Government should as a matter of routine be reduced to writing and submitted to the issuing authority. If time permits, the confirmation shall invariably be taken before initiating action. However, in an exigency where action is required to be taken immediately or it is not possible to obtain written confirmation of the orders before initiating action, the functionary to whom the verbal orders are given shall take the action required and at the first available opportunity obtain the requisite confirmation while submitting to the issuing authority a report of the action taken by him.
(12) If any doubt or dispute arises as to the interpretation of these rules or the Division to which a case properly pertains, the case shall be referred to the Cabinet Division, whose decision shall be final. The Cabinet Division shall obtain the orders of the Prime Minister where necessary.
(13) Instructions ancillary to these rules shall, whenever considered desirable, be issued by the Cabinet Division:
Provided that the special or general orders required to be framed by the Divisions in terms of these rules may be issued by them after consulting the Cabinet Division.
(14) If any order passed happens to contravene a law, rule or policy, it shall be the duty of the next below officer to point out this to the authority passing the order.
(15) Detailed instructions for the manner of disposal of business in the Federal Secretariat shall be issued by the Establishment Division in the form of Secretariat Instructions.

Rule 6. Individual and collective responsibility.-- The Cabinet shall collectively be responsible for the advice tendered to, or the executive orders issued in the name of the

President whether by an individual Minister or as a result of decision by the Cabinet; but the Minister shall assume primary responsibility for the disposal of business pertaining to his portfolio.

Rule 7. Orders and instruments, agreements and contracts.--(1) Subject to Article 173, all executive actions of Government shall be expressed to be taken in the name of the President.

Note.- The use of the expression "Federal Government" in relation to the Provincial Governments and "Government of Pakistan" in relation to foreign Government shall be in order.

(2) The officers listed in Schedule IV may authenticate by signature all orders and other instruments made and executed in the name of the President: Provided that in certain cases an officer may be so authorized for a particular occasion by order of the Prime Minister.

(3) Instructions regarding the manner of authentication of orders and instruments in connection with the representation of Pakistan in foreign countries or at international conferences and of international agreements and treaties, shall be issued by the Foreign Affairs Division.

(4) Instructions for the making of contracts on behalf of the President and the execution of such contracts and all assurances of property, shall be issued by the Law, Justice and Human Rights Division.

PART B.-CONSULTATION AMONG DIVISIONS

Rule 8. Inter-Division procedure.-(1) When the subject of a case concerns more than one Division, the Division incharge shall be responsible for consulting the other Division concerned and no orders shall issue, nor shall the case be submitted to the Cabinet or the Prime Minister, until it has been considered by all the Divisions concerned, and their views obtained. Such consultation shall take place as early as may be practicable: Provided that in cases of urgency and with the approval of the Prime Minster, this requirement may be dispensed with, but the case shall at the earliest opportunity there-after be brought to the notice of the other Divisions concerned.

(1A) The Division should normally furnish its views to the referring Division within a fortnight of the receipt of reference. If more time is required because of the complicated nature of the case, the referring Division should invariably be informed of the position by the end of a fortnight indicating, simultaneously, the time by which the reply would be sent.

(2) In the event of a difference of opinion between the Divisions concerned, the Minister primarily concerned shall try to resolve the difference in consultation with the

other Ministers concerned. If no agreement is reached and the Minster primarily concerned desires to press the case, the case shall be submitted to the Prime Minister or, if the Prime Minister so desires, to the Cabinet:
Provided that in a matter of urgency the Minster primarily concerned may submit the case to the Prime Minister at any stage:
Provided further that where the Prime Minister is the Minister-in-Charge, the final views of other Divisions concerned shall be obtained before the case is submitted to the Prime Minister.
(3) When a case is referred by one Division to another for consultation, all relevant facts and the points necessitating the reference shall be clearly brought out. The reference should be complete in all respects to eliminate avoidable back references on the same issue(s). Similarly replies given by the Division should also be complete in all respects and cover all the points raised by the referring Division.
(4) Even where consultation is not required, a Division may, for purposes of information, pass copies of a communication received by it, or show a case, to such other Division as it considers would be interested in, or would profit by, it:
Provided that copies of classified documents shall be made and distributed only in accordance with the instructions issued by the Cabinet Division in accordance with rule 55(2):
Provided further that copies of cypher telegrams received or dispatched by the Pakistan Crypto Centre shall be distributed in accordance with the standing orders issued by the Foreign Affairs Division in consultation with the Defence Division and the Cabinet Division.
(5) A Minister may ask to see a case of another Division if it is required for the disposal of a case in his Division. The Minister for Finance may ask to see a case of any Division in which a financial consideration is involved. While making such request the Minister shall give the reasons for which the case is called for and shall be dealt with under the general or special orders of the Minister-in-Charge of the other Division. If, for any reason, the case, or relevant extracts from it, cannot be made available the Minister of the Division shall explain the position to the Minister making the request or bring the matter to the notice of the Prime Minister, if necessary.
(6) The Prime Minister may call for a case from any Division.
(7) If a Minister desires any further action to be taken on the case of another Division, he shall take up the matter with the Minister of that Division.
Rule 9. Secretaries' Committee.-(1) There shall be a Secretaries' Committee to discuss matters referred to it by a Division, a Minister or the Prime Minister, in which the experience and collective wisdom of the senior officers could be consulted, to the benefit of the subject under consideration.
(2) In a matter discussed in the Secretaries' Committee, if the Secretary of a Division has agreed to a proposal, it shall not be necessary to consult his Division again on that proposal.
(3) The Secretaries' Committee shall meet at least once a month unless there are no items for discussion.
(4) Other instructions regarding the submission of cases to the Secretaries' Committee shall be issued by the Cabinet Division.
(5) When a matter is referred to a Committee or working group, and a Division

is represented therein by an officer of or above the rank of Joint Secretary, the agreed decision of the Committee or working group shall be treated as final and shall not be subjected to further scrutiny in that Division.

Rule 10. Consultation with the Cabinet Division.-- (1) No Division shall, without previous consultation with the Cabinet Division, issue, or authorize the issue of any orders which involve,-

(a) the interpretation of these rules;

(b) a change in the allocation of business between the various Divisions of a Ministry;

(c) the strength, terms and conditions of service of the personal staff of Ministers, Ministers of State, Special Assistants to the Prime Minister and other dignitaries who enjoy the rank and status of a Minister or Minister of State; and

(d) the selection of an officer of the level of Assistant Director and Deputy Director in the Intelligence Bureau.

(2) Proposals regarding any directions by the President to the Governor of a Province under clause (1) of Article 145 shall be submitted to the President by the Division concerned but a copy of the Presidential directive will be supplied to the Cabinet Division.

(3) The Divisions concerned shall obtain the clearance of the Cabinet Division to the proposals for sending of the delegations which are not in conformity with the procedure laid down by that Division regarding categorization of international conferences.

Rule 11. Consultation with the Establishment Division.-- No Division shall, without previous consultation with the Establishment Division, issue, or authorize the issue of, any orders, other than orders in pursuance of any general or special delegation made by the Establishment Division, which involve -

(a) & (b) Deleted vide Cabinet Division Memo. No.104/59/78-Min.I, dated 5-7-1979.

(c) Appointment to a post in BS-20 and above and equivalent whether by initial appointment or promotion or transfer.

(d) a change in the terms and conditions of service of Federal civil servants;

(e) a change in the statutory rights and privileges of any Federal Government servant;

(f) Omitted vide SRO No.246(I)/2001, dated 26.4.2001.

(g) expenditure proposals relating to the Finance Division under rule 12 (1) (b), (2) and (3);

(h) the interpretation of rules and orders made by the Establishment Division; and

(i) rules for recruitment to any post or service, including the question of removing a post or service from the purview of the Federal Public Service Commission for the purposes of recruitment.

Rule 12. Consultation with the Finance Division.- (1) No Division shall, without previous consultation with the Finance Division, authorize the issue of any orders, other than orders in pursuance of any general or special delegation made by the Finance Division, which will affect directly or indirectly the finances of the Federation or which in particular involve -

(a) relinquishment, remission or assignment of revenue, actual or potential, or grant of a guarantee against it;

(b) expenditure for which no provision exists in the budget or for which no sanction exists;

(c) [Omitted vide Cabinet Divn Notification No.4-11/91-Min-I dated 22.10.1991.];

(d) floatation of loan;

(e) re-appropriation within budget grant;

(f) alteration in the method of compilation of accounts, or of the budget estimates;

(g) receipt or expenditure of foreign exchange unless already allocated;

(h) a change in the terms and conditions of service of Government servants, on their statutory rights and privileges, which have financial implications;

(i) interpretation of rules made by the Finance Division; and

(j) omitted vide Cabinet Divn Notification No.4-14/98-Min.I dated 01.12.98.

(2) No proposal to which the previous concurrence of the Finance Division is required shall, so long as concurrence is refused, be proceeded with. If a Minister cannot reach agreement with the Minister for Finance and desires to press the proposal, he shall submit it to the Prime Minister or, if the Prime Minister so desires to the Cabinet. Formal orders shall not issue until the Finance Division has given its scrutiny to the details of the proposal, where no such details have been supplied with the proposal.

(3) Except to the extent that power may have been delegated to the Divisions under the rules framed by the Finance Division, every order of an administrative Division conveying a sanction to be enforced in audit shall be communicated to the audit authorities through the Finance Division.

Rule 13. Consultation with the Foreign Affairs Division.-- The Foreign Affairs Division shall, subject to orders in pursuance of any general or special delegation made by that Division, be consulted on all matters which affect the foreign policy of Pakistan, or the conduct of its foreign relations.

Rule 14. Consultation with the Law, Justice and Human Rights Division.-- (1) The Law, Justice and Human Rights Division shall be consulted--

(a) on all legal questions arising out of any case;

(b) on the interpretation of any law;

(c) before the issue of or authorization of the issue of an order, rule, regulation, by-law, notification, etc. in exercise of statutory powers;

(d) deleted vide Cabinet Division No.104/10/76-Min, dated 26-3-1976.

(e) before instituting criminal or civil proceedings in a court of law in which the Government is involved;

(f) whenever criminal or civil proceedings are instituted against the

Government at the earliest possible stage; and
(g) before the appointment of a legal adviser in any Division or any office or corporation under its administrative control and the Law, Justice and Human Rights Division will make its recommendations after consultation with the Attorney General.
(2) No Division shall consult, the Attorney General except through the Law, Justice and Human Rights Division and in accordance with the procedure laid down by that Division.
(3) If there is disagreement between the views of the Attorney General and the Law, Justice and Human Rights Division, the case shall be submitted to the Minister for Law, Justice and Human Rights for opinion. If the Minister disagrees with the Attorney General, the case shall be referred to the Prime Minister for orders who may refer the matter to the Cabinet if he so desires.
(4) For any proposed legislation the Law, Justice and Human Rights Division shall be consulted in accordance with rules 27 to 30.
(5) Bills or Ordinances received from the Provincial Governments or Governors requiring assent or instructions of the President shall be examined in the Division concerned and shall be submitted to the President through the Law, Justice and Human Rights Division.

Rule 14A. Consultation with Revenue Division.- (1) No Division shall, without previous consultation with the Revenue Division, authorize the issue of any orders, other than orders in pursuance of any general or special delegation made by the Revenue Division, which will affect directly or indirectly the collection of revenue from federal taxes, levy of taxes, duties, cesses or fees.

PART C.--REFERENCES TO THE PRIME MINISTER [AND THE PRESIDENT].

