NATIONAL OPEN UNIVERSITY OF NIGERIA

SCHOOL OF ARTS AND SOCIAL SCIENCES

COURSE CODE: INR 112

COURSE TITLE:
INTRODUCTION TO INTERNATIONALLAW AND DIPLOMACY IN PRE-COLONIAL AFRICA

COURSE GUIDE

INR 112
INTRODUCTION TO INTERNATIONAL LAW AND DIPLOMACY IN PRE-COLONIAL AFRICA

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Introduction

INR 112: Introduction to International Law and Diplomacy in Pre-colonial Africa, is a one semester course. It will be available for all students to take towards the core module of the French and International Studies programme. This course is suitable for any foundation student seeking to understand the whole essence of International Law and of Diplomacy generally and with respect to the situation in pre-colonial Africa.

This course consists of 21 Units that examine in detail the types of interstate laws prevalent in pre-colonial Africa and how they were used for the purpose of interstate relations. It is also concerned with a thorough investigation of how the aims and purpose of diplomacy were achieved in Africa. It traces the origins and sources of international law in pre-colonial Africa, the nature and uses of contractual obligations and inter-state agreements, general principles of pre-colonial African law, the use of force, settlement of disputes and pre-colonial diplomatic matters. However, a proper grasp might not be possible without juxtaposing what was with what is. Therefore, the course addresses some aspects of modern international law, the contending Schools of thought in International Law, elements of international law and the substance of diplomacy. The approach adopted is such that there is usually a comparison between what obtained in pre-colonial Africa and what modern international system has to offer on issues relating to International Law and Diplomacy.

There are compulsory prerequisites for this course. The course guide tells you briefly what the course is all about, what you are expected to know in each unit, what course materials you need to use and how you can work your way through these materials. It also emphasizes the necessity for tutor–marked assignments. There are also periodic tutorial classes that are linked to this course.

What You will Learn in this Course

The overall objective of INR 102: Introduction to International Law and Diplomacy in Pre-colonial Africa, is to expose the students to the whole

gamut of issues surrounding the notion and practice of diplomacy, its origin, appearance in pre-colonial African society and its present manifestations in modern international law. Your understanding of this course will serve to expose you to a very important part of international studies that deals with the rules and regulations that guide the relationships between states, and also the manner in which international relations is conducted.

Course Aims

The basic aim we intend to achieve in this course is to expose the student to the history, development and practice of diplomacy as it existed in pre-colonial Africa. It is important that the student understands that the international system is not necessarily anarchic, but had rules and regulations which developed over time that modulated the relationship between sovereign nations.

Course Objectives

Several objectives can be delineated from this course. In addition, each unit has specific objectives. The unit objectives can be found at the beginning of each unit. You may want to refer to them as you study the particular unit to check on the progress you are making. You should always look at the unit objectives after completing a unit. In this way, you can be sure that you have covered what is required of you in that unit.

What You will Learn from this Course

On successful completion of the course, you should be able to:

identify the different forms of interaction in pre-colonial Africa
know how international law and diplomacy developed in Africa
understand the role of trust, reputation and the extended family in the interactions
identify the different processes of international law
understand the evolution of modern International law
know the sources of modern international law

be familiar with the nature of international treaties
understand the relationship between municipal and international law
be conversant with the position of the various Schools of thought on International law
understand the concept of recognition of states and sovereignty in International relations
be acquinted with the issue of territory as it relates to international law and diplomacy
be able to relate immunities and privileges of diplomats to the importance of diplomacy
be conversant with the features and operations of foreign missions
understand the processes and interpretations of diplomacy
be familiar with pre-colonial African diplomacy

Working through this Course

To complete this course you are required to read the study units, read recommended textbooks and other materials provided by the National Open University of Nigeria (NOUN). Most of the units contain self-assessment exercises, and at points in the course, you are required to submit tutor-marked assignments for assessment purposes. At the end of this course, is a final examination. Stated below are the components of the course and what you are expected to do.

Course Materials

Course Guide
Study Units
Textbooks and other Reference Sources
Assignment File
Presentation

It cannot be sufficiently stressed that you must obtain the text materials. They are provided by the NOUN. You may also be able to purchase the materials from the bookshops. Please, contact your tutor if you have problems in obtaining the text materials.

Study Units

There are twenty-one study units in this course, these are as follows:

Unit 1	Discourse on Africa as the Origin of Humanity
Unit 2	The Nature of Pre-colonial African society
Unit 3	Municipal Law in Pre-colonial African societies
Unit 4	Cross-Boundary Interactions in Pre-colonial Africa
Unit 5	Sources of Pre-colonial Africa International law
Unit 6	Laws of War in Pre-colonial Africa
Unit 7	The Nature of Modern International Law
Unit 8	Sources of Modern International Law
Unit 9	Classical Scholars of International Law
Unit 10	Settlement of International Disputes
Unit 11	Recognition of States in Modern International Law
Unit 12	Jurisdiction of States in Modern International Law
Unit 13	Contending Schools of Thought in Modern International Law
Unit 14	Understanding Diplomacy
Unit 15	Who is a Diplomat?
Unit 16	Historical Evolution of Pre-colonial Diplomacy
Unit 17	Conduct of War in Pre-colonial Africa
Unit 18	War in Modern Times
Unit 19	Power and Capability in Pre-colonial African Societies
Unit 20	Power and Capability in Contemporary Times
Unit 21	Comparing Trends in International Law, International Relations and Diplomacy

Each unit contains a number of self-tests. In general, these self-tests are based on the materials you have just covered or require you to apply it in some way. They are to assist you to gauge your progress as well as reinforce your understanding of the material. Together with tutor-marked assignments, these exercises will assist you in achieving the stated learning objectives of the individual units and of the Course.

Set Textbooks

You may require to purchase these textbooks stated below.

J. Brierly, ThelawofNations:AnIntroductiontoInternationalLawof Peace, Oxford, Clarendon Press., 1949.

I.Brownlie, BasicDocumentsinInternationalLaw, Oxford, University Press, 1995.

G. Finch, TheSourcesofModernInternationalLaw, NY, William Hein and Co. Inc., 2000.

Assignment File

There are many assignments for this course, with each unit having at least one assignment. These assignments are basically meant to assist you to understand the course. In this file, you will find all the details of the work you must submit to your tutor for marking. The marks you obtain for these assignments will count towards the final mark you obtain for this course. Further information on assignment can be found in the Assignment File itself, and later in this Course Guide in the section on assessment.

Assessment

There are two aspects to the assessment of this course. First, are the Tutor-Marked Assignments; Second, is the written examination.

In tackling the assignments, you are expected to apply the information, knowledge and experience acquired during the course. The assignments must be submitted to your tutor for formal assessment in accordance with the deadlines stated in the Assignment File. The work you submit to your tutor for assessment accounts for 30 per cent of your total course mark.

At the end of the course, you will need to sit for a final examination of three hours duration. This examination will account for the other 70 per cent of your total course mark.

Tutor-Marked Assignments (TMAs)

There are a number of tutor-marked assignments in this course. You only need to submit 21 of them. The best five (i.e the five highest score of the 21 tutor marked assignments) are taken into account. Each assignment carries 20 marks but on the average when the five assignments are put together, then each assignment will count 10% towards your total course mark. This implies that the total marks for the best three (3) assignments which would have been 100 marks will now be 30% of your total course mark.

Assignment File

The Assignments for the units in this course are contained in the Assignment File. You will be able to complete your assignments from the information and materials contained in your set books, reading and study units. However, it is always desirable at this level of your education to research more widely and demonstrate that you have a very broad and in-depth knowledge of the subject matter.

When you complete each assignment, send it together with a TMA (tutor-marked assignment) form to your tutor. Ensure that each assignment reaches your tutor on or before the deadline given in the Assignment File. If for any reason you cannot complete your work on time, contact your tutor before the assignment is due to discuss the possibility of an extension. Extensions will not be granted after the due date unless there are exceptional circumstances warranting such.

Final Examination and Grading

The final examination for INR 102: Introduction to International Law and Diplomacy in Pre-colonial Africa, will be of three hours' duration and it accounts for 70% of the total course grade. The examination will consist of questions which reflect the practice exercises and tutor-marked assignments you have previously encountered. All areas of the course will be assessed.

Use the time between the completion of the last unit and sitting for the examination to revise the entire course. You may find it useful to review

your tutor-marked assignments and comment on them before the examination. The final examination covers information from all aspects of the course.

Course Marking Scheme

Table 1: *Course marking Scheme*

ASSESSMENT	MARKS
Assignments	Best five marks of the Assignments @10% each (on the average) = 30% of course marks
Final examination	70% of overall course marks
Total	100% of course marks

How to get the most from this Course

In distance learning, the study units replace the university lectures. This is one of the great advantages of distance learning; you can read and work through specially designed study materials at your own pace, and at a time and place that suit you best. Think of it as reading the lecture instead of listening to the lecturer. In the same way a lecturer might give you some reading to do, the study units tell you what to read, and which are your text materials or set books. You are provided exercises at appropriate points, just as a lecturer might give you an in-class exercise.

Each of the study units follows a common format. The first item is an introduction to the subject matter of the unit, and how a particular unit is integrated with the other units and the course as a whole. Next to this is a set of learning objectives. These objectives let you know what you should be able to do by the time you have completed the unit. These learning objectives are meant to guide your study. The moment a unit is finished, you must go back and check whether you have achieved the objectives. If this is made a habit, then you will significantly improve your chances of passing the course.

The main body of the unit guides you through the required reading from other sources. This will usually be either from your set books or from a Reading section.

The following is a practical strategy for working through the course. If you run into any trouble, telephone your tutor or post the question on the web GS OLE's discussion board. Remember that your tutor's job is to help you. When you need assistance, do not hesitate to call and ask your tutor to provide it.

Read this Course Guide thoroughly, it is your first assignment.

Organise a Study Schedule- Design a 'Course Overview' to guide you through the Course. Note the time you are expected to spend on each unit and how the assignments relate to the units. Important information, e.g. details of your tutorials, and the date of the first day of the Semester is available from the Web GS OLE. You need to gather all the information into one place, such as your diary or a wall calendar. Whatever method you choose, you should decide on and fill in your own dates and schedule of work for each unit.

Once you have created your own study schedule, do everything to stay faithful to it. The major reason that students fail is that they get behind with their course work. If you get into difficulties with your schedule, please, let your tutor know before it is too late.

Turn to Unit 1, and read the introduction and the objectives for the unit.

Assemble the study materials. You will need your textbooks and the unit you are studying at any point in time.

Work through the unit. As you work through the unit, you will know what sources to consult for further information.

Visit your study centre for up-to-date course information which will be available there.

Well before the relevant due dates (about 4 weeks before due dates), access the Assignment File for your next required assignment. Keep in mind that you will learn a lot by doing the assignment carefully. They have been designed to help you meet the objectives of the course and, therefore, will help you pass the examination. Submit all assignments not later than the due date.

Review the objectives for each study unit to confirm that you have achieved them. If you feel unsure about any of the objectives, review the study materials or consult your tutor. When you are confident that you have achieved a unit's objectives, you can start on the next unit. Proceed unit by unit through the course and try to pace your study so that you keep yourself on schedule.

When you have submitted an assignment to your tutor for marking, do not wait for its return before starting on the next unit. Keep to your schedule. When the Assignment is returned, pay particular attention to your tutor's comments, both on the tutor-marked assignment form and also the written comments on the ordinary assignments.

After completing the last unit, review the course and prepare yourself for the final examination. Check that you have achieved the unit objectives (listed at the beginning of each unit) and the course objectives (listed in the Course Guide).

Tutors and Tutorials

There are 15 hours of tutorials (twenty 2-hour sessions) provided in support of this course. You will be notified of the dates, times and location of these tutorials, together with the name and phone number of your tutor, as soon as you are allocated a tutorial group.

Your tutor will mark and comment on your assignments, keep a close watch on your progress and on any difficulties you might encounter and provide assistance to you during the course. You must mail your tutor-marked assignments to your tutor well before the due date (at least two working days are required). They will be marked by your tutor and returned to you as soon as possible.

Do not hesitate to contact your tutor by telephone, e-mail, or discussion board. The following might be circumstances in which you will find help necessary. Contact your tutor if:–

- you do not understand any part of the study units or the assigned readings.
- you have difficulties with the exercises.
- You have a question or problem with an assignment, with your tutor's comments on an assignment or with the grading of an assignment.