Rule 15. Reference to the Prime Minister.-(1) No order shall be issued without the approval of the Prime Minister in-
(a) cases involving important policy or departure from important policy;
Note.- Departure from policy includes departure from a previous decision of the Cabinet or the Prime Minister.
(b) cases involving directions to a Governor under Article 145 and to a Provincial Government under Article 149;
(c) cases where it is proposed that the Federal Government undertake the implementation of an international agreement relating to a subject in the provincial field;
(d) cases of Awards--Decorations in recognition of gallantry and academic distinction;
(e) cases relating to petitions addressed to the Prime Minister which are neither withheld under the instructions for the transmission of such petitions to the Prime Minister nor accepted;

(f) cases relating to mercy petitions against sentences of death passed by Courts requiring the exercise of President's prerogative of pardon;
(g) cases enumerated in Schedule V-A; and
(h) cases involving sanction for the prosecution of the holder of a post referred to in Schedule V-A.
(2) A case submitted to the Prime Minister for his orders shall include a selfcontained, concise and objective summary stating the relevant facts and the points for decision prepared on the same lines as those prescribed in these rules for a summary for the
Cabinet, except that only one copy will be required which may not be printed. The summary shall include the specific recommendations of the Minister-in-Charge and shall be accompanied by a draft communication, wherever appropriate.
(3) Omitted vide Cabinet Division O.M.No.104/8/85-Min-I, dated 4-08-85.
(4) In a case in which the Prime Minister's orders are obtained in oral discussion by a Minister, Minister of State, Special Assistant to the Prime Minister, Deputy Chairman Planning Commission, Secretary or by any other officer of the Government, a written note containing a brief record of the discussion and the orders of the Prime Minister shall be submitted to the Prime Minister's Office for the information of the Prime Minister.
(5) The Prime Minister shall:
(a) communicate to the President all decisions of the Cabinet relating to the administration of the affairs of the Federation and proposals for legislation;
(b) furnish such information relating to the administration of the affairs of the Federation and proposals for legislation as the President may call for; and
(c) if the President so requires, submit for the consideration of the Cabinet any matter on which a decision has been taken by the Prime Minister or a Minister but which has not been considered by the Cabinet.

Rule 15-A. Reference to the President.--(1) Notwithstanding the provisions made in these rules, where in terms of any provision of the Constitution any function is to be performed or any orders have to be issued by the President or his specific approval is required, the Division concerned shall incorporate a paragraph to this effect in the summary entitled as "Summary for the Prime Minister". The Prime Minister shall render his advice and submit the case to the President. After the President has seen and approved the case, it shall be returned to the Prime Minister. The cases to which this sub-rule applies are enumerated in Schedule V-B.
(2) Notwithstanding the provisions made in these rules, where in terms of any provisions of the Constitution, any function is to be performed or any orders have to be issued by the President in his discretion, the Division concerned shall submit the case to the President through the Prime Minister in the form of a self-contained, concise and objective summary entitled as "Summary for the President" stating the relevant facts and points for decision prepared on the same lines as prescribed in these rules for a Summary for the Cabinet, except that only one copy will be required which may not be printed. This procedure will, however, not be applicable where the President has conveyed the decision to the Prime Minster for issuing orders in respect of cases in his discretion. The cases to which this sub-rule applies are enumerated in Schedule VI.

(3) The cases and papers referred to in Schedule VII shall be submitted to the President for his information.

PART D.--CABINET PROCEDURE

Rule 16. Cases to be brought before Cabinet.--(1) The following cases shall be brought before the Cabinet:-

(a) proposals for legislation, official or non-official, including money bills;

(b) promulgation and revocation of Ordinances;

(c) the budgetary position and proposals before the presentation of the Annual Budget Statement and a Supplementary Budget Statement or an Excess Budget Statement under Articles 80 and 84;

(d) proposals for levy, abolition, remission, alteration or regulation of any tax and floatation of loans;

(e) a reference to the Supreme Court for advice on a question of law under clause (1) of Article 186;

(f) generation of electricity and laying of inter-provincial transmission lines;

(g) proposals involving action under Article 149 in respect of a subject in the Concurrent Legislative List;

(h) proposals involving negotiations with foreign countries, e.g. exchange of diplomatic and commercial representation, treaties and agreements, visits of goodwill missions, representation at international conferences and meetings:

Provided that all proposals for entering into any cultural or other agreements with any foreign government shall, in the first instance, be submitted to the Cabinet for approval in principle and actual negotiations shall be initiated only after the proposal has been approved by the Cabinet:

Provided further that decisions regarding the composition of all delegations, except those for which important briefs are required, to attend meetings of international bodies may be taken by mutual consultation between the Minister and the Minister for Finance, but the approval of the Prime Minister shall be obtained--

(i) where the delegation is sponsored by a Division under the direct charge of the Prime Minister or a Division or Divisions under the charge of the Minister for Finance; or

(ii) where a Minister is proposed to be included in the delegation:

Provided further that a decision regarding the opening of an honorary consulate abroad may be taken by the Foreign Affairs Division in consultation with the Commerce Division.

(i) important reports and documents required to be laid before the Assembly or Senate;

(j) cases involving vital political, economic and administrative policies;

Note.- Cases of this nature shall first be brought to the notice of the Prime Minister by the Minister-in-Charge. The Prime Minister will decide whether any such case should be

brought before the Cabinet.
(k) case which the Minister-in-Charge considers important enough for discussion in the Cabinet;
(l) other cases required to be referred to the Cabinet under the provisions of these rules; and
(m) any case desired by the Prime Minister to be referred to the Cabinet.
(2) Notwithstanding the provisions of sub-rule (1), the Prime Minister may in any case give directions as to the manner of its disposal without prior reference to the Cabinet.

Rule 17. Method of disposal of Cabinet cases.--(1) Cases referred to the Cabinet shall be disposed of--
(a) by discussion at a meeting of the Cabinet; or
(b) by circulation amongst Ministers; or
(c) by discussion at a meeting of a committee of the Cabinet:
Provided that the decisions of the Committee shall be ratified by the Cabinet unless the Cabinet has authorized otherwise.
The Secretary to the Cabinet (hereinafter referred to as the "Cabinet Secretary") shall, under the general or special orders of the Prime Minister, indicate the manner in which a case shall be disposed of.
(2) Committees of the Cabinet may be constituted, and their terms of reference and membership laid down by the Cabinet or the Prime Minister. Such Committees may be standing or special committees; accordingly as they are appointed to deal with a class of cases or a specific case.

Rule 18. Manner of submission of Cabinet cases.--(1) In respect of all cases to be submitted to the Cabinet, the Secretary of the Division concerned shall transmit to the Cabinet Secretary a concise, lucid and printed memorandum of the case (hereinafter referred to as the "summary"), giving the background and relevant facts, the points for decision and the recommendations of the Minister-in-Charge. In the event of the views of the Division being different from the views of the Minister, both the views shall be included in the summary.
Provided that the Executive Director, Higher Education Commission shall be the ex-officio Federal Secretary and may submit summaries or cases to Cabinet directly with the approval of Chairman, Higher Education Commission, having the status of a Federal Minister.
(2) In the case of a proposed legislation to which approval is sought in principle, the summary shall bring out clearly the main issues to be legislated upon.
(3) The summary shall be self-contained as far as possible, not exceeding two printed pages and may include as appendices only such relevant papers as are necessary for the proper appreciation of the case. The number of copies of the summary and the form in which it is to be drawn up shall be prescribed by the Cabinet Secretary.
(4) Where a case concerns more than one Division, the summary shall not be submitted to the Cabinet unless it has been considered by all the Divisions concerned. In

the event of a difference of opinion between them, the points of difference shall be clearly stated in the summary, a copy of which shall be sent by the sponsoring Division to the other Division concerned simultaneously with the transmission of the summary to the Cabinet Division.
(5) All draft Bills, Ordinances or Orders shall be submitted to the Cabinet after they have been scrutinized by the Law, Justice and *[Human Rights] Division, and no changes shall be made therein except in consultation with that Division.
(6) No case for inclusion in the agenda of a meeting of the Cabinet shall be accepted unless it reaches the Cabinet Secretary at least [*seven clear] days in advance of the meeting:
Provided that, if a case is urgent and is required to be taken up at short notice, the Secretary concerned will obtain approval of the Prime Minister for its inclusion in the agenda before it is transmitted to the Cabinet Secretary.
(7) It shall be the duty of the Cabinet Secretary to satisfy himself that the papers submitted by a Secretary are complete and in appropriate form. He may return the case until the requirements of the rules have been complied with. If the Cabinet Secretary is satisfied that the case does not merit consideration of the Cabinet he may advise the matter to be placed before an appropriate forum or require it to be submitted to the Prime Minister.

Rule 19. Procedure regarding circulation of Cabinet cases.--(1) When a case is circulated to Cabinet for recording opinion, the Cabinet Secretary shall specify the time by which opinions should be communicated to him. If a Minister does not communicate his opinion by that time, it shall be assumed that he accepts the recommendations contained in the summary.
(2) On the expiry of the specified time, the Cabinet Secretary shall submit the opinions received to the Prime Minister for decision.
(3) If the Prime Minister directs that the case shall be discussed at a Cabinet meeting, the Cabinet Secretary shall circulate the opinions recorded by the Ministers, in form of supplementary summary.
(4) Report made to the Cabinet of action taken on its decisions, and other cases submitted only for information, shall normally be disposed of by circulation.

20. Procedure regarding Cabinet Meetings.-- (1) Meeting of the Cabinet to discuss ordinary business shall normally be held once a week, on a day and time to be specified by the Prime Minister.
Provided that the Prime Minister may call for a special meeting of the Cabinet at any time and on any day to discuss urgent business:
Provided further that the Cabinet meetings will be attended by the persons holding the Cabinet rank and the Advisers, Special Assistants to the Prime Minister and Ministers of State may attend meetings of the Cabinet by special invitation.
(2) Ministers shall so arrange their tours that they are able to attend the weekly Cabinet meetings, unless they have obtained the Prime Minister's permission to absent themselves, in which case their Secretary should invariably be in attendance at the Cabinet
meeting if any item relating to his Division is on the agenda of the Cabinet meeting.

(3) The Prime Minister may authorize the holding of Cabinet meetings during his absence.
(4) The Prime Minister shall preside at all Cabinet meetings. In the absence of the Prime Minister, a Minister nominated by the Prime Minister shall preside. The decisions taken in the Prime Minister's absence shall be subject to the approval of the Prime Minister, unless the Cabinet feels that a particular case is so urgent that immediate action may be taken in anticipation of the Prime Minister's approval.
(5) The Cabinet Secretary shall ordinarily issue to the Ministers, three days in advance of a meetings, a circular showing the cases proposed to be placed on the agenda, together with the summaries relating to such cases. In the case of special meetings, the agenda may be issued less than three days in advance. A copy of the agenda, without summaries shall also be supplied to the Secretaries of Divisions.
(6) No case shall be discussed nor any issue raised unless the summary relating to it has first been circulated:
Provided that the Prime Minister may, in his discretion or at the representation of a Minister, dispense with this requirement if he is satisfied that the circumstances were such that a working paper could not be supplied and the matter could brook no delay.
(7) The Secretary shall be in attendance at the cabinet meeting for the purpose of the case relating to his Division even when his Minister attends that meeting.
(8) Other officers of the Divisions shall not ordinarily be required to be in attendance at the Cabinet meetings except-
(a) when information on points within their technical or specialized knowledge is required; or
(b) when the Minister or the Secretary are unable to attend. In such cases any officer may be invited to the meeting by the Cabinet Secretary. Such officers may be asked to join the meeting only for the relevant case and, after giving the information required, shall withdraw from the meeting before discussion is taken up by the Cabinet.
(9) If the Secretary of the Division concerned considers that the discussion on a case should await the return of the Minister, he may request the Cabinet Secretary for its postponement until the return of the Minister. Similarly, the Secretary may request for the withdrawal of a case belonging to his Division from the agenda of the Cabinet meeting.
(10) When a case is taken up by a meeting of the Cabinet, the Prime Minister may request the Minister or the Secretary or any other officer of the Ministry concerned who may be in attendance in accordance with sub-rule (8), to explain the point or points on which a decision is required.
(11) The Cabinet Secretary and or any other officer of the Cabinet Division authorized by him shall attend all meetings and prepare-
(a) a brief record of the discussion which, in the absence of special directions by the Cabinet to the contrary, shall be of an impersonal nature;
(b) a record of the decisions without any statement of the reasons therefor.
(12) The Cabinet Secretary shall circulate to the Ministers a copy of the above

record for perusal and return within 24 hours of issue.
(13) A copy of decision of the Cabinet, and wherever considered necessary of the points made during the discussion shall be supplied by the Cabinet Secretary to the Secretary of the Division concerned for action under rule 24.
(14) If a Minister considers that there has been a mistake or omission in recording the minutes, he shall point it out to the Cabinet Secretary within 24 hours of the issue of the minutes. The Cabinet Secretary shall obtain the orders of the Prime Minister and, if necessary, issue a corrigendum, correct the official record in the Cabinet Division and advise the Secretary of the Division concerned.
(15) Where a Minister was unable to attend a Cabinet meeting, and the Secretary attended the meeting, the record of the items concerning the Division shall be sent to the Secretary.

Rule 20A. National Security Council.- (1) There shall be a National Security Council to serve as a forum for consultation on strategic matters pertaining to the sovereignty, integrity and security of the State; and the matters relating to democracy, governance and inter-Provincial harmony.
(2) The President shall be the Chairman of the National Security Council and its other members shall be the Prime Minister, the Chairman of the Senate, the Speaker of the National Assembly, the Leader of the Opposition in the National Assembly, the Chief Ministers of the Provinces, the Chairman Joint Chiefs of Staff Committee, and the Chiefs of Staff of the Pakistan Army, Pakistan Navy and Pakistan Air Force.
(3) Meetings of the National Security Council may be convened by the President either in his discretion, or on the advice of the Prime Minister, or when requested by any other of its members.
(4) Necessary administrative support to the National Security Council shall be provided by the National Security Council Secretariat, headed by the Secretary to the National Security Council.

Rule 21. Procedure regarding Inter-Provincial Conference.--(1) Meetings of the Inter-Provincial Conference shall be convened by the Cabinet Division under the directions of the Prime Minister who shall preside at the meetings.
(2) Only cases of major importance which require policy decision and mutual discussion between the Federal and the Provincial Governments shall be brought before the Inter-Provincial Conference.
(3) The Federal and Provincial Ministers and officials of the Divisions concerned and of the Provincial Governments may be associated with the deliberations of the Conference as and when considered necessary.
(4) The provisions of rules 17, 18 and 20 shall apply mutatis mutandis to the manner of submission of cases to, and the procedure for the meetings of, the Inter-Provincial Conference except that the summary shall reach the Cabinet Division at least [fifteen] clear days in advance of the commencement of the Conference.
(5) Other instructions regarding the submission of cases to the Conference shall be issued by Cabinet Secretary.

Rule 22. Procedure regarding National Economic Council.--(1) Meetings of

the National Economic Council shall be convened by the Cabinet Division under the directions of the Prime Minister who shall preside at the meetings.
(2) The Federal and Provincial Ministers and officials of the Divisions concerned and of the Provincial Governments may be associated with the deliberations of the National Economic Council as and when considered necessary.
(3) The provisions of rules 17, 18 and 20 shall apply mutatis mutandis to the manner of submission of cases to, and the procedure for the meetings, of the National Economic Council except that the summary shall reach the Cabinet Division at least fifteen clear days in advance of the commencement of the meeting.
(4) Other instructions regarding the submission of cases to the National Economic Council shall be issued by the Cabinet Secretary.

Rule 23. Procedure regarding Committees of Cabinet, Inter-Provincial Conference and National Economic Council.--(1) Meetings of a Committee of the Cabinet or of Inter-Provincial Conference or of the National Economic Council shall be convened by the Cabinet Division under the directions of the Chairman of the Committee concerned, who shall preside at the meeting of the Committee.
(2) The members of the Committee shall attend the meetings:
Provided that a Federal Minister or a Provincial Minister, where he is a member, if unable to attend a meeting, may authorize the Secretary of the Division or Department concerned to represent him.
(3) Officials of the Divisions concerned and of the Provincial Governments may be associated with the deliberations of the Committee as and when considered necessary.
(4) The provisions of rules 18, 19 and 20 shall apply mutatis mutandis to the manner of submission of cases to, and the procedure for the meeting of the Committee.
(5) Other instructions regarding the submission of the cases to the Committee shall be issued by the Cabinet Secretary.

Rule 24. Action on decisions of the Cabinet, Inter-Provincial Conference, National Economic Council *[or their Committees], etc.--(1) When a case has been decided by the Cabinet, the Inter-Provincial Conference or the National Economic Council or their Committees, the Minister-in-Charge shall take prompt action to give effect to the decision.
(2) When the decision is received by the Secretary of the Division concerned, he shall-
(a) acknowledge the receipt of the decision in the form provided;
(b) transmit the decision to his Division for action;
(c) keep a register with himself of the decisions received, for the purpose of ensuring that prompt and complete action is taken on those decisions; and
(d) coordinate action with any other Division concerned with the decision.
(3) The Secretary of the Division concerned shall, on receipt of the Cabinet decision, communicate it to the Division but shall not forward the original documents. The decision shall be formally conveyed as decision of the Federal Government and

details to the Ministers present at the meeting of the Cabinet, Committee of Cabinet etc., shall not be disclosed.

Note:-The record of the discussion before a decision was taken shall not be passed down unless it contains points which require further consideration or action in the Division concerned.

(4) To ensure implementation of the Cabinet decisions, the Secretary of each Division shall keep a record of all the decisions conveyed to him and shall watch progress of action until it is completed. It shall be his responsibility as Secretary of the Division sponsoring the summary, to consult or inform any other Divisions concerned, in order to ensure full implementation of the decision.

(5) The Cabinet Secretary shall watch the implementation of Cabinet decisions, and the Secretary in the Division concerned shall supply to the Cabinet Secretary such documents as the latter may, by general or special request, require to enable him to complete his record of the case.

(6) The Cabinet Secretary shall maintain the record of each case which shall consist of-

(a) a copy of all papers issued under rules 19(1), 20(5), 21(4), 22(3) or 23(4);

(b) a copy of the records prepared under rules 19(2), 20(11) or 23(4);

(c) all documents received under sub-rule (5).

(7) The Secretaries shall retain in their personal custody the record of Cabinet decisions and discussions conveyed to them under rule 20(13), and shall make them over to their successors at the time of handing over charge.

(8) All papers submitted to Cabinet are secret until the Cabinet discussion has taken place. Thereafter each secretary shall decide whether the case should continue to be classified as secret, and inform the Cabinet Division of his decision.

(9) The Ministers shall return to the Cabinet Secretary--

(a) the papers issued to them for decision by circulation, immediately after recording their opinion;

(b) the papers issued to them for decision by discussion in a meeting of the Cabinet or Committee of the Cabinet, etc., under rule 20(5), 21(4), 22(3) or 23 (4), immediately after the discussion has taken place;

(c) copies of the record of discussion and decision circulated by the Cabinet Secretary under rule 19(1), 20(12), 21(4), 22(3) or 23(4); immediately after they have perused them; and

(d) reports of action taken on Cabinet decisions, or other papers circulated for information, immediately after perusal.

Rule 25. Periodical reports of activities of Divisions.--(1) Omitted vide SRO 135(I)/98, dated 3rd March, 1998.

(2) At the beginning of each financial year, each Division shall, for the information of the Cabinet and for the information of general public prepare as a permanent record, a Year Book which shall contain--

(a) the details of its activities, achievements and progress during the preceding financial year giving only the unclassified information

which can be used for reference purposes;
(b) the programme of activities and targets set out for itself during the preceding financial year and the extent to which they have been realized; and
(c) the relevant statistics properly tabulated.
Note:- The Secretary of the Division shall ensure that only unclassified material is supplied for the Year Book so that the information contained therein may be available for the use of academics, scholars and others interested.
(3) Every Year Book shall be circulated by the Cabinet Secretary for information [within ninety days at the end of the financial year under report].

Rule 26. Annual Report.-(1) There shall be prepared by the Cabinet Division an annual report on the observance and implementation of the Principles of Policy in relation to the affairs of the Federation in terms of clause (3) of Article 29.
(2) The Law, Justice and Human Rights Division shall cause the report to be laid before the Assembly.
(3) The provisions of rule 25(2) and (3) shall apply for the preparation and submission of the report to Cabinet as they apply to a Year Book.

PART E.—LEGISLATION

Rule 27. Official Bills.-(1) The Division concerned shall be responsible for determining the contents of the proposed legislation, for consulting the other Divisions concerned (including the Finance Division) where necessary, and for obtaining the approval of the Cabinet under rule 16(1)(a), to the issues involved, before asking the Law, Justice and Human Rights Division to draft the Bill.
Provided that where the proposed legislation involves only a verbal or formal amendment of an existing law, it shall not be necessary to obtain approval of the Cabinet before asking the Law, Justice and Human Rights Division to draft it.
(2) When referring the approved legislation to Law, Justice and Human Rights Division for drafting, the Division concerned shall send the relevant papers along with a memorandum indicating the provisions which are intended to be incorporated in the draft Bill and giving the objects of and reasons for those provisions to enable the Law, Justice and Human Rights Division to grasp the exact intention of the Division concerned and the full scope of the proposed legislation.
(3) Apart from giving shape to the draft legislation, the Law, Justice and Human Rights Division shall advise the Division concerned as to the competence of Majlis-e-Shoora (Parliament) to make a law on the subject to which the proposed legislation relates and whether any legal requirements are to be complied with before the Bill is introduced in the Assembly or the Senate.
(4) Whenever consent or recommendations of the Federal Government or previous sanction of the President is necessary for the introduction of a Bill it shall be drafted by the Law, Justice and Human Rights Division along with the Bill.
(5) The Division concerned shall then--

(a) submit the case to the Cabinet--
(i) for approval of the draft Bill;
(ii) for deciding any issue that may still be outstanding;
(b) obtain the approval of the Prime Minister on the decisions of the Cabinet on the points mentioned in clause (a) where the approval has not already been given by the Prime Minister in the meeting of the Cabinet; and
(c) obtain the signature of the Prime Minister on the consent or recommendation, or of the President on the previous sanction, where required to the introduction of the Bill in the Assembly or the Senate; and
23 return the Bill to the Law, Justice and Human Rights Division for further action in terms of sub-rule (8).
(5A) The Cabinet may, in an appropriate case, while according approval to the proposed legislation under sub-rule (1), dispense with the requirements of clause (a) of sub-rule (5) regarding submission of the case to the Cabinet for approval of the draft bill.
(6) The Division concerned shall include in the brief prepared for the use of the Minister-in-Charge the direction which the Cabinet has given regarding the line of action to be adopted with regard to the Bill.
(7) Legislation relating to the codification of substantive law or for the consolidation of existing enactments or legislation of a purely formal character, e.g., repealing and amending Bills and short title Bills, may be initiated in the Law, Justice and Human Rights Division. It shall, however, consult the Division concerned, if any, which shall consider the draft legislation from the administrative point of view and send their views to the Law, Justice and Human Rights Division.
(8) After taking action in terms of sub-rule (5) the Division concerned shall forward to the Law, Justice and Human Rights Division the draft legislation in its final form with a statement of objects and reasons duly signed by the Minister-in-Charge. The Law, Justice and Human Rights Division, after satisfying itself that all legal requirements have been complied with for the introduction of the Bill in the Assembly or, as the case may be, the Senate, transfer the bill alongwith the statement of objects and reasons to the Parliamentary Affairs Division for arranging its introduction in the appropriate House.

Rule 28. Non-Official Bills.--(1) The Division concerned shall be responsible for assessing the administrative implications of the proposed legislation and for consulting the other Divisions concerned, including the Finance Division, where necessary.
(2) Thereafter the Division concerned shall consult the Law, Justice and Human Rights Division who shall, apart from advising the Division concerned on the legal implications of the proposed legislation and the competence of the Majlis-e-Shoora (Parliament) to make a law on the subject to which the Bill relates, advise it as to whether any legal requirements are to be complied with and whether the Bill is one which cannot be introduced under the Constitution without the consent or recommendations of the Federal Government or previous sanction of the President.
(3) The Division shall then obtain—
(a) the instructions of the Cabinet regarding the provisions of the Bill;
(b) the decision of the Cabinet as to which of the following motions in the Assembly is to be supported—

(i) that it be taken into consideration by the Assembly either at once or at some future date to be specified;
(ii) that it be referred to a Select Committee;
(iii) that it be circulated for the purpose of eliciting opinion thereon; and
(iv) that it be opposed; and
(c) the signature of the Prime Minister on the consent or recommendation, or of the President on the previous sanction, where required to the introduction of the Bill in the Assembly or the Senate.
(4) The Division shall include in the brief prepared for the use of the Minister-in-Charge the directions which the Cabinet has given regarding the line of action to be adopted with regard to the Bill.

Rule 29. Official and non-official amendments to Bills.-- The procedure regarding official amendments shall be the same as for official bills and that for nonofficial amendments the same as for non-official Bills.

Rule 30. Ordinances.--(1) The provisions of rule 27 shall apply mutatis mutandis when the proposed legislation is an Ordinance. The Law, Justice and Human Rights Division shall promulgate the Ordinance and in due course arrange to lay it before--
(i) the Assembly, if it contains provisions dealing with all or any of the matter specified in clause (2) of Article 73;
(ii) both Houses, if it does not contain provisions dealing with any of the matters referred to in clause(i).
(2) When an ordinance is to be withdrawn the approval of the President shall be obtained by the Division concerned through the Prime Minister.