You should try your best to attend the tutorials. This is the only chance to have face to face contact with your tutor and ask questions which are answered instantly. You can raise any problem encountered in the course of your study. To gain the maximum benefits from course tutorials, prepare a question list before attending them. You will learn quite a lot from participating in the discussions.

MAIN COURSE

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MODULE 1

UNIT 1 DISCOURSE ON AFRICA AS THE ORIGIN OF HUMANITY

CONTENTS

1.0 INTRODUCTION

Until recently many Western had shown obvious contempt and prejudice for Africa, describing that part of the world, as the “dark continent”. It was strongly argued that Africa had no history beyond its contact with Western civilization. However, unfolding events and discoveries, especially in archeology and Darwinism, have all pointed to Africa as the foundation of humanity. This part of the course therefore, introduces the student to the rudiments of the forms of interaction that existed in Africa prior to Western civilization. It gives an insight into the understanding of the African people and their diverse ways of life before the European colonial conquest of the continent. Attempts would be made at tracing the developments from pre-Christian Era (B.C.E.). In this wise, we would be

dealing with the emergence of the *Australopithecus Africanus* and *Homo Habilis* in East Africa, between the periods, 3-1.5m. Furthermore, this would include the spread of Homo erectus over Africa and Asia in the period 750,000 till the Berlin Conference on the Partitioning of Africa in 1884.

2.0 OBJECTIVES

To present the different stages of human development.
Highlight issues surrounding the origin of man.
Provide evidences to substantiate the notion of 'Africa as the origin of man'.
Broaden the debate on the origin of man.

3.0 MAIN CONTENT

3.1 The Origin of Man

There have been copious explanations and theories advanced on the origin of man. It would be pertinent to highlight some of them, viz:
Theory of spontaneous generation
Theory of uniformitarianism
Theory of prior simpler form
Inheritance theory
Degeneration theory
Theory of natural selection

The first of these theories presupposes that each organism came into existence in its present form without any form of relationship with other species, thus the evolution of man is not traceable to any object or substance that had existed sometime in the past. This is followed by the uniformitarian thesis as propounded by James Hulton, signifying some kind of commonality in the evolutionary processes of living organisms. Perhaps, the most strategic and instructive in linking the origin of man to Africa is the theory of natural selection, by Darwin. It argues that all currently existing organisms evolved from a process of natural selection by which at a point in the history of organic development, certain unfavorable conditions resulted in the death of weaker organisms and the

survival of the fittest. For the survivor to overcome extinction, they developed special adaptive features to cope with harsh environmental conditions. Also, that the new breed which resulted from their parent stock over a period resulted, through gradual differentiation, in a new species.

Africa's position becomes clearer in the process of considering the evolutionary tree in the animal kingdom. The multicellular organisms occupy a higher level than the unicellular organisms and the vertebrates are more complex than the invertebrates. Mammals are classified as the highest of the vertebrates in terms of intelligence and sophistication, followed by the species of monkey and gorillas, which are next in this hierarchy. Treated as closely related to man among the primates or apes are chimpanzees and gorillas. Hence, in the quest to find the missing link in the trajectory of human race, reference is made to this category of living 'personalities'. On this score, there is enough archaeological excavation to prove the assertion. The most significant of the archeological discoveries have been found on the African continent. Logically therefore, it may be asserted that life started in Africa.

In 1925, the fossil of a primate found in South Africa was identified as the earliest primate called *Australopithecus.* One identifiable feature of the primate is the presence of opposal fingers arranged in a manner which facilitates gripping of objects for tool making. Also, the Australopithecus had a set of teeth similar to that of man except for its molar teeth. To buttress this point, a compendium of Toyin Falola's findings on pre-colonial African societies would further guide our thinking in this part of the course. The overwhelming evidence has confirmed that humans evolved in Africa and migrated to other parts of the world. This idea was expressed as early as 1859. However, this view was unacceptable to some based on spiritual and racial considerations. There were those who faulted the assertion as a result of their belief in biblical account of the origin of man, while Europeans found it impossible to accept that their ancestors had African origin. Nevertheless, scientific and archaeological findings have validated the view that Africa is the birthplace of humankind. The examination of ancient objects of stone and bone as well as many other artifacts and fossils from various parts of the continent has shed light on human evolution. The sequence of events can be determined by

stratigraphy—the idea that objects found below layers of earth are older than those above. A dating technique, - radiocarbon dating (carbon-14) - has also made it possible to provide an approximate age for a variety of organic materials, such as charcoal and bones that are as much as fifty thousand years old. The more recent technique involving mitochondrial DNA (deoxyribonucleic acid)—the analysis of the genetic material in a cell that is passed unchanged from a mother to her child, has also confirmed the archaeological evidence that modern humans originated in Africa and began to move elsewhere about one hundred and fifty thousand years ago.

Africa is an ancient continent, indeed the oldest. It follows, therefore, that it contributed to the prehistoric development of humankind. The history of *Homo sapiens* and those before them shows how humans emerged and developed the first tools and technology, how they lived in a difficult environment, and how they survived on fishing, and hunting. This is a long history during which people and the objects they valued both emerged, a time when variations in climate, skin colour, way of life, and beliefs began to occur in various parts of Africa and the rest of the world.

3.2 Evidence/Facts

Homo sapiens (“modern man” or “thinking man”) was a stage in the development of “hominids”—primates who had enlarged brains and the capacity to walk on two legs. How the earliest hominids evolved over three million years ago is still a subject of great speculation. However, there are archaeological records of the earliest humans in East and Southern Africa, including hominids that could stand and walk on two legs. In 1959, a large Australopithecus African known as Zinjanthropus (the nut cracker) was found in Olduvai Gorge in East Africa (precisely Tanzania). It was radio carbon-dated to be 1.7 million years old. Archeological experts have suggested that it could have evolved into *homo habilis* from which the *homo sapiens* descended. This is the species of the modern man characterized by bipedal features and large brain which enables man to organize complex community and development. On the basis of existing archaeological knowledge, it is established that man has been existing in his present biological form for at least two and a half million years, first in East Africa. It is the view of many scholars that the

transition from the australopithecines (collective reference to australopithecus) to *homo habilis* and *homo erectus* marks the emergence of "true" human beings. These two-legged beings could use their hands to protect themselves, use simple tools, and carry a few items. Their fingers, too, became elongated, thus giving them an advantage in making tools. The first clues to what the early hominids looked like, and which of them are connected to "modern man," are derived from many skeletons found in Eastern and Southern Africa.

The origin of man is located geographically in Africa. This is mostly because the various stages of human development and transformation across the phylogenetic scale of life have been found to have deposits in the part of the world. Once again, the earliest Australopithecine to the *homo habilis*, *homo erectus* and *homo sapiens* are all traceable to Africa. Africa is key in providing the archaeological fossils in tracing man's origin. It is not the production of the fossil that is in itself important but that it points to the fact that the fossilized organisms lived in the place where the fossils have been found. It is the logic of establishing the location of the fossil to its origin that puts Africa forward as the ancestral root of humanity.

More recently, there have been evidence of a number of Australopithecus found in Africa. Africa has produced both Australopithecus Africanus (often known as the gracile Australopithecus) and Australopithecus robutus. Not too long ago, a third Australopithecus species had been added to the fray, that is, Australopithecus aferensis. These fossilized remains were once again discovered in the eastern part of Africa. The extant evidence suggests a most likely link between all of them. In other words, it is suggested that Australopithecus aferensis gave rise to Australopithecus Africanus which in turn led to Australopithecus robutus.

Students of human evolution used to think of a direct transition from the australopithecines to australopithecus erectus but the discoveries of the 1960s have disproved this. The famous biological anthropologist, Louis Leakey, believes this much. In addition, there are more recent discoveries from Lake Turkana region of eastern Africa, dating about three million years B. P. (before the present). In the final analysis, the linkage has been established that the origin of *homo habilis* is located between

Australopithecines and *homo erectus*. More importantly, scholars have claimed that the *Homo sapiens* evolved independently, but in Africa.

3.3 Artefacts

Part of the material cultural heritage left behind by the early man is the artefacts. These are necessities that complemented other physical aspects for the daily existence of man. The artefacts also provide useful opportunity to trace the history and origin of man. These constitute those concrete objects made by man to master his environments. The use of the artefacts coincided with certain periods in the origin of man. The invention also added to the transformation of the early man from one stage to another.

Leakey has shown not only that man originated from Africa but developed a large variety of tool types nearly two million years ago to cater for himself. The evolution of the tools or artefacts are spread across the different epochs, as man develops the mental capabilities to adjust to his ever dynamic environment, starting from the early Stone Age to the late Stone Age. Man's earliest tools were stones. He spent about two million years using the stone tools. Although he could have used other materials such as bones, wood and leather under special circumstance, these scarcely survived the harsh climatic conditions. The Stone Age is split into three within which the stone tools or artefacts went through developmental stages.

Early Stone Age

The production of the artefacts and their refinement were very slow under this dispensation. The earliest and simplest types of tool used, were pebbles. These are regard as O'Huvan type of tools deriving their name from Olduvai George in Tanzania. Such tools have also been found in many other places in Africa. Later, man began the graduation of tools with definite shapes, which were remarkably different from what existed at the initial beginning. These included; choppers, cleavers and picks. The process of the production of these tools is generally regarded as the Acheulian industry. The period of the earliest stones used as tools, coincided with the era of the lower Pleistocene when both

Australopithecus and Homo erectus have been said to have existed. The import of this is that they were produced by the Homo erectus and Australopithecus.

Middle Stone Age

Ecological and environmental changes in this age resulted in the production of various tools in different parts of Africa. Moreover, the tools being produced by the different localities is a reflection of the social, economic and political challenges being faced by each of these localities. The "forested" areas featured Lupembam and Tshitolian tools named after Lupemba in Angola and Tshitolian named after Bena Tshitoli plateau in the Kasai region of the Democratic Republic of Congo. The Lumpemba tools included lance heads, arrow points, etc. while Tshitolian tools were more refined and more pointed. Additionally, the arrow heads were barbed for more effective hunting. Along the grassland regions, three major tools, namely- the stillbay, Magosian and Wilton industries were prominent features. The end of the middle Stone Age witnessed further improvement, finer and more pointed tools in the efforts towards meeting the various challenges of daily existence. The most prominent among the lot was called, the Microliths. These were put to various use and functioned very well until the evolution of newer tools, made for the Late Stone Age.

Late Stone Age

This epoch witnessed the emergence of the Bush man. They were known as the *Hottentots* or *Khoi khoi*. For most part of this era, the Microlith continued to be useful. Further improvements in crafting techniques were later made, with the result that the stone implements become very small in size, since, as arrow-point and barbs and perhaps composite knives, they were slotted into shafts in which grooves were cut with tiny chisel-like tools. These very small implements are often called 'microliths' ('small stones'). Microlithic industries have been found in a number of places in West Africa, and several rock-shelter sites, which produced them, have been excavated in Ghana and Nigeria. A different form of the same general 'family' of mocrolithic industries, but with its relationships pointing more to the northward, has been known in Senegal.

The earliest of these microlithic industries has been dated as beginning about ten thousand years ago. In Sudan and Kenya, the later stages of the microlith-using people seem to have used it to make pottery.

Ground stone axes are found throughout the whole of West Africa including the forest area – in fact in far greater numbers than in Eastern and Southern Africa. They are often believed by the present inhabitants to be thunderbolts hurled by the god of thunder or a sky-god, and as such to have magical properties. Until recently, comparatively few ground stone axes had been found in satisfactory archaeological conditions, but some axes may be associated with the later stages of microlithic industries. There seems to have been a rather different version in caves and rock-shelters in Guinea, where the microlithic element is much less prominent and instead there are heavier cutting and scraping tools; in the more forested areas near Conakry and in Sierra Leone and S.E. Guinea.

Note however, that so many other artifacts were developed overtime, and these included the barbed harpoons, decorated pottery and a bone industry. Furthermore, there were the bows and digging sticks. Furthermore, asides from the various artefacts of the Stone Age, there are also those credited to the Iron Age, which mostly originated from the Northern part of Africa.

3.4 Technology

About a hundred thousand years ago, the modern human (*Homo sapiens*) began to displace the archaic hominids. Even if some anatomical features of the previous hominids were retained, the emphasis now shifted to cultural and intellectual changes, such as the ability to use tools and the challenges occasioned with living in groups. Not only0 did humans multiply; they advanced in their technologies and developed agriculture and states.

Although, it is almost impossible to extricate the collection of artefacts from technological development of any people, nonetheless, there exists a thin line between both, which allows for some level of distinction. Technology encompasses both techniques and tools invented, discovered and applied to the mastery of nature or the immediate surrounding

environment. Apart from modern technology as we know it, the traditional African society had developed its own autochthonous technology, however, crude it was, before interaction with the Western world. This can be linked to the relics and material culture of the different ages earlier mentioned. It involved the methods of transforming the gift of nature (natural resources) into a form that would be relevant to meet the challenges of daily existence.

One of the major discoveries of the African man that by implication could be taken as part of his contribution to the technological development of the human race was the discovery and mastery of the art of making wood, discovered about 55,000 B.C. This enabled him acquire his first apartment, that is, places once occupied by stronger carnivores, and to cook his own food. Examples of such cases include the Montague cave in South Africa, Kalambo cave in Zambia. In addition, the African man was also able to evolve the technique and process of domesticating animals. This was a landmark achievement, if one notes that most of these animals stayed in the forest and were known to have been very wild. Perhaps, a more resounding success story of this technological advancement was the use of clay for artistic purposes. The popular terra-cotta technology is a living testimony of this assertion.

4.0 CONCLUSION

In this unit, we have discussed the origin of man, and attempted to substantiate the claim that in Africa lay the origin of humanity. This has been conducted by tracing the history of Africa and the various modes of exchanges that existed, even prior to the interaction with other human races. There are indeed, scientifically verified basis for believing that Africa is the origin of man. All of the developmental theories, though distinct in their own ways of tracing the emergence of man, are yet agreed on the geographical root of man. Furthermore, over the millennia, man developed tools to adjust to the ever dynamic circumstances of his environment. The evolution of these tools is also traceable to Africa, which clearly substantiates the belief that Africa is not just the origin of man, but the authentic base of civilization. Equally, the ancient peoples developed modes of interaction to enable exchanges between themselves in the society. However, all other forms of development such as codified

laws and acceptable standards of international relations did not properly take shape until the interaction with the outside world.

SELF ASSESSMENT EXERCISES

1. Explain the theory of natural selection.
2. How can you determine the age of archeological artifacts?

5.0 SUMMARY

In this unit, we have discussed the origin of man, and his different stages of human development. In the process, we highlighted the dynamics of adjustment to circumstances of hid evolving environment.

6.0 TUTOR-MARKED ASSIGNMENT

1. Narrate the history of the development of the human race.
2. Discuss the various methods used in dating or determining the age of archeological findings.
3. Highlight and discuss some of the African technological gifts to the human race.
4. Discuss some of the evidences that point to the notion of Africa as the origin of man.

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UNIT 2 THE NATURE OF PRE-COLONIAL AFRICAN SOCIETY

CONTENTS

1.0 INTRODUCTION

Here, we are concerned with studying the nature of societal interaction in pre-colonial Africa. You would have realized from unit 1, that this group of people was neither deaf nor dumb. Similarly, it is obvious that they possessed remarkable level of intelligence, for it is from them that all the advancements- technological, information, transportation, etc. enjoyed by man today, evolved. However, they probably would not have been able to achieve the much they achieved, if there was no enabling environment for such. In essence, the economic, political and socio-cultural milieu was such that provided for an organized nature of human co-existence. We have therefore, addressed the issue of the nature of the society in this period from the angle of relevant instruments for assessing interactions among men.

2.0 OBJECTIVES

After you have studied this study unit, you should be able to:

understand the role of trust, reputation and the extended family in transactions during the pre-colonial era.

understand the dynamics of all facets of interaction in pre-colonial Africa.
understand the relationship between the mode of production and laws governing commerce.
highlight the role of non-institutionalized mechanisms for peaceful coexistence in pre-colonial Africa.

3.0 MAIN CONTENT

3.1 Economic/Commercial Activities

Historical evidence and accounts suggest that thriving commerce had existed in Africa long before colonization. Between the fourth and fourteenth centuries most of the old empires had become well known for their commerce and wealth, which they had begun to extend across borders. Domestic transactions in pre-colonial Africa were not necessarily consummated instantaneously, and "payments" for goods were made over extended periods. The market participants effectively practiced a version of modern day "buying on credit." Expectedly, there were mechanisms with which pre-colonial Africans enforced their contracts, paid their debts, and ensured the quality of their goods.

Panyar ring was one means of ensuring the performance of contractual obligations, particularly debt obligations, in most pre-colonial African states. This practice indirectly invites members of the extended family or the community to exert pressure on the offender to fulfill his or her obligations. Under this practice any inhabitant from the village of the delinquent debtor is seized by the members of the village of the creditor. The debtor is then put to work for the creditor until the debt is paid. Although the practice appears rather harsh when viewed through today's lenses of fairness and justice, the appeal of panyar ring lies in its ability to use family and community pride as a guarantee for the fulfillment of contractual obligations.

While maintaining a good reputation, honest performance on the part of sellers, family pride and integrity, this system assured performance on the part of buyers in the pre-colonial Africa economic environment. The culture placed a premium on family pride and integrity which would be

lost if a buyer failed to live-up to his end of a bargain by failing to pay a debt. Financial obligations privately entered into by individuals often took on a larger meaning because they invariably obligated an entire family if not the entire community. The objects and methods of trade in pre-colonial African societies were relatively simple. Production was principally agrarian, mostly herding or gardening for subsistence. Furthermore, primitive production technologies limited the volume of output and therefore restricted the volume of surpluses to be traded. Additionally, bartering, a common means of exchange at the time also imposed restrictions on the types of transactions. Therefore, it is not surprising that the prevailing enforcement mechanisms were relatively simple, taking into account the simple nature of trading, the limitations imposed by geography, and the lack of written laws and recorded transactions.

3.2 Politics

The political plane was volatile. This is clearly because power-sharing and allocation of resources between and among men is naturally a vexatious issue. Thus, over the years, irrespective of the different epochs, political issues have always courted deserved attention. In pre-colonial Africa's political plane, like in Europe, wars and communal clashes were not uncommon occurrences. There were conducts that guided warring communities and states with particular reference to the limitations of participants, treatment of prisoners of wars, post-war relationships, etc.

3.3 Territoriality

Relatively low population densities in Africa over previous centuries made it much more difficult to establish fixed territorial states than was the case in Europe and elsewhere in the past. While great cities arose in Europe in recent centuries, African cities remained mere towns by comparison. One of the reasons is that Africans relocated from one area to a next once soil became exhausted or illness intruded.

As opposed to the conditions in Europe, the African state of the pre-colonial period was not a territorial state. Because of low population densities and the large amount of open land, wars of territorial conquest

have seldom been a significant aspect of the continent's history. In pre-colonial Africa, the primary object of warfare was to capture cattle, slaves and treasure, not land, which was plentiful. While territorial conquest was a key factor in state formation in Europe and in other regions in modern history, war played a smaller role in state development in Africa). Thus, while at the end of the 18th century, the so-called 'absolute' states in Europe achieved a virtual monopoly of force, at the expense of their subject populations, the situation in Africa and elsewhere, was very different. Of the five hundred or so independent political units in the Europe in 1500, only twenty-five remained by 1900. In this process the modern European map took its shape as states were formed through war and territorial conquest - a process of steady extension of the provision of territorial security from one community to the next as the one king, bandit or warlord, succeeded in subjugating his neighbor. In this, and many other respects, European history, while serving as the dominant source of writing and reference, is quite dissimilar from that of much of the rest of the world, in particular that of Africa.

In this process security came to be identified with the security of the state from external or internal threat. Largely as a result of the important role that the military played in European state formation, much of the debate about security came to be dominated by military notions – with the armed forces seen as the last resort of power. Military institutions were of central importance in fashioning the nation-state that emerged in Western Europe and North America. In fact citizenship and compulsory national military service co-existed in a close relationship. Eventually the citizen army and its civilian reservists became instruments of nationalism and a device for political control over the military professionals.

The 19th century witnessed the democratization of the European state, in part a response to pressure from subject populations for more rights, and in part as incentive offered by state leaders to increase the legitimacy of the states' demands for raising taxes. The 'state' developed as a separate institution from the broader citizenry that is today characterized as the evolution of the rational-legal state – in contrast to the personal exercise of power that continued to be the rule in pre-colonial Africa. Events in North America had by then diverted from that in Europe with the establishment first of the Union and eventually the United States of

America, built on the lessons of oppression and exploitation that its white people brought from Europe and at the expense of the millions of black slaves that were brought from Africa.

In Africa, with its widely dispersed populations, concentrations of people in one area seldom intruded on the security consciousness elsewhere on the continent. Boundaries between communities were imprecise and fluid and it was unclear where one area of authority ended and another began. The result was that pre-colonial African states were exceptionally dynamic. This prompted Geoffrey Herbst's submission that "political organizations were created, rose and fell naturally in response to opportunities and challenges". Naturally low population density also reduced innovation and development pressure. Thus roads were few and far between, too costly to build and maintain over vast distances with low population density and low traffic volumes. Until modern medicine was able to overcome the limitations imposed by the environment on the procreation of humans on the continent, the political structure in Africa was an age-grade system that established gerontocracy as the dominant form of political organization.

In contrast to the history of Europe with its high population densities and tight territorial control, power tended to dissipate quite rapidly from the centre in Africa. Clear borders between tribes and kingdoms were seldom evident. The imposition of rigid colonial borders that were superimposed after the Berlin conference of the late 19th century thus represented impressive changes for the continent and its peoples. Although it would appear as if African state formation (in the territorial sense) had been accelerating during that century, the indigenous process of security consolidation that characterized European state formation was interrupted by the external and militarily superior intervention in Africa in the scramble for relative influence between European powers and control over resources.

Subsequent colonialism left an indelible footprint on Africa, despite the fact that the colonial interlude was relatively brief, the number of colonialists few, and the methods of control often indirect. In the process the continent was reordered along the political space concepts prevalent in Europe, derived from a foreign experience and not its own. Borders

were drawn and determined by the political interests in Europe based on the occupation of what were, at least initially, only small slivers of African territory. Security was now guaranteed by a foreign, external force, differentiated by its superior organization and technological advancement. A thin white line stood between Africa and Europe, imposing the structures of the latter, however superficially, on the former.

Upon independence during the 1950s and 1960s, African governments inherited the trappings of statehood, including armed forces that had been orientated to serve a wider, imperial scheme such as protection of a sea-route or contribution to European forces in select frontiers. Quite literally, the armed forces of the newly independent African states had no clear role comparable to their European counterparts except to serve as presidential guard. No wonder that in time, they would aspire to political power. The police forces, previously essentially and practically there ‘to keep the natives in check’, soon served to keep any opposition to the government at bay. Perhaps more importantly, post-colonial administrations were taught and soon absorbed the thinking of their former colonial masters.

3.4 Social/Cultural Activities

The evidence shows that most natives of pre-colonial Africa relied on trust, reputation, and the institutions of the extended family and chieftaincy to police the behavior of the market participants. These institutions were used to prevent fraudulent practices in the market, and to ensure that contractual obligations were dutifully discharged. The village chiefs, as custodians of the laws and customs, ensured order. They held court and relied on their council of elders to dispense justice. In extreme cases the chiefs meted out punishments such as temporary or permanent banishments to individuals who violated the norms of their respective villages. Because members of tribal communities were illiterate, the rules governing market operations and the community in general were recorded through the practice of oral history whereby traditions and rules would be narrated by the elders to the young. Sometimes these narrations were ritualistically performed, conferring solemnity upon the rules and reverence upon the elders and chiefs.

Indeed, there were overwhelming similarities in the nature and character

of most societies in pre-colonial Africa, however, some striking diversities cannot be ignored. There was, for instance, an early and important cultural differentiation between the savannah and forest zones of West Africa; and if most of the languages of the entire area had a common origin they subsequently diverged. Thus today, whereas the Mande languages are spoken in a large part of the savannah region, the Kwa languages prevail in the forest belt. And even within the each geographical zone clear linguistic differences are in evidence. As an example, Ewe, Akan and Ga in modern Ghana, and Yoruba, Nupe and Ibo in modern Nigeria belong to the Kwa group of languages. The speakers of these Ghanaian and Nigerian languages do not at all understand one another, although frontier populations are frequently bilingual. Similarly, in the realm of state-building, we find that although the ancient Tekrur, Ghana, Mali and Songhai empires of the savannah had their later parallels in the Mossi, Nupe, Igala and Jukun kingdoms of the middle zone and the Asante, Dahomey, Yoruba and Benin kingdoms of the forest, each set of state systems was distinctively adapted and elaborated to suit its particular environment.