PART F--RELATIONS WITH MAJLIS-E-SHOORA (PARLIAMENT)

Rule 31. Compliance with Rules of Majlis-e-Shoora (Parliament).—

All Divisions shall, in their relations with the Assembly, the Senate and Majlis-e-Shoora (Parliament) in joint sitting comply with the Rules of Procedure and Standing Orders of the Assembly, the Senate or the joint sitting, as the case may be.

Rule 32. Summoning of Majlis-e-Shoora (Parliament), a House or joint sitting by the President.--(1) At the appropriate time the Secretary Parliamentary Affairs Division shall ascertain the state of business pending for the consideration of the Assembly, the Senate or Joint sitting.
(2) The Secretary Parliamentary Affairs Division, shall in terms of rule 15-A, obtain the President's orders on summoning the Assembly, the Senate, both Houses or Majlis-e-Shoora (Parliament) in joint sitting, as the case may be, and communicate the date, time and place of the commencement of the session--

(a) in the case of the Assembly, to the Secretary of the Assembly;
(b) in the case of the Senate, to the Secretary of the Senate;
(c) in the case of both Houses and joint sitting, to the Secretary of the Assembly and also to the Secretary of the Senate;
(3) Upon receipt of a communication under sub-rule (2), the date, time and place for the commencement of the session shall be notified in the Gazette-
(a) in the case of the Assembly, by the Secretary of the Assembly;
(b) in the case of the Senate, by the Secretary of the Senate;
(c) in the case of both Houses or joint sitting, by the Secretary of the Assembly and also by the Secretary of the Senate.

Rule 33. Prorogation of Majlis-e-Shoora (Parliament), a House, or joint sitting by the President.--(1) At the appropriate time, the Secretary Parliamentary Affairs Division shall in terms of rule 15-A, obtain President's orders on prorogation of the Assembly, the Senate, both Houses or Majlis-e-Shoora (Parliament) in joint sitting, as the case may be and communicate the same,--
(a) in the case of the Assembly, to the Secretary of the Assembly;
(b) in the case of the Senate, to the Secretary of the Senate;
(c) in the case of both Houses and joint sitting, to the Secretary of the Assembly and also to the Secretary of the Senate.
(3) Upon receipt of a communication under sub-rule (1), the date of prorogation of the session shall be notified in the Gazette,--
(a) in the case of the Assembly, by the Secretary of the Assembly;
(b) in the case of the Senate, by the Secretary of the Senate;
(c) in the case of both Houses and joint sitting, by the Secretary of the Assembly and also by the Secretary of the Senate.

Rule 34. Summoning and prorogation of National Assembly by the Speaker.--
(1) When the Assembly is summoned by the Speaker under clause (3) of article 54, the date, time and place for the commencement of the session shall be notified in the Gazette by the Secretary of the Assembly.
(2) When the Assembly is prorogued by the Speaker under clause (3) of Article 54, the date of prorogation shall be notified in the Gazette by the Secretary of the Assembly.

Rule 35. Summoning and prorogation of the Senate by the Chairman.--(1) When the Senate is summoned by the Chairman under clause (3) of article 54 read with Article 61, the date, time and place for the commencement of the session shall be notified in the Gazette by the Secretary of the Senate.
(2) When the Senate is prorogued by the Chairman under clause (3) of Article 54 read with Article 61, the date of prorogation shall be notified in the Gazette by the Secretary of the Senate.

Rule 36. Review of official and non-official business.-- As soon as a notification under sub-rule (3) of rule 32, sub-rule (1) of rule 34, or sub-rule (1) of rule 35 is issued, all Divisions shall undertake a review of official and non-official business intended to be

brought before the Assembly, the Senate, both Houses or the joint sitting, as the case may be, and shall promptly forward to the Parliamentary Affairs Division detailed lists of such business, not later than five days before the commencement of the session.

Rule 37. Provisional forecast of official and non-official business.-- The Secretary, Parliamentary Affairs Division, shall prepare a provisional forecast of the business to be brought before the Assembly, the Senate or the joint sitting, as the case may be and shall make, through the appropriate Leader of the House, or in the case of the joint sitting, through the Prime Minister, proposals to the Speaker or , as the case may be, the Chairman for the allotment of days for the transaction of official as well as non-official business. The final arrangement as approved by the Speaker or, the Chairman as the case may be, shall be circulated by the appropriate Secretariat to all the Divisions and the Secretary, Prime Minister's *[Office].

Rule 38. Orders of the Day.-- The Secretary, Parliamentary Affairs Division, shall, in consultation with the appropriate Leader of the House, prepare orders of the day for each official day and forward it to the appropriate Secretariat. In the case of a joint sitting, the Orders of the Day shall be prepared in consultation with the Prime Minister and forwarded to the Secretary of the Assembly.

Rule 39. Transmission of Bills etc.--(1) Copies of Bills, including Bill passed by one House and transmitted to the other House, Bills to be reconsidered by the Assembly and Bills to be considered in a joint sitting, resolutions, notices, questions and other business to be brought before the Assembly, the Senate or the joint sitting shall be forwarded as soon as received or possible, by the appropriate Secretariat to the Division concerned.

(2) If a Bill, resolution, motion or question has been wrongly addressed to a Division by the appropriate Secretariat, it shall be promptly transferred by the receiving Division to the Division concerned, under advice to that Secretariat.

(3) The appropriate Secretariat shall inform the Division concerned as soon as it is known that a resolution, motion or question has been admitted in its final form or not admitted so that the Division concerned may regulate its action accordingly.

(4) Before the commencement of each session of the National Assembly or the Senate, the appropriate Secretariat shall ascertain from the Cabinet Division the allocation of business amongst the Divisions.

Rule 40. Action by Divisions.-- As soon as any communication (whether a notice, intimation, a Bill or any other paper) is received from the appropriate Secretariat or any other authority regarding the business or affairs of the Assembly, the Senate or the joint sitting, the receiving officer shall at once bring it to the notice of the Secretary and the Minister.

Rule 41. Introduction of Bills, etc.--(1) Money Bills, whether with respect to any matter in the Federal Legislative List or the Concurrent Legislative List, shall originate only in the Assembly.

Provided that simultaneously when a Money Bill, including the Finance

Bill containing the Annual Budget Statement, is presented in the National Assembly, a copy thereof shall be transmitted to the Senate which may, within seven days, make recommendations thereon to the National Assembly.
(1A) The National Assembly shall consider the recommendations of the Senate and, after the Bill has been passed by the Assembly with or without incorporating the recommendations of the Senate, it shall be presented to the President for assent.
(2) Bills, other than Money Bills, resolutions, motions, questions or other business with respect to any matter in the Federal Legislative List or in the Concurrent Legislative List may originate or be moved or asked, in or, as the case may be, brought before either House:
Provided that the Prime Minister shall determine the House in which a particular official bill, resolution or motion originate or be moved or, as the case may be, before which any other official business shall be brought.
(3) Omitted vide SRO 822(I)/2002, dated 20th November 2002.
(4) An official Bill shall be introduced in the Assembly, or as the case may be, the Senate by the Minister-in-Charge or by any other Minister on his behalf.
(5) The Minister concerned shall in consultation with the Leader of the House, decide as to which of the following motion should be made with regard to an official Bill after its introduction,--
(a) that it be taken into consideration at once and passed; or
(b) that it be taken into consideration on a date to be specified; or
(c) that it be referred to a Select Committee; or
(d) that it be circulated for the purpose of eliciting opinion thereon;

Provided that if a question of important policy is involved, the Minister shall obtain the orders of the Prime Minister.
(6) Omitted vide SRO 822(I)/2002, dated 20th November 2002.
(7) The Division concerned shall prepare for the use of the Minister-in-Charge a brief of each Bill, whether official or non-official.

Rule 42. Assent to Bills.-- A Bill to be presented to the President for his assent shall be forwarded by the appropriate Secretariat duly certified by the Speaker or, as the case may be, the Chairman to the Parliamentary Affairs Division who shall submit it to the President for his assent. The President shall-
(a) assent to the Bill, or
(b) if it is a Bill other than a Money Bill, return the Bill to the Majlis-e-Shoora (Parliament) with a message requesting that the Bill, or any specified provision thereof, be reconsidered and that any amendments specified in the message be considered.

Rule 42A. Reconsideration of Bill by Majlis-e-Shoora (Parliament).-- When the President has returned a Bill to the Majlis-e-Shoora (Parliament) for reconsideration and the Bill is again passed by the Majlis-e-Shoora (Parliament), with or without amendment, by the votes of the majority of the total membership of the two Houses, it shall be again presented to the President and the President shall assent thereto.

Rule 43. Resolutions.--(1) When an official resolution is to be moved in the

Assembly, the Senate or the joint sitting, the Division concerned shall, where time permits, consult the Law, Justice and Human Rights Division and obtain approval of the Cabinet, before forwarding the resolution with a notice signed by the Minister to the Secretary of the appropriate Secretariat:
Provided that no such resolution shall be forwarded to the appropriate Secretariat until the Prime Minister has seen it if he was not present at the Cabinet meeting, or where there was no time to consult the Cabinet.
Note:- Official resolutions may be for the ratification of an international convention, constitution of a statutory body, declaration of policy on a matter of public interest, etc.
(2) On receipt of a non-official resolution from the appropriate Secretariat, the Division concerned shall examine its contents and, when the resolution is admitted for discussion, obtain the orders of the Cabinet if time permits. But the orders of the Prime Minister shall in any case be obtained. In examining the resolution, the Division concerned shall consider whether the discussion of the resolution, or any part thereof, would be detrimental to the public interest and if so, it should point this out, with reasons, in its comments on the resolution.
(3) The Division concerned shall prepare regarding each resolution, whether official or non-official, a brief for the use of the Minister.
(4) After a resolution has been adopted, the appropriate Secretariat shall forward it to the Division concerned for appropriate action.

Rule 44. Motions.--(1) The Division concerned shall submit an official motion, together with a notice, to the Minister-in-Charge and after he has signed it, shall forward it to the appropriate Secretariat.
Note:-*Official motions may be for the election of members to a Standing Committee or a statutory body, raising discussion on a particular matter, etc.*
(2) On receipt of a non-official motion from the appropriate Secretariat, the Division concerned shall consider whether a discussion of the motion, or any part thereof, would be detrimental to the public interest.
(3) If the Division is of opinion that discussion of a motion or any part thereof would be detrimental to the public interest or that the motion or any part thereof involves a point of important policy which requires the orders of the Prime Minister or the Cabinet under these rules, it shall, as soon as the motion is admitted, submit the case for the orders of the Prime Minister or, as the case may be, the Cabinet and shall in doing so state the reasons for holding such opinion.
(4) The Division concerned shall prepare regarding each motion, whether official or non-official, a brief for the use of the Minister.
(5) After a motion has been adopted, the appropriate Secretariat shall forward it to the Division concerned for appropriate action.

Rule 45. Questions.--(1) On receipt, from the appropriate Secretariat, of a question (starred, un-starred or short notice) proposed to be asked by a member, the Division concerned shall draft a reply and after it has been approved by the Minster forward the required number of copies of the reply to the appropriate Secretariat before the day on which the question is put down for answer. In the case of a starred question, a brief be

prepared by the Division concerned for the use of the Minister in answering any supplementary question that may be asked.
(2) A copy of each supplementary question asked in respect of a starred question, and of the reply given thereto, shall be forwarded by the appropriate Secretariat to the Division concerned, as soon as possible after the proceedings have been transcribed.
(3) The Division concerned shall be responsible for the fulfillment of any undertakings given on its behalf in reply to a question or a supplementary question.

Rule 46. Budget.--(1) The Minister for Finance shall, in consultation with Prime Minister and the Speaker, prepare a time-table for the consideration of the annual budget by the Assembly. The Secretary of the Assembly shall intimate the time-table so decided upon to all the Divisions and the Secretary, Prime Minister's *[Office].
(2) On receipt of a motion proposing a cut in a demand (or supplementary demand) for grant of funds, the Division concerned shall examine the points raised by the member, and any further points likely to be raised, and prepare a brief for the use of the Minister-in-Charge in making a reply.
(3) When the budget is passed by the Assembly, the Minister for Finance shall submit the Schedule of Authorized Expenditure to the Prime Minister who shall authenticate the Schedule by his signature as required by Article 83.

Rule 47. Committees of Assembly or Senate.--Standing or ad-hoc Committees may be constituted by the Assembly or the Senate to advise the Divisions concerned on general administrative policy or a special problem.

PART G -- RELATIONS WITH PROVINCES

Rule 48. Directions to the Governors.-- No Division shall issue a directive to the Governor of the Province under clause (1) of Article 145 without the specific approval of the Prime Minister.

Rule 49. Obligations of Provinces and Federation.--(1) It shall be the duty of the Division concerned with a subject in the Concurrent Legislative List to submit the proposal to the Cabinet when action under Article 149 is called for.
(2) Along-with the proposal, the principles underlying the Federal Law should also be stated.
(3) The implementation of an international agreement in the Provincial field shall normally be the responsibility of the Provincial Government unless in any case specific orders of the Prime Minister are obtained by the Division concerned in accordance with rule 15(1)(c).
(4) The Foreign Affairs Division shall issue necessary instructions to the Provincial Governments in the matter of conducting correspondence with the Government of a foreign country or a Pakistan Diplomatic Mission abroad or a Foreign Mission in Pakistan or an International Organization.

Rule 50. Conferment of powers and imposition of duties upon a Province.-- The Division concerned shall obtain the specific orders of the Prime Minister, if it is proposed to enact a law conferring powers and imposing duties upon a Province or officers or authorities thereof under clause (2) of Article 146.

PART H – EMERGENCY PROVISIONS

Rule 51. Proclamation of Emergency on account of war, internal disturbance, etc.--(1) The Proclamation in case of a grave emergency in which the security of Pakistan, or any part thereof is threatened by war or external aggression, or by internal disturbance beyond the power of a Provincial Government to control, shall be issued by the Cabinet Division in terms of rule 15-A.

(2) The Divisions concerned shall keep the provisions of clauses (2) to (8) of Article 232 in view for making legislation, if required, while a Proclamation of Emergency is in force and for the submission of the Proclamation to the joint sitting or the Senate, as the case may be.

(3) The provisions of rules 27, 28, 29 and 30 shall apply mutatis mutandis for the purpose of legislation while a Proclamation of emergency is in force.

Rule 52. Failure of constitutional machinery in a Province.--The Proclamation in case of failure of constitutional machinery in a Province shall be issued by the Cabinet Division in terms of rule 15-A.

(2) The Division concerned shall keep the provisions of clauses (3) to (6) of Article 234 in view for making legislation, if required, while a Proclamation of Emergency is in force and for the submission of the Proclamation to the joint sitting or the Senate, as the case may be.

(3) The provisions of rules 27, 28, 29 and 30 shall apply mutatis mutandis for the purpose of legislation while a Proclamation of Emergency is in force.

Rule 53. Proclamation in case of financial stringency.--(1) The Proclamation in case of financial stringency shall be issued by the Finance Division in terms of rule 15-A.

(2) The Finance Division shall keep the provisions of clause (4) of Article 235 in view for the submission of the Proclamation to the joint sitting or the Senate, as the case may be.

Rule 54. Revocation of Proclamation, etc.-- The Proclamation issued under rule 51,52 or 53 shall be varied or revoked by a subsequent Proclamation to be issued by the Division concerned in terms of rule 15-A.

PART I -- MISCELLANEOUS PROVISIONS

Rule 55. Protection and communication of official information.--(1) No information acquired directly or indirectly from official documents or relating to official matters shall be communicated by a Government servant to the press, to non-officials or even to officials belonging to other Government offices, unless he has been generally or specially empowered to do so.

(2) Detailed instructions shall be issued by the Cabinet Division for the treatment and custody of official documents and information of a classified nature.
(3) Ordinarily all official news and information shall be conveyed to the press and the public through the Press Information Department or the External Publicity Wing of the Information and Media Development Division. The manner in which this may be done shall be prescribed by general or special orders to be issued by the Information and Media Development Division.
(4) Only Ministers and Secretaries, and such officers as may be authorized, shall act as official spokesmen of the Government. No statement involving foreign policy shall normally be made by a person (other than the Minster of State for Foreign Affairs and the Prime Minister) without prior consultation with the Foreign Affairs Division.

Rule 56. Channels of Communications.--(1) Except as provided in sub-rule (2), all correspondence with the Government of a foreign country or a Pakistan diplomatic mission abroad or a foreign mission in Pakistan or an international organization shall normally be conducted through the Foreign Affairs Division:

Provided that by means of general or special orders to be issued by the Foreign Affairs Division, direct correspondence may be allowed under such conditions and circumstances as may be specified.
(2) All requests to a foreign Government or an international organization for economic or technical assistance shall be made through the Economic Affairs Division, which shall correspond with the foreign Government, etc., in accordance with the prescribed channel. The Economic Affairs Division may allow, by general or special orders, such requests to be made direct.
(3) Correspondence with Provincial Governments shall be conducted direct by the Division, in respect of the subjects allocated to them, subject to the provisions of rule 8, and it shall ordinarily be addressed to the Secretary of the Department concerned in the Provincial Government:

Provided that under general or special orders to be issued by a Division, its Attached Department may be authorized to correspond direct with the Department of a Provincial Government under such conditions and circumstances as may be specified therein.
(4) Copies of the correspondence with the Provincial Government in respect of the affairs of former and acceding states, if any, and Tribal Areas shall be endorsed to the Kashmir Affairs & Northern Areas and States & Frontier Regions Division, provided that Division may, by means of general or special orders, specify the class or classes of correspondence which shall be conducted through that Division.
(5) All correspondence with the headquarters of the Defence Forces viz. General Headquarters, Naval Headquarters, Air Headquarters, or their subordinate formations, shall normally be conducted through the Defence Division:
Provided that by means of general or special orders to be issued by the Defense Division direct correspondence may be allowed under such conditions and circumstances as may be specified:

Provided further that the provisions of this sub-rule shall not affect normal communications between a Service Commander and the Civil Authorities in his area of inter-department discussion in which Service representatives are required to take part.

Rule 57. Relaxation.-- The *[President] may **[on the advice of the Prime Minister] permit, where he considers it necessary, relaxation of the provisions of these rules in individual cases.

Rule 58. Repeal.-- The Rules of Business, 1962 are hereby repealed:

Provided that all rules, instructions and orders issued under the provisions of these Rules shall continue in force so far as applicable and with the necessary adaptations until altered, repealed or amended by the appropriate authority.

A rule of Business contains Schedules which are not included in the Appendix B.

APPENDIX: C

Vienna Convention on the Law of Treaties 1969

The States Parties to the present Convention,

Considering the fundamental role of treaties in the history of international relations,

Recognizing the ever-increasing importance of treaties as a source of international law and as a means of developing peaceful co-operation among nations, whatever their constitutional and social systems,

Noting that the principles of free consent and of good faith and the pacta sunt servanda rule are universally recognized,

Affirming that disputes concerning treaties, like other international disputes, should be settled by peaceful means and in conformity with the principles of justice and international law,

Recalling the determination of the peoples of the United Nations to establish conditions under which justice and respect for the obligations arising from treaties can be maintained,

Having in mind the principles of international law embodied in the Charter of the United Nations, such as the principles of the equal rights and self-determination of peoples, of the sovereign equality and independence of all States, of non-interference in the domestic affairs of States, of the prohibition of the threat or use of force and of universal respect for, and observance of, human rights and fundamental freedoms for all,

Believing that the codification and progressive development of the law of treaties achieved in the present Convention will promote the purposes of the United Nations set forth in the Charter, namely, the maintenance of international peace and security, the development of friendly relations and the achievement of co-operation among nations,

Affirming that the rules of customary international law will continue to govern questions not regulated by the provisions of the present Convention,

Have agreed as follows:

PART I INTRODUCTION

Article 1 Scope of the present Convention

The present Convention applies to treaties between States.

Article 2 Use of terms

1. For the purposes of the present Convention:
   (a) "treaty" means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation;
   (b) "ratification", "acceptance", "approval" and "accession" mean in each case the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty;
   (c) "full powers" means a document emanating from the competent authority of a State designating a person or persons to represent the State for negotiating, adopting or authenticating the text of a treaty, for expressing the consent of the State to be bound by a treaty, or for accomplishing any other act with respect to a treaty;
   (d) "reservation" means a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State;
   (e) "negotiating State" means a State which took part in the drawing up and adoption of the text of the treaty;
   (f) "contracting State" means a State which has consented to be bound by the treaty, whether or not the treaty has entered into force;
   (g) "party" means a State which has consented to be bound by the treaty and for which the treaty is in force;
   (h) "third State" means a State not a party to the treaty;
   (i) "international organization" means an intergovernmental organization.
2. The provisions of paragraph 1 regarding the use of terms in the present Convention are without prejudice to the use of those terms or to the meanings which may be given to them in the internal law of any State.

Article 3 International agreements not within the scope of the present Convention

The fact that the present Convention does not apply to international agreements concluded between States and other subjects of international law or between such other subjects of international law, or to international agreements not in written form, shall not affect:
(a)the legal force of such agreements;
(b)the application to them of any of the rules set forth in the present Convention to which they would be subject under international law independently of the Convention;
(c)the application of the Convention to the relations of States as between themselves under international agreements to which other subjects of international law are also parties.

Article 4 Non-retroactivity of the present Convention

Without prejudice to the application of any rules set forth in the present Convention to which treaties would be subject under international law independently of the Convention, the Convention applies only to treaties which are concluded by States after the entry into force of the present Convention with regard to such States.

Article 5 Treaties constituting international organizations and treaties adopted within an international organization

The present Convention applies to any treaty which is the constituent instrument of an international organization and to any treaty adopted within an international organization without prejudice to any relevant rules of the organization.

Part II Conclusion and entry into force of treaties

Section 1. Conclusion of treaties

Article 6 Capacity of States to conclude treaties

Every State possesses capacity to conclude treaties.

Article 7 Full powers

1. A person is considered as representing a State for the purpose of adopting or authenticating the text of a treaty or for the purpose of expressing the consent of the State to be bound by a treaty if:
(a)he produces appropriate full powers; or
(b)it appears from the practice of the States concerned or from other

circumstances that their intention was to consider that person as representing the State for such purposes and to dispense with full powers.
2. In virtue of their functions and without having to produce full powers, the following are considered as representing their State:
(a)Heads of State, Heads of Government and Ministers for Foreign Affairs, for the purpose of performing all acts relating to the conclusion of a treaty;
(b)heads of diplomatic missions, for the purpose of adopting the text of a treaty between the accrediting State and the State to which they are accredited;
(c) representatives accredited by States to an international conference or to an international organization or one of its organs, for the purpose of adopting the text of a treaty in that conference, organization or organ.

Article 8 Subsequent confirmation of an act performed without authorization

An act relating to the conclusion of a treaty performed by a person who cannot be considered under article 7 as authorized to represent a State for that purpose is without legal effect unless afterwards confirmed by that State.

Article 9 Adoption of the text

1. The adoption of the text of a treaty takes place by the consent of all the States participating in its drawing up except as provided in paragraph 2.
2. The adoption of the text of a treaty at an international conference takes place by the vote of two-thirds of the States present and voting, unless by the same majority they shall decide to apply a different rule.

Article 10 Authentication of the text

The text of a treaty is established as authentic and definitive:
(a)by such procedure as may be provided for in the text or agreed upon by the States participating in its drawing up; or
(b)failing such procedure, by the signature, signature ad referendum or initialling by the representatives of those States of the text of the treaty or of the Final Act of a conference incorporating the text.

Article 11 Means of expressing consent to be bound by a treaty

The consent of a State to be bound by a treaty may be expressed by signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession, or by any other means if so agreed.

Article 12 Consent to be bound by a treaty expressed by signature

1. The consent of a State to be bound by a treaty is expressed by the signature of its representative when:

(a) the treaty provides that signature shall have that effect;
(b) it is otherwise established that the negotiating States were agreed that signature should have that effect; or
(c) the intention of the State to give that effect to the signature appears from the full powers of its representative or was expressed during the negotiation.
2. For the purposes of paragraph 1:
(a) the initialling of a text constitutes a signature of the treaty when it is established that the negotiating States so agreed;
(b) the signature ad referendum of a treaty by a representative, if confirmed by his State, constitutes a full signature of the treaty.