In the indigenous patterns of subsistence, moreover, we find contrasts between the forest and grassland peoples during the period under consideration. Before contact with Europeans introduced such food crops as maize and cassava, the forest peoples were predominantly cultivators depending on root crops, fruit and legumes. They also cultivated kola trees and obtained palm products from their forest environment. In one particular area in the west, an area stretching from the Gambia to western Liberia, both swamp and upland rice was grown as a staple crop. None of the early Europeans reported that it had been recently introduced; in fact it had long been an important riverine crop on the middle Niger from where it reached the forest peoples to the south and south-west. In addition to cultivation, the forest peoples kept domestic livestock such as hump-less cattle, goats, pigs and poultry; and hunting and trapping were prominent in the traditional economy. Their fabrics were mainly screw pine and raffia matting and bark-cloth. There were, centres of iron-smelting, and especially in parts of the transition zone between forest and savannah, iron-smithing was also fairly generally practised. Besides indigenous architecture (including the subsidiary skills of masonry and carpentry), sculpture, in the media of clay, bronze, brass, ivory and wood,

was undertaken in places. These arts and crafts served utilitarian, religious and aesthetic ends, producing private and public buildings, household utensils, stools, gongs, statues, masks, ornaments, etc.

Before the organization of the centralized state systems, the old patterns of social and political organization were generally small in scale and rooted in kinship and other ties. A lineage system, which might be patrilineal or matrilineal, enabled kinsmen of one line of descent to maintain solidarity for internal organisation and for dealings with the kinsmen of other lineages. In some places this lineage principles was extended to embrace a number of local groups conceived and organized as a kindred body. In other places, particularly where the people lived in comparatively large settlements, the concept and practice of kinship reached the level of a village organization. But scarcely anywhere were large politically centralized states.

4.0 CONCLUSION

We have discussed the nature of coexistence, and the physical attributes of communities in pre-colonial Africa. A striking observation has to do with the various methods in ensuring the performance of contractual obligations, namely, trust, reputation, the extended family, community and panyar ring. This character of smooth economic relationships within pre-colonial intra-African societies pervaded all other areas of communal coexistence. There were rules and regulations that guided moral, economic and political conducts.

5.0 SUMMARY

In this unit, we discussed the role of family and communal living in pre-colonial Africa and the dynamics of interaction in all ramifications.

SELF ASSESSMENT EXERCISES

1. Explain the role of the extended family and communities in ensuring the sanctity of transactions in Pre-colonial Africa.
2. Panyar ring was a means of ensuring the performance of contractual obligations, Discuss.

6.0 TUTOR- MARKED ASSIGNMENTS

1. What was the place of trust and reputation in ensuring the performance of contractual obligations in pre-colonial Africa?
2. Would you say that pre-colonial Africa lacked instruments of mediation in market transactions?
3. Compare and contrast the nature of territorial developments in pre-colonial Africa and Europe.

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UNIT 3 MUNICIPAL LAW IN PRE-COLONIAL AFRICA

CONTENTS

1.0 INTRODUCTION

This aspect of the course would concern itself with the evolution of municipal laws, the methods of legal interpretation, adjudication and administration in pre-colonial time. This flows onto the international level. We shall examine the interrelationships between the municipal and international law of the times, which would allow for the understanding of the continuing debate of the 'lawfulness' or otherwise of international law. It is interesting to note that, like every other areas of existence in pre-colonial Africa, there were critical institutions concerned with obedience and with the rule of law, and they also have a form of watchdog to curtail excesses of the authority.

Every human society has a body of rules, principles, customs, mores or folklores, which regulate the activities of the individuals and groups that make up the society. Logically, the absence of such body of rules guiding the conduct of constituent individuals (i.e. the law) has the implication for lawlessness, violence, anarchy and jungle justice or what Thomas Hobbes refers to as the State of Nature- where life was brutish, nasty and short. The traditional African societies also did have their own legal systems before the advent of the colonialists. It could be said that these societies

operated their guiding principles effectively and was sufficiently far reaching, basically because of the potent means of sanctions.

Essentially, the laws guiding any society are a product of the dynamics of events, culture, beliefs, myths, etc of such society. As such, the understanding of the municipal laws of the pre-colonial African Societies is inseparable from the key institutions of governance in existence at the time and the interplay between these institutions and structures in the determination, implementation and interpretation of such legal rules.

To buttress the foregoing, the nature of society in part of pre-colonial East-Africa, (present-day Uganda) would suffice. Between the 14th and the 16th centuries A.D Nilotic-speaking herders migrated south from Sudan, displaced the Chwezi, and established dominance over preexisting farming peoples. The Nilotic speakers formed several kingdoms, notably Bunyoro, south of Lake Albert, and Ankole, west of Lake Victoria.

The kingdom of Buganda, located between Bunyoro and Lake Victoria, also developed about 500 years ago. Buganda, probably formed by a defeated claimant to the Bunyoro throne, steadily expanded over the next four centuries, largely at the expense of Bunyoro. The earliest confirmed date in Ugandan history is 1680 when a solar eclipse was recorded during the reign of Jjuuko, an early *kabaka* (king) of Buganda. As opposed to the *omukama* (king) of Bunyoro, who was chosen exclusively from the royal clan and whose chiefs had some independent authority, the kabaka of Buganda could be chosen from any clan. By the 19th century the kabaka commanded total authority over his kingdom, and all power and wealth flowed from him. He did not keep a standing army, but adult males were conscripted for war as needed.

By the 19th century the Ankole kingdom had become a caste system in which Hima herders, ruled by a king selected from the royal clan, dominated Iru farmers. Toro, Uganda's fourth major kingdom, emerged about 1830 when a disgruntled son of the Bunyoro omukama declared the region north of Lake Victoria that he ruled independent. This constantly evolving nature of society was replicated in most of pre-colonial Africa. Thus, all manner of human interaction was dynamic in nature, always going through regular fine-tuning in order to be relevant in meeting the

exigencies of specific situations. The series of wars; attrition, occupation, etc meant the constant changing of societal goals and the means through which the goals are achieved.

In this light the legislature, executive, judiciary often fused and the checks and balances among them constitute the primary focus in tackling the issue of laws and legality in pre-colonial Africa. However, it is noteworthy that the classification of the pre-colonial Africa into a neat compartment is impossible given the fact that some did not exhibit highly structured or hierarchical societies. Even those with hierarchical structures varied in the degree of centralization. Nonetheless, what would be recognized is a make-shift classification of *republican* and *centralized* societies.

2.0 OBJECTIVES

After you have studied this study unit, you should be able to:-

trace the evolution of municipal laws in pre-colonial Africa.
understand the relationship between municipal and International law
establish a linkage between municipal in pre-colonial Africa and other parts of the world.
trace the sources of law in pre-colonial Africa.

3.0 MAIN CONTENT

3.1 Sources of Law

The municipal laws in the pre-colonial Africa states were essentially derived from two principal sources. These included the

1. Customs/Religion
2. Indigenous legislation/Proclamation.

Under the customary sources, the role of the traditional religion in the different pre-colonial communities was not different from the way of life of the people. The way of life of the various pre-colonial communities was characterized by ancestral worship, rituals and traditions which

formed the bedrock of their religion. The religious practices of the society were over time accepted and respected as given by a high supernatural being or demi-god that could not be questioned. Such religious precepts constituted part of the law of the society, which specifies what is acceptable, right, good or otherwise. They also set the moral standards of conduct in the relationship between members within each community and the entirety of the society. Another point that is sociologically relevant is the fact that the communal rituals, an aspect of the religion, depict interest and values of specific societies which relate to both domestic and political domain of social life. An example is the *Adae Ceremony* of the Ashanti Federation in Ghana.

The religious influence or determinant of the municipal law is manifested in many forms and often coloured by a people's experiences, philosophy, beliefs, and social structure, as such, morality is inseparable from the formal laws. Therefore, the customs of the people of Africa became another religiously interwoven source of law. These covered many aspects of the traditional life. It could be regarded as civil or criminal in outlook, depending on the issue involved, the intensity of the offence, the scope of its impact and number of people involved. The area of coverage by the traditional/customary laws included trade, inheritance, kinship and marriage, ownership, land tenure, guardianship and cognizance was taken of such wrongs as murder, transgression or taboos, insults, assaults and defamation. In other words, the municipal laws tended to emerge with local content influenced as they were by economic, social and ecological exigencies. Established by regular practice and routine observance, that is, peremptory acceptance, the customary normative rules were recognized by the society. Put differently, they became a body of acts, practices and procedures which had accumulated over the years and became stereotyped. Therefore, disputes on what was appropriate or otherwise were settled by reference to customs and tradition which to a large extent had the force of law.

Not all customs or religious practices were incorporated, however, as part of the municipal laws. The aspect of the religious practices that made part of the municipal law in most cases provided what scholars have regarded as "negative values" or contents i.e. the don'ts, the taboos which were believed to be proscribed by the ancestors or the Supreme Being. For

customs, only those practices essential for the peaceful co-existence of the society became part of the municipal law but trivial issues were excluded from the precinct of the enforceable municipal laws. In the final analysis, for as long as an act could be shown to have been commanded by a god or ancestor or to have been practiced from time immemorial and enjoyed the sanctions of elders and ancestors, it is right and the good man *has* to comply. The non-compliance was tantamount to showing disrespect to the gods and threatening the welfare of the society. This was a most serious offence which was highly and severely punished. It could attract banishment or death penalty in the extreme.

Legislation or indigenous proclamation was another source of law in the pre-colonial Africa. Life then was not quite different to what we have in the modern Africa with respect to instruments of social control, most especially in pyramidal or hierarchical societies. Laws in the society were not static. They reflected the nature of ongoing development in the society. Besides what were handed down by the ancestors through animism or customary practices, there were deliberate efforts by political leadership or the entire community in the case of republican or cephalous communities to forge rules, codes and standards of behavior that could handle the exigencies of the time, regulate interpersonal relations and order social life in a particular direction for social development, common good and communal survival.

In essence, it is inaccurate to conclude that customary law was a static and immutable rule because of the alleged ancestral origin. As the supplementary principle of order, the chief either alone proclaimed law (instructive and prohibitive) or in-council which projected and reflected the current stage of social development. This was because in many places there existed legislative bodies which were not forbidden to make new laws. This provided the opportunity to respond to and meet the current needs, wishes and demands of the people. The old Oyo Empire, the Dahomey Kingdom, the Benin Kingdom, Ashanti Kingdom, to mention a few provide instances where the people had made demands up the king and the chiefs which later led to proclamations and legislation, unwritten as they were.

At another level, law-making was not the exclusive preserve of the

paramount ruler, especially in egalitarian societies. The pre-colonial municipal law took the form of what was experienced by the ancient Greek city-states. Municipal laws were the result of joint deliberation and collective reflection.

3.3 Institutions/Structures

By the institutions or structure of municipal laws, we refer to various agencies or groups of individuals which played significant roles in the making, execution and interpretation or adjudication of laws in the pre-colonial African period. Although laws were largely unwritten, they were made by the locals, who had the moral authority to provide principles that reflected the currents of social development.

The Legislature- what constituted the legislature varied from place to place with respect to nature of society i.e. centralized or republican. The law-making bodies in the centralized societies comprised the paramount chief himself (monarchy) or chief-in-council (oligarchy). In some highly centralized societies, it was the paramount ruler alone who ruled without recourse to any of his subjects, this was however a rare case. This took place in the “Islamized” part of Africa and in the Dahomey Kingdom.

On the other hand, the king-in-council made laws with the help of certain advisory council. The king discussed issues of concern with them and solicited their candid views on issues, although he was not bound to accept their perspective. This law making “cabinet” could comprise village chiefs i.e. those in-charge of other provinces under the overall control of the king. The Oyo Empire had the Alaafin who made declarations either alone or in consultation with the Oyo Mesi, the king makers. The various king makers held different positions of specialty and could offer advice to the Alaafin with respect to their area of specialization. The procedure was replicated at the lower hierarchy i.e. provincial level by the Baales (village heads) and Baales (clan heads). In Ghana, the story was not different. There was the Ashantehene as the paramount ruler of the Akan federation. In his legislature were the kingdom heads i.e. the Omanhene which he consulted to prescribe laws for the entire federation.

There were also law-making bodies in the pre-colonial Africa republics. In these republics, various organs had a certain degree of law-making jurisdiction. The council of chiefs was a major law making body which comprised various clan heads meeting together to make and ratify some laws as well as adjudicate matters in dispute. The age groups also performed some law-giving role as well as law enforcement.

On the whole, the legislature embarked on democratic discussion and then promulgated throughout the land. These laws could emanate from the act of borrowing "positive" rules from neighboring communities or a declaration of new legal rules to regulate the activities of subjects within the ruler's area of jurisdiction.

The Executive- laws made (written or unwritten) without sanction or instrument/machinery enforcement is as good as not existent. The role of the executive in pre-colonial Africa was not clear cut. This was due to the fact that there was nothing like the separation of power in most cases. The same personnel handled the process of lawmaking and execution, in the person of the paramount ruler. However, he did play the role of seeing to the enforcement of the rules he made. He operated and maintained an enforcement agency which was his police and palace guards. Also, he had his own prison system and put in place mechanism to ensure compliance with the laws made.

There were also delegated executive powers which were given to some chiefs and provincial heads to ensure and enforce adherence to common rules of the land. Some cult groups also performed the law-enforcement roles of the land, such included the Ogboni in the Yoruba Kingdom and Ekpe in the Igbo Kingdom among others.

The Judiciary- since there was no clear separation of office and personnel in most places, the paramount ruler acted as the adjudicator. The court of law was legally constituted under the political leadership. The purpose of the judicial system was to settle dispute and administer justice. In other places, there existed an established court system not directly or completely under the king's control. For instance, the Hausa –Fulani had the Alkali court which heard all suits brought or referred to it. However, the Emir acted as the Chief Justice who heard appeals from the Alkali

court.

In the Ashanti Kingdom, the court system was a hierarchy, specifically three levels. There was the lowest level of Odikurow (the village head). The Odikurow court was subordinated to the Ohene (divisional chief) and the Ohene in turn to Omanhene (the paramount chief). Over and above Omanhene, however, was the *federal supreme court* which was for all the Akan Kingdoms of which Ashanti Kingdom constituted a part. The whole process had something similar to the court system.

The courts in pre-colonial Africa heard both civil and criminal suits. In the "pre-literate" society, the judges had to rely on personal knowledge. This was made easy due to the fact that the role of a judge was inseparable from the traditional role of rulers who were not only repositories but also orthodox interpreters of the cultural institutions – legal or otherwise – of their communities. Also, the members of the judicial council also played "remembrancer" role to assist the king in the ascertainment of the customs and mores. Under certain circumstances, the judges' decisions produce new laws, and having the character of judicial precedent. These are regarded by contemporary scholars as *discretionary* laws, which mirrored the ideals of fairness, justice and equity in the pre-colonial community. This occurred in cases where judges (kings) had to fill lacunae left by customary laws, more so those relating to the ancestors. The king acted as the "Alase Ekeji Orisa" (Second in Command to the gods) i.e. could interpret the minds of the gods.

3.4 Checks and Balances

The picture painted above about the ubiquitous role of the paramount rulers in legal matters may suggest that they had absolute powers. To think in this manner is not only erroneous but also misleading. For, in the various pre-colonial Africa societies there were mechanisms to check the possible excesses of the king or ruler. These were to ensure that the kings or rulers comply with the ancestral directives and customs as well as avoid becoming tyrannical.

In the Oyo Kingdom of the Yoruba land for instance, the Oyomesi and the Ogboni exercised checks and controls on the king. They might in some cases do so in an advisory manner, by drawing his attention to the errors

in judgment. In the extreme, he could be asked to "open the calabash" meaning to commit suicide, if the situation is terrible as to warrant such action to appease the gods.

Among the Vais tribes of Liberia and Sierra Leone the nature and form of government was monarchical, with the king exercising great power. However, the will of the king was limited by a supreme council composed of the noble who had significant roles to play in the execution of the rules of the unwritten constitution.

4.0 CONCLUSION

Without doubt, pre-colonial African societies had well established legal rules and codes of conduct that guided the nature of co-existence in every society. These rules were made by authorities, who sometimes might be both the interpreter and the adjudicator, as the circumstances demanded, but were also curtailed by series of checks and balances mechanisms. Of equal importance, is that the dynamic nature of society played significant roles in the determination of the system of law that was applied to each and every society. As the war of conquest, occupation, attrition, were waged, so also was the legal norms amended to reflect existing realities.

5.0 SUMMARY

In this unit, we examined the source(s) of law and legal institution in pre-colonial Africa.

SELF ASSESSMENT EXERCISES

1. In general, what role does a chief play in ensuring order in pre-colonial Africa?
2. Highlight some checks and balances mechanisms for law making processes in pre-colonial Africa.

6.0 TUTOR-MARKED ASSIGNMENTS

1. How did the authorities ensure compliance with rules in pre-colonial Africa?

2. What were the specific roles of the three arms in ensuring lawful behaviour?
3. Explain the relationships between the three arms of government.

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UNIT 4 CROSS-BOUNDARY INTERACTIONS IN PRE-COLONIAL AFRICA

CONTENTS

1.0 INTRODUCTION

We define cross-boundary interactions as the gamut of relationship between two or more distinct cultural or linguistic groups or states. Such interactions could be peaceful through trade or economic activities, social activities or cultural interactions. They could also be violent and tension-soaked, as a result of politico-military activities such as wars and conquests. Either by peace or war, an important result of cross-boundary relations has been the spread of some cultural traits such as religious ceremonies, names, dresses, royal emblems, titles, currencies and some other forms of socio-political and economic institutions among the interacting communities. In our discussions of inter-group relations, we shall dwell on such critical issues as trade, trade-routes, markets, religions, wars and diplomacy.

2.0 OBJECTIVES

After you have studied this study unit, you should be able to:-

understand the nature of international relations in pre-colonial Africa.

gain the ability to compare international relations in both periods.
be familiar with foreign policy methods of the era.
understand the underlying basis for interaction.

3.0 MAIN CONTENT

3.1 Economics

The system of exchange and production had always taken a cross boundary toga in pre-colonial Africa from the earliest period. The major economic activity that facilitated cross–boundary interaction was trade. Trading activity in pre-colonial Africa was based on agricultural products as well as in solid minerals such as gold, salts e.t.c. Basically, this was as a result of the agrarian nature of most of the economies. This endeavour led to the creation of trade routes such as the Trans-Sahara and Atlantic trade routes, which facilitated and consolidated the interaction through trade.

However, one form of trade which had its economic and demographic impact on the various communities in different ecological zones was the slave trade. Trans-Sahara slave trade had enriched some states while undermining others especially in the North. On the other hand the Atlantic slave trade later became the mainstay of the economies of several coastal states and their immediate neighbours in the hinterland especially Yoruba, Ashantes, Dahomey, Igbo and Benin.

For our purposes, a very comprehensive systemic pattern of trading activities would be relevant. In this respect, trade in the Sahara and Sudan during this period would perhaps be the best fit for our case. Villages in the savanna were compelled by the conditions under which they lived to endure the rigours of a subsistence economy, yet they managed to produce occasional surpluses, which they were eager to trade whenever the opportunity presented itself. In his extended journey through Mali and adjacent lands, Ibn Battuta, as stated earlier reported no difficulty obtaining local foodstuffs at stopping points along the route, farming wives greeting the travelers with millet and rice which they sought to exchange for salt, glass ornaments, and perfumes.

This was but particular evidence of a trading complex that spread its network throughout the West African savanna and forest, accounting for a lively and continuous exchange at local and regional markets, and eventually channeling goods into the main commercial arteries that bound West African to the Mediterranean and Middle East. At the village level, the markets were held weekly or at some other regular interval, each day at a different hamlet, the goods restricted for the most part to locally grown foodstuffs, the merchants those hard-working farm wives hopeful of adding to their limited resources through the sale of a chicken, some eggs, a portion of surplus grain, or even a hot snack produced expertly in a tiny portable kitchen.

From time to time the itinerant merchant appeared at the village market but more often he was to be found in the larger regional centers that grew up at important intersections or near the seat of government. Here were located mercantile clans like the Mandinka-speaking Dyula for whom trade was a full time occupation, which they pursued with such skill, and determination that their very name came to be synonymous with ‘trader’ throughout West Africa. Making full use of family connections, Dual merchants shipped goods across West Africa, moving them along forest paths on the heads of slave porters, across the savanna in donkey trains, and down the rivers in fleets of dugout canoes.

The movement of goods involved many items in a complex exchange marked by a shrewd sense of profit and the patience to overlook immediate for ultimate gain. Rice, for example, might be sold at a loss in a forest market in order to quickly obtain kola nuts for sale at high prices in the north. Rarely, however, was the transaction a simple exchange of two commodities. More typical was a commerce involving numerous shipments, shipments, purchases, and sales, with consignments making several journeys to centers where they were divided, some sold, some retained for further shipment, some combined with new lots and sent off to still other markets. Such complexities required that merchants fill many roles, acting variously as exporter and importer, as broker, as shipper, as wholesaler, and as retailer.

Much of this local and regional traffic eventually found its way to the principal entry points perched near the end of the desert, for it was, in

fact, part of the great movement of goods that formed the trans-Sahara trade. At towns like Awdaghost, Walata, Gao, or Kano, the caravans arrived and departed, negotiating the difficult desert passage in a two-month march during which they often fought both storm and brigand, ever mindful of the need for haste to the next oasis before supplies of water were exhausted. Given competent guides, protection purchased from the desert peoples through whose territory they passed, and wells unspoiled by drifting sand, the travelers found the Sahara passage more uncomfortable than dangerous, its chief irritants those desert lice and scorpions encountered at each oasis. Buffeted by stomps or attacks, however, a train might lose its way in the wasteland, perhaps slaughtering its camels for the moisture in their craws, a desperate measure that sometimes saved those for whom rescuer was near, but more likely merely postponed for a few miserable days the ultimate loss of men, beasts, and cargo.

The earliest known desert crossing dates from the first millennium before Christ and was undertaken by hose-drawn chariots, evidence of which occurs in cave drawings from the Fezzan to the Niger. Herodotus reported these vehicles in the fifth century B.C. but, once the camel made his appearance, use of the horse declined except along the desert edge. It seems probable that a certain amount of commerce was transacted across the Sahara in these early times; however, the lack of Mediterranean artifacts in the savanna and the paucity of references in ancient texts suggest that such trade must have been slight and intermittent.

The camel greatly eased the desert passage, but it remained for the Arab and Berber merchants from North Africa to organize and direct the great caravans that maintained the trade for over a thousands years until the last decades of the nineteenth century. Following the rise of Islam in the mid – seventh century, Arab armies conquered North Africa and Arab settlers were soon established in Egypt and in the Maghreb those regions of Mediterranean Africa lying to the West. From centers along the northern desert such as Sijilmasa or Wargala, North African merchants began to organize and dispatch caravans to the south laden with rich cloths and tempered steel, with cowries from the Indian Ocean and glass beads from Venice, with copper for the bronze-casting industries of Ife and Benin, with dates, figs, and other oasis foods, with a few slaves for the courts of

savanna kings, and with vast numbers of Barbary horses to sustain the royal cavalries and endow the king's officers with a prestigious transport appropriate to their elevated station. By about 1000 A.D. there were four main routes. Two in the west started from Sijilmasa in Morocco, one descending through Taghaza to Awdaghost and the other proceeding straight south to Timbuktu and Gao. The other routes began in Tunis and Tripoli, moving across the desert to Hausa land and Bornu respectively via the Fezzan.

The caravans also brought south quantities of salt quarried from Saharan mines; in return West Africa sent north its celebrated malaguetta pepper, acacia gum used in Europe as fabric sizing, kola nuts for the North African market, leather goods and cotton clothes particularly from Hausa land, and many slaves destined eventually for the Mediterranean basin and the East. Far more than all these other goods, however, it was gold that was shipped north to the hungry markets of North Africa and Europe.