Article 13 Consent to be bound by a treaty expressed by an exchange of instruments constituting a treaty

The consent of States to be bound by a treaty constituted by instruments exchanged between them is expressed by that exchange when:
(a) the instruments provide that their exchange shall have that effect; or
(b) it is otherwise established that those States were agreed that the exchange of instruments should have that effect.

Article 14 Consent to be bound by a treaty expressed by ratification, acceptance or approval

1. The consent of a State to be bound by a treaty is expressed by ratification when:
(a) the treaty provides for such consent to be expressed by means of ratification;
(b) it is otherwise established that the negotiating States were agreed that ratification should be required;
(c)the representative of the State has signed the treaty subject to ratification; or
(d) the intention of the State to sign the treaty subject to ratification appears from the full powers of its representative or was expressed during the negotiation.
2. The consent of a State to be bound by a treaty is expressed by acceptance or approval under conditions similar to those which apply to ratification.

Article 15 Consent to be bound by a treaty expressed by accession

The consent of a State to be bound by a treaty is expressed by accession when:
(a) the treaty provides that such consent may be expressed by that State by means of accession;
(b) it is otherwise established that the negotiating States were agreed that such consent may be expressed by that State by means of accession; or
(c) all the parties have subsequently agreed that such consent may be expressed by that State by means of accession.

Article 16 Exchange or deposit of instruments of ratification, acceptance, approval or accession

Unless the treaty otherwise provides, instruments of ratification, acceptance, approval or accession establish the consent of a State to be bound by a treaty upon:
(a) their exchange between the contracting States;
(b) their deposit with the depositary; or
(c) their notification to the contracting States or to the depositary, if 50 agreed.

Article 17 Consent to be bound by part of a treaty and choice of differing provisions

1. Without prejudice to articles 19 to 23, the consent of a State to be bound by part of a treaty is effective only if the treaty so permits or the other contracting States so agree.
2. The consent of a State to be bound by a treaty which permits a choice between differing provisions is effective only if it is made clear to which of the provisions the consent relates.

Article 18 Obligation not to defeat the object and purpose of a treaty prior to its entry into force

A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when:
(a) it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty; or
(b) it has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed.

Section 2. Reservations

Article 19 Formulation of reservations

A State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation unless:
(a) the reservation is prohibited by the treaty;
(b) the treaty provides that only specified reservations, which do not include the reservation in question, may be made; or
(c) in cases not falling under sub-paragraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty.

Article 20 Acceptance of and objection to reservations

1. A reservation expressly authorized by a treaty does not require any subsequent acceptance by the other contracting States unless the treaty so provides.
2. When it appears from the limited number of the negotiating States and the object and purpose of a treaty that the application of the treaty in its entirety between all the parties is an essential condition of the consent of each one to be bound by the treaty, a reservation requires acceptance by all the parties.
3. When a treaty is a constituent instrument of an international organization and unless it otherwise provides, a reservation requires the acceptance of the competent organ of that organization.
4. In cases not falling under the preceding paragraphs and unless the treaty otherwise provides:
(a) acceptance by another contracting State of a reservation constitutes the reserving State a party to the treaty in relation to that other State if or when the treaty is in force for those States;
(b) an objection by another contracting State to a reservation does not preclude the entry into force of the treaty as between the objecting and reserving States unless a contrary intention is definitely expressed by the objecting State;
(c) an act expressing a State's consent to be bound by the treaty and containing a reservation is effective as soon as at least one other contracting State has accepted the reservation.
5. For the purposes of paragraphs 2 and 4 and unless the treaty otherwise provides, a reservation is considered to have been accepted by a State if it shall have raised no objection to the reservation by the end of a period of twelve months after it was notified of the reservation or by the date on which it expressed its consent to be bound by the treaty, whichever is later.

Article 21 Legal effects of reservations and of objections to reservations

1. A reservation established with regard to another party in accordance with articles 19, 20 and 23:
(a) modifies for the reserving State in its relations with that other party the provisions of the treaty to which the reservation relates to the extent of the reservation; and
(b) modifies those provisions to the same extent for that other party in its relations with the reserving State.
2. The reservation does not modify the provisions of the treaty for the other parties to the treaty inter se.
3. When a State objecting to a reservation has not opposed the entry into force of the treaty between itself and the reserving State, the provisions to which the reservation relates do not apply as between the two States to the extent of the reservation.

Article 22 Withdrawal of reservations and of objections to reservations

1. Unless the treaty otherwise provides, a reservation may be withdrawn at any time and the consent of a State which has accepted the reservation is not required

for its withdrawal.
2. Unless the treaty otherwise provides, an objection to a reservation may be withdrawn at any time.
3. Unless the treaty otherwise provides, or it is otherwise agreed:
(a) the withdrawal of a reservation becomes operative in relation to another contracting State only when notice of it has been received by that State;
(b) the withdrawal of an objection to a reservation becomes operative only when notice of it has been received by the State which formulated the reservation.

Article 23 Procedure regarding reservations

1. A reservation, an express acceptance of a reservation and an objection to a reservation must be formulated in writing and communicated to the contracting States and other States entitled to become parties to the treaty.
2. If formulated when signing the treaty subject to ratification, acceptance or approval, a reservation must be formally confirmed by the reserving State when expressing its consent to be bound by the treaty. In such a case the reservation shall be considered as having been made on the date of its confirmation.
3. An express acceptance of, or an objection to, a reservation made previously to confirmation of the reservation does not itself require confirmation.
4. The withdrawal of a reservation or of an objection to a reservation must be formulated in writing.

Section 3. Entry into force and provisional application of treaties

Article 24 Entry into force

1. A treaty enters into force in such manner and upon such date as it may provide or as the negotiating States may agree.
2. Failing any such provision or agreement, a treaty enters into force as soon as consent to be bound by the treaty has been established for all the negotiating States.
3. When the consent of a State to be bound by a treaty is established on a date after the treaty has come into force, the treaty enters into force for that State on that date, unless the treaty otherwise provides.
4. The provisions of a treaty regulating the authentication of its text, the establishment of the consent of States to be bound by the treaty, the manner or date of its entry into force, reservations, the functions of the depositary and other matters arising necessarily before the entry into force of the treaty apply from the time of the adoption of its text.

Article 25 Provisional application

1. A treaty or a part of a treaty is applied provisionally pending its entry into force if:
(a) the treaty itself so provides; or
(b) the negotiating States have in some other manner so agreed.
2. Unless the treaty otherwise provides or the negotiating States have otherwise agreed, the provisional application of a treaty or a part of a treaty with respect to a State shall be terminated if that State notifies the other States between which the treaty is being applied provisionally of its intention not to become a party to the treaty.

Part III Observance, application and interpretation of treaties

Section 1. Observance of treaties

Article 26 Pacta sunt servanda

Every treaty in force is binding upon the parties to it and must be performed by them in good faith.

Article 27 Internal law and observance of treaties

A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 46.

Section 2. Application of treaties

Article 28 Non-retroactivity of treaties

Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party.

Article 29 Territorial scope of treaties

Unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory.

Article 30 Application of successive treaties relating to the same subject-matter

1. Subject to Article 103 of the Charter of the United Nations, the rights and

obligations of States parties to successive treaties relating to the same subject-matter shall be determined in accordance with the following paragraphs.
2. When a treaty specifies that it is subject to, or that it is not to be considered as incompatible with, an earlier or later treaty, the provisions of that other treaty prevail.
3. When all the parties to the earlier treaty are parties also to the later treaty but the earlier treaty is not terminated or suspended in operation under article 59, the earlier treaty applies only to the extent that its provisions are compatible with those of the latter treaty.
4. When the parties to the later treaty do not include all the parties to the earlier one:
(a) as between States parties to both treaties the same rule applies as in paragraph 3;
(b) as between a State party to both treaties and a State party to only one of the treaties, the treaty to which both States are parties governs their mutual rights and obligations.
5. Paragraph 4 is without prejudice to article 41, or to any question of the termination or suspension of the operation of a treaty under article 60 or to any question of responsibility which may arise for a State from the conclusion or application of a treaty, the provisions of which are incompatible with its obligations towards another State under another treaty.

Section 3. Interpretation of treaties

Article 31 General rule of interpretation

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.
2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:
(a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;
(b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.
3. There shall be taken into account, together with the context:
(a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;
(b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;
(c) any relevant rules of international law applicable in the relations between the parties.
4. A special meaning shall be given to a term if it is established that the parties so intended.

Article 32 Supplementary means of interpretation

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:
(a) leaves the meaning ambiguous or obscure; or
(b) leads to a result which is manifestly absurd or unreasonable.

Article 33 Interpretation of treaties authenticated in two or more languages

1. When a treaty has been authenticated in two or more languages, the text is equally authoritative in each language, unless the treaty provides or the parties agree that, in case of divergence, a particular text shall prevail.
2. A version of the treaty in a language other than one of those in which the text was authenticated shall be considered an authentic text only if the treaty so provides or the parties so agree.
3. The terms of the treaty are presumed to have the same meaning in each authentic text.
4. Except where a particular text prevails in accordance with paragraph 1, when a comparison of the authentic texts discloses a difference of meaning which the application of articles 31 and 32 does not remove, the meaning which best reconciles the texts, having regard to the object and purpose of the treaty, shall be adopted.

Section 4. Treaties and third States

Article 34 General rule regarding third States

A treaty does not create either obligations or rights for a third State without its consent.

Article 35 Treaties providing for obligations for third States

An obligation arises for a third State from a provision of a treaty if the parties to the treaty intend the provision to be the means of establishing the obligation and the third State expressly accepts that obligation in writing.

Article 36 Treaties providing for rights for third States

1. A right arises for a third State from a provision of a treaty if the parties to the treaty intend the provision to accord that right either to the third State, or to a group of States to which it belongs, or to all States, and the third State assents thereto. Its assent shall be presumed so long as the contrary is not indicated,

unless the treaty otherwise provides.
2. A State exercising a right in accordance with paragraph 1 shall comply with the conditions for its exercise provided for in the treaty or established in conformity with the treaty.

Article 37 Revocation or modification of obligations or rights of third States

1. When an obligation has arisen for a third State in conformity with article 35, the obligation may be revoked or modified only with the consent of the parties to the treaty and of the third State, unless it is established that they had otherwise agreed.
2. When a right has arisen for a third State in conformity with article 36, the right may not be revoked or modified by the parties if it is established that the right was intended not to be revocable or subject to modification without the consent of the third State.

Article 38 Rules in a treaty becoming binding on third States through international custom

Nothing in articles 34 to 37 precludes a rule set forth in a treaty from becoming binding upon a third State as a customary rule of international law, recognized as such.

Part IV Amendment and modification of treaties

Article 39 General rule regarding the amendment of treaties

A treaty may be amended by agreement between the parties. The rules laid down in Part II apply to such an agreement except in so far as the treaty may otherwise provide.

Article 40 Amendment of multilateral treaties

1. Unless the treaty otherwise provides, the amendment of multilateral treaties shall be governed by the following paragraphs.
2. Any proposal to amend a multilateral treaty as between all the parties must be notified to all the contracting States, each one of which shall have the right to take part in:
(a) the decision as to the action to be taken in regard to such proposal;
(b) the negotiation and conclusion of any agreement for the amendment of the treaty.
3. Every State entitled to become a party to the treaty shall also be entitled to become a party to the treaty as amended.
4. The amending agreement does not bind any State already a party to the treaty which does not become a party to the amending agreement; article 30, paragraph

4(b), applies in relation to such State.
5. Any State which becomes a party to the treaty after the entry into force of the amending agreement shall, failing an expression of a different intention by that State:
(a) be considered as a party to the treaty as amended; and
(b) be considered as a party to the un amended treaty in relation to any party to the treaty not bound by the amending agreement.

Article 41 Agreements to modify multilateral treaties between certain of the parties only

1. Two or more of the parties to a multilateral treaty may conclude an agreement to modify the treaty as between themselves alone if:
(a) the possibility of such a modification is provided for by the treaty; or
(b) the modification in question is not prohibited by the treaty and:

(i) does not affect the enjoyment by the other parties of their rights under the treaty or the performance of their obligations;
(ii) does not relate to a provision, derogation from which is incompatible with the effective execution of the object and purpose of the treaty as a whole.
2. Unless in a case falling under paragraph 1(a) the treaty otherwise provides, the parties in question shall notify the other parties of their intention to conclude the agreement and of the modification to the treaty for which it provides.

Part V Invalidity, termination and suspension of the operation of treaties

Section 1. General provisions

Article 42 Validity and continuance in force of treaties

1. The validity of a treaty or of the consent of a State to be bound by a treaty may be impeached only through the application of the present Convention.
2. The termination of a treaty, its denunciation or the withdrawal of a party, may take place only as a result of the application of the provisions of the treaty or of the present Convention. The same rule applies to suspension of the operation of a treaty.

Article 43 Obligations imposed by international law independently of a treaty

The invalidity, termination or denunciation of a treaty, the withdrawal of a party from it, or the suspension of its operation, as a result of the application of the present Convention or of the provisions of the treaty, shall not in any way impair the duty of any State to fulfil any obligation embodied in the treaty to which it would be subject under international law independently of the treaty.

Article 44 Separability of treaty provisions

1. A right of a party, provided for in a treaty or arising under article 56, to denounce, withdraw from or suspend the operation of the treaty may be exercised only with respect to the whole treaty unless the treaty otherwise provides or the parties otherwise agree.
2. A ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty recognized in the present Convention may be invoked only with respect to the whole treaty except as provided in the following paragraphs or in article 60.
3. If the ground relates solely to particular clauses, it may be invoked only with respect to those clauses where:
(a) the said clauses are separable from the remainder of the treaty with regard to their application;
(b) it appears from the treaty or is otherwise established that acceptance of those clauses was not an essential basis of the consent of the other party or parties to be bound by the treaty as a whole; and
(c) continued performance of the remainder of the treaty would not be unjust.
4. In cases falling under articles 49 and 50 the State entitled to invoke the fraud or corruption may do so with respect either to the whole treaty or, subject to paragraph 3, to the particular clauses alone.
5. In cases falling under articles 51, 52 and 53, no separation of the provisions of the treaty is permitted.

Article 45 Loss of a right to invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty

A State may no longer invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty under articles 46 to 50 or articles 60 and 62 if, after becoming aware of the facts:
(a) it shall have expressly agreed that the treaty is valid or remains in force or continues in operation, as the case may be; or
(b) it must by reason of its conduct be considered as having acquiesced in the validity of the treaty or in its maintenance in force or in operation, as the case may be.

Section 2: Invalidity of treaties

Article 46 Provisions of internal law regarding competence to conclude treaties

1. A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance.

2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith.

Article 47 Specific restrictions on authority to express the consent of a State

If the authority of a representative to express the consent of a State to be bound by a particular treaty has been made subject to a specific restriction, his omission to observe that restriction may not be invoked as invalidating the consent expressed by him unless the restriction was notified to the other negotiating States prior to his expressing such consent.

Article 48 Error

1. A State may invoke an error in a treaty as invalidating its consent to be bound by the treaty if the error relates to a fact or situation which was assumed by that State to exist at the time when the treaty was concluded and formed an essential basis of its consent to be bound by the treaty.
2. Paragraph 1 shall not apply if the State in question contributed by its own conduct to the error or if the circumstances were such as to put that State on notice of a possible error.
3. An error relating only to the wording of the text of a treaty does not affect its validity; article 79 then applies.

Article 49 Fraud

If a State has been induced to conclude a treaty by the fraudulent conduct of another negotiating State, the State may invoke the fraud as invalidating its consent to be bound by the treaty.

Article 50 Corruption of a representative of a State

If the expression of a State's consent to be bound by a treaty has been procured through the corruption of its representative directly or indirectly by another negotiating State, the State may invoke such corruption as invalidating its consent to be bound by the treaty.

Article 51 Coercion of a representative of a State

The expression of a State's consent to be bound by a treaty which has been procured by the coercion of its representative through acts or threats directed against him shall be without any legal effect.

Article 52 Coercion of a State by the threat or use of force

A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations.

Article 53 Treaties conflicting with a peremptory norm of general international law (jus cogens)

A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

Section 3: Termination and suspension of the operation of treaties

Article 54 Termination of or withdrawal from a treaty under its provisions or by consent of the parties

The termination of a treaty or the withdrawal of a party may take place:
(a) in conformity with the provisions of the treaty; or
(b) at any time by consent of all the parties after consultation with the other contracting States

Article 55 Reduction of the parties to a multilateral treaty below the number necessary for its entry into force

Unless the treaty otherwise provides, a multilateral treaty does not terminate by reason only of the fact that the number of the parties falls below the number necessary for its entry into force.

Article 56 Denunciation of or withdrawal from a treaty containing no provision regarding termination, denunciation or withdrawal

1. A treaty which contains no provision regarding its termination and which does not provide for denunciation or withdrawal is not subject to denunciation or withdrawal unless:
(a) it is established that the parties intended to admit the possibility of denunciation or withdrawal; or
(b) a right of denunciation or withdrawal may be implied by the nature of the treaty.
2. A party shall give not less than twelve months' notice of its intention to denounce or withdraw from a treaty under paragraph 1.

Article 57 Suspension of the operation of a treaty under its provisions or by consent of the parties

The operation of a treaty in regard to all the parties or to a particular party may be suspended:
(a) in conformity with the provisions of the treaty; or
(b) at any time by consent of all the parties after consultation with the other contracting States.

Article 58 Suspension of the operation of a multilateral treaty by agreement between certain of the parties only

1. Two or more parties to a multilateral treaty may conclude an agreement to suspend the operation of provisions of the treaty, temporarily and as between themselves alone, if:
(a) the possibility of such a suspension is provided for by the treaty; or
(b) the suspension in question is not prohibited by the treaty and:
(i) does not affect the enjoyment by the other parties of their rights under the treaty or the performance of their obligations;
(ii) is not incompatible with the object and purpose of the treaty.
2. Unless in a case falling under paragraph 1(a) the treaty otherwise provides, the parties in question shall notify the other parties of their intention to conclude the agreement and of those provisions of the treaty the operation of which they intend to suspend.

Article 59 Termination or suspension of the operation of a treaty implied by conclusion of a later treaty

1. A treaty shall be considered as terminated if all the parties to it conclude a later treaty relating to the same subject-matter and:
(a) it appears from the later treaty or is otherwise established that the parties intended that the matter should be governed by that treaty; or
(b) the provisions of the later treaty are so far incompatible with those of the earlier one that the two treaties are not capable of being applied at the same time.
2. The earlier treaty shall be considered as only suspended in operation if it appears from the later treaty or is otherwise established that such was the intention of the parties.

Article 60 Termination or suspension of the operation of a treaty as a consequence of its breach

1. A material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part.
2. A material breach of a multilateral treaty by one of the parties entitles:
(a) the other parties by unanimous agreement to suspend the operation of the

treaty in whole or in part or to terminate it either:
(i) in the relations between themselves and the defaulting State, or
(ii) as between all the parties;
(b) a party specially affected by the breach to invoke it as a ground for suspending the operation of the treaty in whole or in part in the relations between itself and the defaulting State;
(c) any party other than the defaulting State to invoke the breach as a ground for suspending the operation of the treaty in whole or in part with respect to itself if the treaty is of such a character that a material breach of its provisions by one party radically changes the position of every party with respect to the further performance of its obligations under the treaty.
3. A material breach of a treaty, for the purposes of this article, consists in:
(a) a repudiation of the treaty not sanctioned by the present Convention; or
(b) the violation of a provision essential to the accomplishment of the object or purpose of the treaty.
4. The foregoing paragraphs are without prejudice to any provision in the treaty applicable in the event of a breach.
5. Paragraphs 1 to 3 do not apply to provisions relating to the protection of the human person contained in treaties of a humanitarian character, in particular to provisions prohibiting any form of reprisals against persons protected by such treaties.

Article 61 Supervening impossibility of performance

1. A party may invoke the impossibility of performing a treaty as a ground for terminating or withdrawing from it if the impossibility results from the permanent disappearance or destruction of an object indispensable for the execution of the treaty. If the impossibility is temporary, it may be invoked only as a ground for suspending the operation of the treaty.
2. Impossibility of performance may not be invoked by a party as a ground for terminating, withdrawing from or suspending the operation of a treaty if the impossibility is the result of a breach by that party either of an obligation under the treaty or of any other international obligation owed to any other party to the treaty.

Article 62 Fundamental change of circumstances

1. A fundamental change of circumstances which has occurred with regard to those existing at the time of the conclusion of a treaty, and which was not foreseen by the parties, may not be invoked as a ground for terminating or withdrawing from the treaty unless:
(a) the existence of those circumstances constituted an essential basis of the consent of the parties to be bound by the treaty; and
(b) the effect of the change is radically to transform the extent of obligations still to be performed under the treaty.
2. A fundamental change of circumstances may not be invoked as a ground for

terminating or withdrawing from a treaty:
(a) if the treaty establishes a boundary; or
(b) if the fundamental change is the result of a breach by the party invoking it either of an obligation under the treaty or of any other international obligation owed to any other party to the treaty.
3. If, under the foregoing paragraphs, a party may invoke a fundamental change of circumstances as a ground for terminating or withdrawing from a treaty it may also invoke the change as a ground for suspending the operation of the treaty.

Article 63 Severance of diplomatic or consular relations

The severance of diplomatic or consular relations between parties to a treaty does not affect the legal relations established between them by the treaty except in so far as the existence of diplomatic or consular relations is indispensable for the application of the treaty.

Article 64 Emergence of a new peremptory norm of general international law (jus cogens)

If a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates.

Section 4: Procedure

Article 65 Procedure to be followed with respect to invalidity, termination, withdrawal from or suspension of the operation of a treaty

1. A party which, under the provisions of the present Convention, invokes either a defect in its consent to be bound by a treaty or a ground for impeaching the validity of a treaty, terminating it, withdrawing from it or suspending its operation, must notify the other parties of its claim. The notification shall indicate the measure proposed to be taken with respect to the treaty and the reasons therefore.
2. If, after the expiry of a period which, except in cases of special urgency, shall not be less than three months after the receipt of the notification, no party has raised any objection, the party making the notification may carry out in the manner provided in article 67 the measure which it has proposed.
3. If, however, objection has been raised by any other party, the parties shall seek a solution through the means indicated in article 33 of the Charter of the United Nations.
4. Nothing in the foregoing paragraphs shall affect the rights or obligations of the parties under any provisions in force binding the parties with regard to the settlement of disputes.
5. Without prejudice to article 45, the fact that a State has not previously made the

notification prescribed in paragraph 1 shall not prevent it from making such notification in answer to another party claiming performance of the treaty or alleging its violation.

Article 66 Procedures for judicial settlement, arbitration and conciliation

If, under paragraph 3 of article 65, no solution has been reached within a period of 12 months following the date on which the objection was raised, the following procedures shall be followed:
(a) any one of the parties to a dispute concerning the application or the interpretation of articles 53 or 64 may, by a written application, submit it to the International Court of Justice for a decision unless the parties by common consent agree to submit the dispute to arbitration;
(b) any one of the parties to a dispute concerning the application or the interpretation of any of the other articles in Part V of the present Convention may set in motion the procedure specified in the Annex to the Convention by submitting a request to that effect to the Secretary-General of the United Nations.

Article 67 Instruments for declaring invalid, terminating, withdrawing from or suspending the operation of a treaty

1. The notification provided for under article 65 paragraph 1 must be made in writing.
2. Any act declaring invalid, terminating, withdrawing from or suspending the operation of a treaty pursuant to the provisions of the treaty or of paragraphs 2 or 3 of article 65 shall be carried out through an instrument communicated to the other parties. If the instrument is not signed by the Head of State, Head of Government or Minister for Foreign Affairs, the representative of the State communicating it may be called upon to produce full powers.

Article 68 Revocation of notifications and instruments provided for in articles 65 and 67

A notification or instrument provided for in articles 65 or 67 may be revoked at any time before it takes effect.

Section 5: Consequences of the invalidity, termination or suspension of the operation of a treaty

Article 69 Consequences of the invalidity of a treaty

1. A treaty the invalidity of which is established under the present Convention is void. The provisions of a void treaty have no legal force.
2. If acts have nevertheless been performed in reliance on such a treaty:
(a) Each party may require any other party to establish as far as possible in their

mutual relations the position that would have existed if the acts had not been performed;
(b) Acts performed in good faith before the invalidity was invoked are not rendered unlawful by reason only of the invalidity of the treaty.
3. In cases falling under articles 49, 50, 51 or 52, paragraph 2 does not apply with respect to the party to which the fraud, the act of corruption or the coercion is imputable.
4. In the case of the invalidity of a particular State's consent to be bound by a multilateral treaty, the foregoing rules apply in the relations between that State and the parties to the treaty.