Like the Dyula, the Arabo – Berber merchants maintained agents at numerous points, north and south to keep check on the competition, to follow the market trends, and to observe, perhaps to influence, important political developments. Such elaborate organization was essential, for expenses were high and decisions based upon faulty or inadequate information could prove fatal. The cargoes were taxed at both northern and southern terminals as well as en route, and to these costs were added expenses of transport – camels rented or bought, guides, outriders, and drivers, food and forage for the journey – as well as the price of the cargo itself. All these factors greatly heightened anxieties over the desert journey, yet the profits were great indeed for those who adventured and overcame its hazards. Personal fortunes may be reckoned by an individual promissory note of six thousand gold ounces recorded in the tenth century, or the seventy-five hundred ounces of gold exported annual by merchants from Jenne in the sixteenth century. While overall estimates are difficult, it seems reasonable to value the total volume of business crossing the desert each year at more than five hundred thousand ounces of gold.

At another level, the trading interactions among the people of pre-colonial Africa also facilitated language transfer from one location to another and

also encouraged the exchange of ideas and social/cultural beliefs.

3.2 Politics

Political association in this era was centered around traditional authorities, with major areas on the continent bearing more of a modicum of similarity than differences. Once more, the Sudanese case would be our case-study. The great empires of the medieval Sudan have sometimes been regarded as ephemeral political entities without great intrinsic unity and lacing even frontiers to delineate the extent of their authority. In a purely time sense it seems unreasonable to impute weakness to states that lasted as long as Ghana's three centuries, Mali's effective existence from the advent of Sundiata in 1239 A.D. until the capture of Jenne by Sunni Ali. Over two hundred years later, the unbroken thousand-year reign of the ruling Mais of Kanem-Bornu, or the long-lived stability of the Mossi states. Furthermore, the test of political vitality in these African kingdoms must be in terms of Africa's own traditional social structure vastly different from the concept of empire that developed, for example, in the West.

Political authority within the black African civilization of the savanna had evolved over time at two differing level, each of which was rooted in the idea of mutual relationship between individuals or groups. One level comprised the village community which was the essential economic unit of this rural civilization. Within the village, authority rested with such individuals as the heads of families, the members of the council of elders, and the chief. Within their sphere the village leaders continued unchallenged, for the connection between the village and the enlarged state was made at quite a different level of political relation.

This second level was the lineage or the age grouping involving individuals who possessed common ancestry or identical age grade. The number of these groups, spread out over a number of villages, shared a fixed status such as rulers, nobility, slaves, and others, performed hereditary occupational roles long associated with their family group – farmers, merchants, craftsmen, hunters, and so – forth or in the case of the age set, inherited different civic functions as they passed through successive age grades. State making occurred when the leader of one of

these affiliations, the head of an age group, or the chief of a warrior clan, for example, succeeded by persuasion or more usually by force in imposing his authority on a growing number of independent villages. Such a configuration, based upon duties and responsibilities within a group membership, constituted a vastly different form of polity than the idea of state defined by territorial dimension and the imposition of authority by one civilization, nation, or political association upon another. Under this system many political groupings based on lineage and age-set relationships could coexist within the same state, having little impact upon each other or upon the village community. A lineage could profoundly change its character, perhaps by adopting Islam, without having any marked effect on the rest of the society. The ruler was concerned, therefore, not with total domination of a particular territory but with maintaining clan relationships on which he could rely for such services as troop requisitions, tribute, labour on the royal lands, or servants for his court. In the Sudan, the state had no boundaries, only spheres of influences. It had no name, only the title of its ruler. It had no body of law, only the fixed obligations based upon kinship or other inherited status. To be sure, the system had certain innate weaknesses, although such weaknesses have been apparent in other political configurations from the days of yore to the more recent.

Another interesting dimension to commercial/economic activities during this period is the case of the forest belt regions. For this area, few communities were completely self-supporting. It was therefore a case of economic interdependence since some had commodities that others lacked. A hypothetical case goes thus; there are two neighboring villages, while one is by a river full of fish, the other has no river, but is built on clay soil, which can be used to make pots. Each has something the other lacks, and the inhabitants can make an exchange – clay pots for fish. In essence, the fisherman provided the fish, while the potter provided the pots. There was therefore no need for specialized retailers whose profession it was to trade.

Several villages may be close to one another, each producing commodities which are wanted in the others. Here instead of direct exchange, the commodities may be brought for barter to one village, perhaps to each village in turn on successive days. This means a market,

and a regular market day. Here trade has to be more organized. If the market lasts all day the fisherman cannot take time off from work, so he sends his wife, who thus becomes a part-time trader. This is how trade grew up in the forest belt of coastal West Africa. Small communities, largely, but not completely, self supporting, exchanged goods with one another. But there was no need for a specialized trading profession, for women could combine trade with their house hold and family occupations.

Interestingly, political institutions were transferred from one state to the other and from one community to the other, through the process of cross boundary interaction. This means that some political institutions and activities were transferred through conquest, war and exchange of idea. For example, the Igbo in the Eastern Nigeria are highly acephalous and usually organized along village lines but through their interactions with the Benin Kingdom they embraced the Kingship system; hence title such as Obi of Onitsha and his Ndichie became associated with the Igbo. In spite of the above example, it is noteworthy that whether in the monarchical forms of government (found in most states of Western and Central States) or in the segmentary types of political organization (found in those African States that are not centrally organized), there are institutions or bodies that performed law making, law implementation and law adjudication functions in the societies, before the contact with the Europeans which established the modern political institutions.

3.3 Cultural

Cross cultural relations was a welcome development in pre-colonial Africa. Foreign cultures that were perceived as providing positive influences on the community were welcomed whole-heartedly, while the opposite was the case for those perceived otherwise. In pre-colonial Africa a lot of cultural practices both material and intangible were transferred through cross -boundary interaction. Among the Efik and Ibibio there were both masculine and feminine cults which used the Nsibidi sign language. This became a possibility as a result of liberal cross-boundary interactions.

In the area of religion, most pre-colonial African societies worshipped

their local gods and deities and used their dead ancestors as the intermediaries between the living and the gods. The worship of the gods did not however foreclose the possibility of other religions into African communities. Most significantly, Islam penetrated pre-colonial Africa from the early 7th century. The North African states and most Western Sudan states became highly influenced by the Islamic religion and culture. For example, the Kanem-Bornu Empire was regarded in Arabic literature as a Muslim state because the leaders or rulers embraced Islam much earlier than other peoples of African descent.

Furthermore, cultural interactions also led to the transformation of some segmentary societies into centrally organized political units, and also provided a soothing balm for tension and threat of cross-boundary wars. For example, the Ashanti and Fante settled most of their quarrels by using their daughters that have been given in marriage to either side as Ambassadors of peace. Also, the camel used for transportation among the Hausa- Fulani in Northern Nigeria is a culture picked up from the Berbers, Tuaregs and Moors traders of North Africa.

3.4 Socials Interaction

Perhaps, the nature of social interaction on the international plane in the contemporary world has become very massive, yet its origin can be traced to pre-colonial Africa. In that era, local communities, and the far-flung ones, aspire to promote interactions in all facets of human existence. This ensured the lessening of tension, and by extension, the possibilities of wars. Indeed, cross-boundary social activities also facilitated interaction and encouraged relations across boundary of two or more states or societies. Some of these activities include the organization of wrestling matches among various societies to commence some form of friendly relations or to start diplomatic ties. Such harmonious kind of relationships encouraged the practice of inter-communal marriages, inter-change of names, and so on. As such, there were commonalities in the conduct of ceremonies, such as death, burial, child-naming, etc.

4.0 CONCLUSION

Here, it has become apparent that cross-boundary relationships predate

the conduct of modern-styled international relations. These relationships have been an exemplification of foreign policy, diplomacy, international economic relations, international political and socio-cultural relations, as we have them today.

5.0 SUMMARY

This unit was discourse of the operation of imposed Euro-American law in pre-colonial Africa and its impact – be it economic, political, cultural and social.

SELF ASSESSMENT EXERCISES

1. Discuss the nature of international relations in pre-colonial Africa.

6.0 TUTOR-MARKED ASSIGNMENT

1. Give a brief narration of the trans-Saharan trade.
2. Discuss the role of economics in pre-colonial Africa international relations.

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MODULE 2

UNIT 1 SOURCES OF PRE-COLONIAL AFRICA INTERNATIONAL LAW

CONTENTS

1.0 INTRODUCTION

A review of pre-colonial African system reveals that legal or ethical norms, backed by religious sanctions, were often considered in organizing actions and transactions between independent political units existing within such civilization and culture. In many of these societies, there were legal or religious principles that established routines to handle communications between the political units (e.g. various forms of diplomatic), commercial transactions, conduct of warfare and observance of treaties.

Incidentally, there are many analogies between the rules found operating effectively in historical systems and those of modern international law.

Evidence in the reports of explorers and more recent studies of anthropologists have noted the rather sophisticated rules and ceremonies that were associated with economic, diplomatic, and military transactions between tribes, lineage groups and empires. Almost all peoples used various forms of treaties to secure peace, followed by some kind of ceremony, ritual or sacrifice to seal obligations. The sanctions to these treaties were often religious beliefs that those who broke them would die or receive some violent punishment. Economic exchanges were usually consummated according to strict rules, and in many cases, tribes also possessed rules and customs regulating the outcome and conduct of warfare. Regular observance of these religious restraints helps to explain why, despite frequent wars and violence, many African tribes survived for centuries.

In those ancient times, the role of law in ordering transactions between independent states was much less in evidence, and few analogies with modern international law are to be found. The monarchies neither fully recognized the concept of a family of sovereign states nor a well-defined body of law. Although some vague understanding pertaining to diplomatic immunities and commercial transactions seem to exist, sovereigns did not faithfully observe them except when they feared serious reprisals. There was so little faith in treaties that the signatories often exchanged their hostages as a guarantee for compliance. War and use of force were accepted as normal activities of the state, whether undertaken for glory, plunder, territory, or creation of vassal states. More importantly however, is that there were strict rules governing the conduct of warfare. One of such is that warriors fighting from chariots could not strike those on foot, wounded enemies could not be slain, and, as a form of arms control, poisoned weapons could not be used. In essence, in spite of the glaring weaknesses of the dictates of international law, the society still observed some level of deference for such laws.

As in the modern times, various pre-colonial African communities or societies exchanged various forms of relations with one another. The most prominent were the trading relations. Moreover, the interaction among these societies was not restricted to only peaceful engagement such as trade, cultural, marital, religious, political, relations but also involved conflict interaction. Arising out of this web of actions and reactions were

certain general rules which the pre-colonial societies stuck to as the guiding tenets of inter-tribal relations both during the time of peace and at war periods. This body of laws, conventions and customs among and across traditional African societies is what we regard as the pre-colonial Africa International Law.

Attempt at the study of the "international law" in pre-colonial Africa necessarily takes off from a parallel study of international relations among the pre-colonial communities. A number of factors facilitated the coming in contact of several African societies. One major factor was the reason of the interdependent nature of the people. Because no single community produced all it needed to survive, the communities met with one another to exchange commodities which they did not control but needed. For example Oyo and Nupe people produced kola nuts that were exported to the Hausa states. Between the Nupe and the Oyo peoples, a great deal of trade relation went on. For instance, the Nupe traders supplied potash, shea butter, cereals, bangles, bottle, and others in exchange for yams, palm kernels, oil, cam wood and earth wares. For the Jukun as part of exchange relations, because they were mainly agriculturists, they produced food items both for local consumption and for their neighbors. Common among the exports were groundnuts, pepper, oil seeds, ivory, and ostrich feather.

To buttress this point, there is the need to catalogue the nature of export trade in pre-colonial Africa. Some highly valued commodities were made only in a few places, but were in demand over a wide area. Often, potential customers were hundreds of miles away from the place of manufacture. To supply them, the commodities were transported over long distances. Such trade we can reasonably call 'export trade' for the commodity was exported far from the place where it was made. Salt, for instance, which most people find a necessity rather than a luxury, was manufactured on the West African seashore. Sea water was made to flow into shallow ponds where it evaporated in the heat of the sun, leaving a thick, salty crust on the ground. This deposit was scrapped up, and purified by being mixed with warm water and poured through cone-shaped baskets, filled with straw. This strained off the earth. It was then re-dried in the sun. The finished salt was then placed up in baskets to be 'bartered' with the inland peoples who had no way of making it

themselves.

Cotton, imported originally form the North Africa, grew plentifully on many farms and in compounds (though it was not planted systematically in plantations). In some places people specialized in weaving it and exported their woven cloths to regions where they did not weave. Some special cloths were sought after over an enormous area (like the famous Kano cloth).

For the western part of the continent, there were rich easily workable mineral deposits. The archaeologists who have investigated the Nok culture of Northern Nigeria have proved that iron has been worked here for about two thousand years. In some places iron was extracted from the ground surface, in order that shafts were tunneled to reach the seams of iron ore. The extracted ore was smelted in furnaces, and the smelted iron was then shaped into bars. Iron became an exportable commodity which could be exchanged against other goods – salt, for instance, for most swords or farming implements; sometimes it was readily manufactured by blacksmiths on the spot.

Other industries that produced goods for export were leather making, and perhaps soap making. The cattle keeping peoples living on the fringe of the forest belt could export leather goods into the forest country, which was unsuited for rearing cattle either tanned hides or hides manufactured into goods like sandals or shields. Soap was made form palm oil mixed with ashes. The soap manufactured on the Plantain Islands, off Sierra Leone, was of such high quality in the seventeenth century that the Portuguese government are said to have prohibited it being imported into Portugal to compete with the Portuguese soap.

The export trade, then, was based on localized industries. Some industrial workers were set apart from the rest of the (predominantly farming) population: miners, perhaps, and certainly blacksmiths. But in some industries there were no specialized full time workers. For example sea-salt was made by women or by men too old to farm. Hence industrial organization did not lead to any widespread division of labor among manual workers.

Export trade over long distance required specialized traders who were occupied solely with transporting goods and bartering them with distant customers. They tended to follow familiar paths from one locality to the next, so trade routes developed. People who lived on them could count on getting imported trade goods regularly. A village market might develop into a long distance trade market if it lay on an important trade route. People would be attracted to live there, and the village becomes a town. As the market grew it needed a more complicated organization: market officials to allot pitches, hear complaints and keep order. It also provided wealth for the ruler, who could levy duties on the market people. The implication of this on international law should not be lost on us.

In the village community every able-bodied person farmed: in the market town, occupations could be more specialized. In the Yoruba cities, for instance, there were many who did not farm: the Oba and his court, the market officials, and the itinerant import-export traders. Food had to be provided for them, either brought in from the surrounding villages, or grown by the town people who went out daily to their farms. This swelled the volume of goods sold in the market, for food would be sold there, as well as imported commodities. Nevertheless, apart from the long-distance traders, there was no real class. As in the villages, the markets were carried on largely by women for whom it was a part-time occupation – though vital to the community. Nor, in then subsistence economy of West Africa, were farmers able to grow food for export beyond their own locality, for each community grew the basic food to support itself.

The implication of this trading relation was that it engendered a form of cultural exchange or diffusion. As such there was the spread of some common cultural traits, religious ceremonies, names, dresses, royal emblems, and practices which influenced what developed as African international law in the pre-colonial era. As exchanges in trade went by there was the need to secure and ensure wholesome dealing amongst them which came to be established through treaties and oath taking. Again, certain widespread practices came to be accepted as conventions governing international intercourse among neighbors and other trading partner-communities.

The relations among the various societies were not limited to peaceful relations, but it equally involved conflicts. Principally, the issues of trade and trade-routes have been found to be one of the greatest causes of wars amongst the communities of the era. The consequence of war was the conquest of some groups who became subject to the control of the conquering empire. At other times, armistices were exchanged and mutual agreement was signed as guiding principles for future interaction. In other cases, diplomacy played key roles in the exchanges of terms and the establishment of the rules of inter-communal/societies relations. Some of the diplomatists have ended up contracting treaties for their masters.

On the whole, there were unwritten laws that guided the relationship between and among these peoples. These laws can be said to have emanated from the under mentioned sources.

2.0 OBJECTIVES

After you have studied this unit, you should be able to;

understand the notion of recognition of states in the conduct of inter-state relations.
distinguish between the “constitutive” and “declaratory” views.
understand the linkage of these theories to the positive and naturalist’s positions.
understand the basis of legal antecedents in pre-colonial Africa.

3.0 MAIN CONTENT

3.1 Municipal Laws

Many experts or scholars of African history (indigenous and foreign) hold the view that most pre-colonial African “states” share similar pattern of social organization, control and administration. According to Robert Smith in his study of warfare and diplomacy in Africa, there is the belief that the political life of the peoples of West Africa, in particular and Africa in general provided the tendency towards unity of customary law over a large part of Africa and consequentially providing the context and content of what constituted the international law among this

primitive/primordial societies. He expatiated that on the account of the exchange of diplomatic relations through sending of representatives, the aim of the diplomatic exchanges was to be the means by which the policy of a government through negotiation was achieved. This had manifested in either informal understanding or specific treaties. These all point to the fact that as with the domestic or municipal laws, the international laws were largely unwritten. They were a matter of mutual understanding among the societies which were parties to it. Such arrangement could be secret or open. These agreement or treaties concluded hostilities among or between states. It also concerned trade. About 1650, the Hausa states of Kano and Katsina entered into one; another boundary agreement was enacted by the end of Kanem wars of Idris Aloma. Between 1730 and 1748 Oyo and Dahomey made peace treaties. Other examples were those of the treaty of Jarapanga between Ashanti and the defeated Dagomba and the anti-Ibadan alliance of the Ekiti small states.

3.2 Religious Practices

Religion is believed to be the opium of any society. At no other time is this assumed to be truer than in pre-colonial Africa. At this point in time, religious practices were taken as matters of life and death. All societies had their traditional way of worshipping their gods, and the various doctrines determined the behavior of the individual and by extension, the collectivity (the adherents). These had great influences on rules that were applied at the domestic level and inadvertently on the international scene. Most of the traditional beliefs condemned evil and rewarded good, and most often, these ideological concepts formed the basis of legal standards between societies, even across borders during this period. Even after the embrace of Christianity and Islam from both the Western and Arab world respectively, the momentum for the role of religious practices in establishing the rule of conducts for society increased tremendously.

As regulations guiding inter-state relations, religion also played a significant role especially with the contact with the Northern African states that brought about the spread of the Islamic religion. This was not in any easy manner but through conquest and domination. Having a common outlook, it became easier to relate with the Holy Qu’ran. The content and injunction of the Qu’ran guided inter-state practices. Clearly,

the introduction of Islamic doctrine into various part of Africa was accomplished by that of the Islamic law. This was however made to accommodate the customary laws of the people which did not pollute or dilute the central tenets of the religion. Specifically, a degree of uniformity among the Islamized states of the continent was introduced in such matters as the disposal of booty and the treatment of captives.

3.3 Myths/Belief Systems

Apart from and before the diffusion of Islam into many of the states of pre-colonial Africa, the traditional belief system was the basis of inter-state relations. This was owing to the fact of near homogeneity across the continent in certain aspects of life including the dealings/interaction with the outsiders. More so, the myths and belief systems of the continent supported holding sacrosanct, treaties solemnly entered to and gave a binding force to it. Therefore, treaties went with practices such as swearing of oaths, preparation of sacred emblems and potions and so on.

3.4 Conventions

These were those aspects of their relations which were neither religious nor fundamental rituals. These aspects were those which resulted over time from common practices and became held as part o the rules of intercourse between or among pre-colonial Africa. For instance, the issue of paying tribute to stronger or overlord state became a rule rather than an exception. This also went with the sending and treatment of emissaries, equivalent of modern-day diplomats. It was a general practice to exchange ambassadors among the states/communities of pre-colonial Africa to represent the interest of the kings in designated territories, mostly conquered territories. These representatives were expected and were treated with the understanding relating with the king who sent them to represent his interest. This was more important because, the messengers could sometimes be members of the royal family. They were also known to carry around badges signifying this.

In the area of war relations, there was supposed to be a formal declaration of war contrary to surprise attacks, though these sometimes happened. The challenge among the Yoruba state was always in the form of an

"Aroko" (war message) sent through the ambassador of the challenging king. In some places, to minimize the occurrence and the destructive effect of war, there was the arrangement of the exchange of excess in casualties of war. In other words, it was part of their convention, to send the number of people a particular community killed in excess to a place which killed less, a sort of balancing method.

In essence, the international law of the pre-colonial Africa was an extension of the municipal laws of the states. This was made possible by the degree of similarities among them and the degree of inter-penetration in peaceful dealings. The law guiding the relations among these states went beyond the boundary of the peaceful to the realm of the violent. The effectiveness and compliance with the international law which was largely unwritten was through certain superstitious or religious practices such as oath taking, swearing and the like which made the treaties, conventions and agreements sacred.

4.0 CONCLUSION

We conclude this unit by noting that the development of the modern legal system was largely euro-centric in character, and emanated from the push and pull of autocratic rule, religious influences and other extra-legal sources. It is almost impossible to link the evolution of modern international law to the practice of international law in pre-colonial Africa. The point of departure evolved from the necessity for international law in both eras. The emergence of international law in Africa was prompted by the necessity of economic activities. Though, these laws were crude at the initial stage, and thus had to go through series of processes to fine-tune the mechanisms. By and large, while we can not conclude that international law in pre-colonial Africa had technical issues such as the Laws of the Seas and Human Right Law in its statute, yet it provided enough legal strength to guide the conduct of relationships between the members of the society and the so-called international community.

5.0 SUMMARY

Attempt has been made to examine the sources of international law in

colonial Africa and the relationship with municipal law, religious practices, myths, beliefs, convention, etc.

SELF ASSESSMENT EXERCISES 1

1. Describe the evolution of Modern International Law with respect to Europe.
2. Explain two of the sources of pre-colonial Africa International Law.

6.0 TUTOR-MARKED ASSIGNMENT

1. The Development of Modern International Law was largely Euro-centric. Discuss.
2. Draw a linkage between municipal law and international law in pre-colonial Africa.

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UNIT 2 LAWS OF WAR IN PRE-COLONIAL AFRICA

CONTENTS

1.0 INTRODUCTION

It is easy to assume that no law can actually govern the conduct of war. A classic prompting for the assumption is the assertion by the renowned Roman orator- Cicero, who claimed that 'laws are silent amidst the clash of arms'. In essence, a war would commence when laws have broken down. However, glaring examples of war tribunal in contemporary times have put a question mark on the veracity of the assumption. The cases of former leaders of Yugoslavia, Rwanda, Sierra-Leone and Liberia are high profile examples of the limitations of warring parties. Just like it is in modern times, warring parties had limitations concerning their actions towards one-another, the neutrals and other actors in the society. It is however pertinent to dwell more on these laws as applied to modern times because of their more explicit nature. For, the documentation of this aspect of pre-colonial Africa is not as robust as that of the modern state-system.

As it were, these laws are based on customs, beliefs, mores and traditions that have passed through several phases of development. In our present world, these laws can basically be broken down into five main characteristics. These include:

1. The first Geneva Conventions for the Protection of the Wounded

and Sick on the battlefield.

2. The second Geneva Convention for the Wounded, Sick and Shipwrecked at sea
3. The third Geneva Convention on the status and treatment of Prisoners of War.
4. The fourth Geneva Convention for the Protection of Civilians.
5. The Additional Protocols of 1977.