Article 70 Consequences of the termination of a treaty

1. Unless the treaty otherwise provides or the parties otherwise agree, the termination of a treaty under its provisions or in accordance with the present Convention:
(a) releases the parties from any obligation further to perform the treaty;
(b) does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination.
2. If a State denounces or withdraws from a multilateral treaty, paragraph 1 applies in the relations between that State and each of the other parties to the treaty from the date when such denunciation or withdrawal takes effect.

Article 71 Consequences of the invalidity of a treaty which conflicts with a peremptory norm of general international law

1. In the case of a treaty which is void under article 53 the parties shall:
(a) eliminate as far as possible the consequences of any act performed in reliance on any provision which conflicts with the peremptory norm of general international law; and
(b) bring their mutual relations into conformity with the peremptory norm of general international law.
2. In the case of a treaty which becomes void and terminates under article 64, the termination of the treaty:
(a) releases the parties from any obligation further to perform the treaty;
(b) does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination; provided that those rights, obligations or situations may thereafter be maintained only to the extent that their maintenance is not in itself in conflict with the new peremptory norm of general international law.

Article 72 Consequences of the suspension of the operation of a treaty

1. Unless the treaty otherwise provides or the parties otherwise agree, the suspension of the operation of a treaty under its provisions or in accordance with the present Convention:

(a) releases the parties between which the operation of the treaty is suspended from the obligation to perform the treaty in their mutual relations during the period of the suspension;
(b) does not otherwise affect the legal relations between the parties established by the treaty.
2. During the period of the suspension the parties shall refrain from acts tending to obstruct the resumption of the operation of the treaty.

Part VI Miscellaneous provisions

Article 73 Cases of State succession, State responsibility and outbreak of hostilities

The provisions of the present Convention shall not prejudge any question that may arise in regard to a treaty from a succession of States or from the international responsibility of a State or from the outbreak of hostilities between States.

Article 74 Diplomatic and consular relations and the conclusion of treaties

The severance or absence of diplomatic or consular relations between two or more States does not prevent the conclusion of treaties between those States. The conclusion of a treaty does not in itself affect the situation in regard to diplomatic or consular relations.

Article 75 Case of an aggressor State

The provisions of the present Convention are without prejudice to any obligation in relation to a treaty which may arise for an aggressor State in consequence of measures taken in conformity with the Charter of the United Nations with reference to that State's aggression.

Part VII Depositaries, notifications, corrections and registration

Article 76 Depositaries of treaties

1. The designation of the depositary of a treaty may be made by the negotiating States, either in the treaty itself or in some other manner. The depositary may be one or more States, an international organization or the chief administrative officer of the organization.
2. The functions of the depositary of a treaty are international in character and the depositary is under an obligation to act impartially in their performance. In particular, the fact that a treaty has not entered into force between certain of the parties or that a difference has appeared between a State and a depositary with

regard to the performance of the latter's functions shall not affect that obligation.

Article 77 Functions of depositaries

1. The functions of a depositary, unless otherwise provided in the treaty or agreed by the contracting States, comprise in particular:
(a) keeping custody of the original text of the treaty and of any full powers delivered to the depositary;
(b) preparing certified copies of the original text and preparing any further text of the treaty in such additional languages as may be required by the treaty and transmitting them to the parties and to the States entitled to become parties to the treaty;
(c) receiving any signatures to the treaty and receiving and keeping custody of any instruments, notifications and communications relating to it;
(d) examining whether the signature or any instrument, notification or communication relating to the treaty is in due and proper form and, if need be, bringing the matter to the attention of the State in question;
(e) informing the parties and the States entitled to become parties to the treaty of acts, notifications and communications relating to the treaty;
(f) informing the States entitled to become parties to the treaty when the number of signatures or of instruments of ratification, acceptance, approval or accession required for the entry into force of the treaty has been received or deposited;
(g) registering the treaty with the Secretariat of the United Nations;
(h) performing the functions specified in other provisions of the present Convention.
2. In the event of any difference appearing between a State and the depositary as to the performance of the latter's functions, the depositary shall bring the question to the attention of the signatory States and the contracting States or, where appropriate, of the competent organ of the international organization concerned.

Article 78 Notifications and communications

Except as the treaty or the present Convention otherwise provide, any notification or communication to be made by any State under the present Convention shall:
(a) if there is no depositary, be transmitted direct to the States for which it is intended, or if there is a depositary, to the latter;
(b) be considered as having been made by the State in question only upon its receipt by the State to which it was transmitted or, as the case may be, upon its receipt by the depositary;
(c) if transmitted to a depositary, be considered as received by the State for which it was intended only when the latter State has been informed by the depositary in accordance with article 77, paragraph 1 (e).

Article 79 Correction of errors in texts or in certified copies of treaties

1. Where, after the authentication of the text of a treaty, the signatory States and

the contracting States are agreed that it contains an error, the error shall, unless they decide upon some other means of correction, be corrected:
(a) by having the appropriate correction made in the text and causing the correction to be initialed by duly authorized representatives;
(b) by executing or exchanging an instrument or instruments setting out the correction which it has been agreed to make; or
(c) by executing a corrected text of the whole treaty by the same procedure as in the case of the original text.
2. Where the treaty is one for which there is a depositary, the latter shall notify the signatory States and the contracting States of the error and of the proposal to correct it and shall specify an appropriate time-limit within which objection to the proposed correction may be raised. If, on the expiry of the time-limit:
(a) no objection has been raised, the depositary shall make and initial the correction in the text and shall execute a process-verbal of the rectification of the text and communicate a copy of it to the parties and to the States entitled to become parties to the treaty;
(b) an objection has been raised, the depositary shall communicate the objection to the signatory States and to the contracting States.
3. The rules in paragraphs 1 and 2 apply also where the text has been authenticated in two or more languages and it appears that there is a lack of concordance which the signatory States and the contracting States agree should be corrected.
4. The corrected text replaces the defective text ab initio, unless the signatory States and the contracting States otherwise decide.
5. The correction of the text of a treaty that has been registered shall be notified to the Secretariat of the United Nations.
6. Where an error is discovered in a certified copy of a treaty, the depositary shall execute a process-verbal specifying the rectification and communicate a copy of it to the signatory States and to the contracting Slates.

Article 80 Registration and publication of treaties

1. Treaties shall, after their entry into force, be transmitted to the Secretariat of the United Nations for registration or filing and recording, as the case may be, and for publication.
2. The designation of a depositary shall constitute authorization for it to perform the acts specified in the preceding paragraph.

Part VIII Final provisions

Article 81 Signature

The present Convention shall be open for signature by all States Members of the United Nations or of any of the specialized agencies or of the International Atomic Energy Agency or parties to the Statute of the International Court of

Justice, and by any other State invited by the General Assembly of the United Nations to become a party to the Convention, as follows: until 30 November 1969, at the Federal Ministry for Foreign Affairs of the Republic of Austria, and subsequently, until 30 April 1970, at United Nations Headquarters, New York.

Article 82 Ratification

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 83 Accession

The present Convention shall remain open for accession by any State belonging to any of the categories mentioned in article 81. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 84 Entry into force

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the thirty-fifth instrument of ratification or accession.
2. For each State ratifying or acceding to the Convention after the deposit of the thirty-fifth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 85 Authentic Texts

The original of the present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

In witness whereof the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

Done at Vienna, this twenty-third day of May, one thousand nine hundred and sixty-nine.

References & Bibliography

- Constitution of Islamic Republic of Pakistan (1973)
- Rules of Business 1973, Government of Pakistan, (as amended up to 6-7-2004)
- Secretariat Instructions, as amended up to 2004, Pakistan Public Administration Research Center, Establishment Ministry, 2004
- The United Nations (Security Council) ACT, 1948 (Pakistani Statute)
- Vienna Convention on Law of Treaties, 1969
- Vienna Convention on Law of Treaties, 1986
- Vienna Convention on State Succession, 1978
- Indian Independence Act, 1947
- The Law of Treaties, Lord McNair, Clarendon Press, 1986
- Introduction To Law Of Treaties, Paul Reuter, Printer Publisher, 1989
- Oppenhiem's International law, 9th edition, ed. Sir Robert Jennings and Sir Arthur Watts, Universal law Publishing Co. 2003
- Public International Law in the Modern Word, David. H. Ott, Pitt Man Publishing, 1987
- International Law, 1st edition, Malcolm D Evans, Oxford University Press, 2003
- Cases and Materials, 6th edition, D. J. Harris, Sweet & Maxwell, 2004
- International Law, F.A. Mann, Clarendon Press, 1973
- Law Among Nations, 5th edition, Gerharld Von Glenn, Macmillan Publishing Co. Inc., 1986
- International Law, volume-1, 3rd edition, George Schwrzenberger, Stevens & Sons Limited, 1957
- International Law, volume-4, Hersch Lauterpacht, ed, E.Lauterpacht, Q.C., Cambridge University Press, 1978
- Introduction to International law, 9th edition, J. G. Starke, Butterworths, 1984

- International Law, 2nd edition, D. W. Greig, Butterworths, 1976
- The Major International Treaties, J. A. S, Great Fontana Metchaen & Company Ltd, 1974
- The Structure and Process of International Law, Essays in Legal Philosophy Doctrine and Theory, ed. by, R. St. J. Macdonald & Douglas M Johnston, Martinus Nijhoff Publishers, 1986
- The Treaty Makers Handbook, Blix and Emerson, 1973
- The constitution of Islamic Republic of Pakistan, J. Muhammad Munir, ed. Zubair Saeed, PLD Publishers, 1999
- The Constitution of Islamic Republic of Pakistan 1973, 6th edition, M. Mehmood, Pakistan Law Times Publications, 2007
- International Law a Treatise, vol. 1 Peace, 8th edition, by Oppenheim, ed. By, H. Lauterpacht, Longmans, 1955
- Principles of Public International law, 3rd edition, Ian Brownlie, Clarendon Press Oxford, 1987
- Cross Border Transaction & Tax Treaties Theory and Practice, Ahmed Khan, Petrosin Info Tect. Pte. Ltd.
- International Law, L. N. Tandoon & S. K. Kapoor, Mansoor Book House Lahore.
- Public International Law, Jurist, Mansoor Book House Lahore.
- International Law (Law of Peace), 2nd edition N. A. Maryan, Macdonald and Evans, 1982
- International Law, 3rd edition, Charles. G. Fenwick, Appleton Century Crofts INC
- Hand book on treaty making, by Australian Trade and Foreign Ministry.
- Fundamentals of International law, Bhalla, S.L. Docta Shelf; Delhi. 1990
- Contemporary International Law: A Concise Introduction, Levi, Werner, Boulder. Westview Press, 1991
- Private International Law: Conflict of Laws, Scott, A.W. Estover Macdonald and Evans; Plymouth., 1979

- **International Law in World Politics-An Introduction, Scott Shirley V., New Delhi. Viva Books Private, 2007**
- **National Institute of Justice - Research Plan: 1991, by U.S., Department of Justice, 1991**
- **New England Law Review, vol 35:2, 2001, Article on "Application of Treaty Based Universal Jurisdiction to Nationals of Non-Party States", by Michael P. Scharf**
- **Year book of International Law Commission, vol ii, 1966**
- **Reservation to Genocide Convention, I.C.J report, 1951**
- **Studies and Essays on International Humanitarian Law and Red Cross Principles (in honour of Jean Pictet), Martinus Nijhoff Publishers; Geneva, 1984**

Consulted Websites

http://untreaty.un.org last visited 27/01/08 United Nation

http://www.icj-cij.org/ last visited 12/12/07 site of International Court of Justice

http://www.un.org/Overview/Charter/contents.html last visited 12/12/07 United Nations Charter

http://www.un.org/law/ilc/index.htm last visted 12/12/07 International Law Commission

http://www.imo.org/HOME.html last visited last visited 17/09/07 International Maritime Organization

http://www.cils.net/legalresmisres.html last visited 08/12/07 Center for International Legal Studies

http://www.univie.ac.at/RI/KONTERM/intlaw/konterm/treaties/html/verzlist.htm

last visted 13/10/07 International Law Treaties (English Version of the Site)

http://www.public-international-law.net last visited 01/12/07 For elaboration of Vienna Convention on Law of Treaties

http://www.dfat.gov.au last visited 9/11/07 websit of Australian Depatment of Foreign Affairs and Trade