The above conventions act as guides against the violation of the rights of different categories of non-combatants and in some cases, combatants who for various reasons might not be in a position to protect themselves. The definition of combatants and non-combatants are explicit within the provisions of the law. A combatant being, 'any member of the Armed Forces except permanent medical and religious staff. Furthermore, it includes any member of an armed group if such is under responsible command, carries weapons openly at least during every military engagement or for as long as the person is visible to the enemy when engaged in military deployment. For the non-combatants are civilians or persons not belonging to the armed forces. In specific terms, protected persons and objects include, members of the Red Cross Society/Red Crescent personnel, their installations and vehicles, safety zones and hospitals, civil defense group members, cultural property/special protection (three small signs), general protection (one big sign), flag of truce and works and installations containing dangerous forces. Violations of any of these laws have been treated with all the seriousness they deserve by the relevant international organizations that are charged with such responsibilities. In most cases, violators are brought to book at the end of the war. The cases of Slobodan Milosevic- former President of Yugoslavia, Jean Kibanda- former Rwandan Prime Minister, Hinga Norman- former Vice-President of Sierra-Leone are pointer to the fact that the international community is committed to prosecuting persons alleged to have violated the laws and customs of war. The recent clamour by a section of the international community for the prosecution of Charles Taylor- former Liberian President for committing crimes against humanity during the course of the civil war that raged in his country is a testimony to the importance of the laws of war. In the final analysis, after a conflict has ended, persons who have committed or ordered any breach of the laws of war, especially atrocities, may be held individually

accountable for war crimes through process of law. Also, nations which signed the Geneva Conventions are required to search for, then try and punish, anyone who has committed or ordered certain "*grave breaches*" of the laws of war. (see GC III, Art. 129 and Art. 130)

According to Olowo-Ake (2005), there are basic principles that must be adhered to in the utilization of the law. These are:

1. Distinction- combatants must distinguish clearly between combatants and civilians or the civilian population. Combatants can be attacked unless they are out of action, i.e. having been injured, captured or surrendered. Civilians are protected from being attacked but lose the protection once they decide to take up weapons to engage in hostilities themselves.
2. Proportionality- when military objectives are attacked, the civilian population and civilian objects must be spared from incidental or collateral damage to the maximum extent that is possible. Further, incidental damage must not be excessive in relation to the direct and concrete military advantage from war operations.
3. Military Necessity- the 1868 Saint Petersburg Declaration states that ‘the only legitimate object to which States should endeavor to accomplish during war is to weaken the military forces of the enemy’. The principle accepts the reality of battle in allowing for whatever reasonable force is necessary; is lawful and; can be operationally justified in combat to make the opponent submit.
4. Limitation- in any armed conflict, the law reminds parties that their right to choose the methods and means of warfare are not unlimited. Thus the law limits how weapons and military tactics may be used, prohibiting those which can cause unnecessary suffering and superfluous injury.

It has often been commented that creating laws for something as inherently lawless as war seems like a lesson in absurdity. But based on the adherence to what amounted to customary international law by warring parties through the ages, it was felt that codifying laws of war would be beneficial.
Some of the central justifications underlying laws of war are:

That wars should be limited to achieving the political goals that started the war (e.g., territorial control) and should not include unnecessary destruction
That wars should be brought to an end as quickly as possible
That people and property that do not contribute to the war effort be protected against unnecessary destruction and hardship

To this end, laws of war are intended to mitigate the evils of war by:

Protecting both combatants and noncombatants from unnecessary suffering;
Safeguarding certain fundamental human rights of persons who fall into the hands of the enemy, particularly prisoners of war, the wounded and sick, and civilians; and
Facilitating the restoration of peace.

Among other issues, the laws of war address declaration of war, acceptance of surrender and the treatment of prisoners of war; the avoidance of atrocities; the prohibition on deliberately attacking civilians; and the prohibition of certain inhumane weapons. It is a violation of the laws of war to engage in combat without meeting certain requirements, among them the wearing of a distinctive uniform or other easily identifiable badge and the carrying of weapons openly. Impersonating soldiers of the other side by wearing the enemy's uniform and fighting in that uniform, is forbidden, as is the taking of hostages.

2.0 OBJECTIVES

After you have studied this unit, you should be able to:

to understand the origin of the laws of war.
to compare the relationships of the laws of war in both era.
to outline the relevant conventions on the laws of war.
to outline the different personalities, places and objects protected by law.

3.0 MAIN CONTENT

3.1 Places of Worship

In pre-colonial Africa, Shrines and Sacred Bush were some of the places that were protected from denigration in the course of conflict. Aside the fact that combat is not allowed to take place in them, any one or regiment that took refuge in them could neither be assaulted nor killed. As at that time, Western religion such as Christianity and Islam had not taken root on the continent and therefore, traditional modes of worship were highly revered. It would be a sacrilege to violate such regulation, and there is no recorded violation of such a law.

Closely related to the above, is that warriors are forbidden from poisoning a river or a well. Africans are of the belief that even if the enemy is deprived of everything in life, water should never be a part of the denials. It is considered very relevant to life, as such it was never allowed to be used as a weapon of war. In addition, warriors that fought on horseback were forbidden from striking any enemy combatant that had fallen off his horse. They were equally barred from striking anyone whose back was turned to them, as that would be considered an act of cowardice.

3.2 Treatment of Prisoners of War

The armed forces of the belligerent parties may consist of combatants and non-combatants. In case of capture by the enemy both have a right to be treated as prisoners of war. Without any form of contradictions, prisoners of war are in the power of the hostile Government, but not in that of the individuals or corps who captured them.

The law states that they must be humanely treated. All their personal belongings, except arms, horses, and military papers remain their property. Prisoners of war may be interned in a town, fortress, camp, or any other locality, and bound not to go beyond certain fixed limits; but they can only be confined as an indispensable measure of safety. The State may utilize the labour of prisoners of war according to their rank and aptitude. Their tasks shall not be excessive, and shall have nothing to do with the military operations.

Prisoners may be authorized to work for the Public Service, for private persons, or on their own account. Work done for the State shall be paid for according to the tariffs in force for soldiers of the winning army employed on similar tasks.

The wages of the prisoners shall go towards improving their position, and the balance shall be paid them at the time of their release, after deducting the cost of their maintenance. In order words, the Government into whose hands prisoners of war have fallen is bound to maintain them.

Failing a special agreement between the belligerents, prisoners of war shall be treated as regards food, quarters, and clothing, on the same footing as the troops of the Government which has captured them. In addition, prisoners of war shall be subject to the laws, regulations, and orders in force in the army of the State into whose hands they have fallen. Any act of insubordination warrants the adoption, as regards them, of such measures of severity as may be necessary.

Escaped prisoners, recaptured before they have succeeded in rejoining their army, or before quitting the territory occupied by the army that captured them, are liable to disciplinary punishment. Prisoners who, after succeeding in escaping are again taken prisoners, are not liable to any punishment for the previous flight.

Every prisoner of war, if questioned, is bound to declare his true name and rank, and if he disregards this rule, he is liable to a curtailment of the advantages accorded to the prisoners of war of his class.

Prisoners of war may be set at liberty on parole if the laws of their country authorize it, and, in such a case, they are bound, on their personal honour, scrupulously to fulfill, both as regards their own Government and the Government by whom they were made prisoners, the engagements they have contracted. In such cases, their own Government shall not require of nor accept from them any service incompatible with the parole given. A prisoner of war can not be forced to accept his liberty on parole; similarly the hostile Government is not obliged to assent to the prisoner's request to be set at liberty on parole. Any prisoner of war, who is liberated on parole and recaptured, bearing arms against the Government to whom

he had pledged his honour, or against the allies of that Government, forfeits his right to be treated as a prisoner of war, and can be brought before the Courts.

3.3 Children/Elderly/Women

There was a special sentiment attached to the female gender in pre-colonial Africa, and such sentiments are beginning to resurface with the amplification of gender-related issues in modern times. Women were seen as the 'weak sex' and such there was usually some form of protection they enjoyed in everyday life, which was extended to the period of battle. Because of the special role they are assumed to be playing in the society, women were given all the protection they desired. This is however not to assume that there were no women warriors, far from it, as a matter of fact, Yoruba history is replete with courageous female warriors who made 'marks on the sands of time'. It must be noted that these category of women were given special treatments on the battlefield, (respect for their sensitive parts) this is asides the fact that they were assumed to be men, since they were also warriors.

In those times, children were seen as special gifts from the gods and their chances of survival were never meant to be jeopardized irrespective of the socio-political conditions in existence. As such, they enjoyed special protection in both war and peace times. Their case is not different from those of the elderly, both male and female. This is because of their assumed harmlessness, as such they are equally well protected in times of crisis. An example is that of severe punishment for anyone who disrespects their sensitive body parts.

Treatment of the Injured- A neutral State which receives in its territory troops belonging to the belligerent armies shall intern them, as far as possible, at a distance from the theatre of war. It can keep them in camps, and even confine them in fortresses or locations assigned for this purpose. It shall decide whether officers may be left at liberty on giving their parole that they will not leave the neutral territory without authorization. Failing this process, the neutral State shall supply the interned with the food, clothing, and relief required by humanity. At the conclusion of peace, the expenses caused by the internment shall be made good.

A neutral State may authorize the passage through its territory of wounded or sick belonging to the belligerent armies, on condition that the trains bringing them shall carry neither combatants nor war material. In such a case, the neutral State is bound to adopt such measures of safety and control as may be necessary for the purpose.

Wounded and sick brought under these conditions into neutral territory by one of the belligerents, and belonging to the hostile party, must be guarded by the neutral State, so as to insure their not taking part again in the military operations. The same duty shall devolve on the neutral State with regard to wounded or sick of the other army who may be committed to its care.

On a general note, the right of belligerents to adopt means of injuring the enemy is not unlimited. Furthermore, it was especially made known that there were prohibitions on the following acts;
To employ poison or poisoned arms
To kill or wound treacherously individuals belonging to the hostile nation or army

To kill or wound an enemy who, having laid down arms, or having no longer means of defense, has surrendered at discretion

To employ arms, projectiles, or material of a nature to cause unnecessary injury

To make improper use of a flag of truce, the national flag, or military ensigns and the enemy's uniform.

To destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war.

4.0 CONCLUSION

In summary, the fore-going is a pointer to the fact that wars were regulated even in the Western pre-civilization era. The mechanisms deployed by both belligerent parties and observers, whether neutral or otherwise, for dictating the pace, tempo and limitations of war for the

monitoring of combats between state-actors developed through the ages. As at the pre-colonial period, when the weapons of war had not become as sophisticated as they presently are, and when the capacity to inflict collateral damage had not been as possible as it exists today, there had been mechanisms put in place to ensure civil conducts of devastating acts. Fortunately, if these had not been in existence, human kind would definitely not been constituted as it is today. It is thus a good omen, that pre-colonial African peoples were civilized enough to recognize the sanctity of some objects and location, and indeed, the necessity to preserve the lives of some human beings in their midst. These guiding principles, curtailed the yearnings for war, as it does today. The numerous conventions guiding the different protocols in the present international system have their origins in ancient times. Interestingly, in contemporary times, these conventions have indeed curtailed the destructive activities of belligerents, for even after the stoppage of hostilities, charges have been brought against perceived culpable personalities.

5.0 SUMMARY

This discourse of laws of Wars in pre-colonial and colonial Africa and comparative analysis also covered the examination of various Geneva conventions for the protection of the wounded, the sick, places of worship, civilian population and prisoners of war, etc.

SELF ASSESSMENT EXERCISES 1

1. Mention the different objects that are held sacrosanct by belligerents in war-time pre-colonial Africa.
2. Mention and explain why specific kinds of people were considered non-combatants in war-time pre-colonial Africa.

6.0 TUTOR-MARKED ASSIGNMENTS

1. Compare and contrast the laws of war in both pre-colonial Africa and contemporary times.
2. Discuss the implications of protection for persons and objects in war-time, pre-colonial Africa.

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UNIT 3 THE NATURE OF MODERN INTERNATIONAL LAW

CONTENTS

1.0 INTRODUCTION

International law is the body of rules considered legally binding in the relations between national states, also known as the law of nations. It is sometimes called public international law in contrast to private international law, which regulates private legal affairs affected by more than one jurisdiction. International law deals with the relationships between states, or between persons or entities in different states. It is sub-divided into "public international law" and private international law". When used without an adjective, "international law" generally refers to "public international law." Thus, public international law defined, "is the system of law which regulates the activities of entities possessing international personality."

The lack of record for the pre-colonial Africa era can be captured in Akinjide's (1988:15) submission: "In the sparse record of events available to us, one comes across occasional references to international agreements and concordants between these medieval States, but the historians of

these times showed little interest in such matters, and we are the poorer for that". But indeed, there "is some evidence of the high degree of knowledge and the practice of diplomatic law as then known in Europe and Asia". Specifically, there were African jurists and diplomats at the court in Delhi in the fourteenth century; there were exchanges of envoys and courtesies between the King of Portugal and the Oba of Benin as well as between him and the traditional ruler of the Congo in the fifteenth century. In like manner, there were alliances for attack and defence between the Kings of Ghana or of Mali and that of Morocco over the centuries. Such were the ordinary types of diplomatic and other forms of intercourse within Africa and between it and the outside world.

This section of the work would explore the possibility of identifying the different processes through which rules of international law are created and how proofs of the existence of such rules are established. Hence, the focus would be a bifurcation of the evolution, the existence and contents of its norms.

Modern international law as it developed during the last 400 to 500 years was a creature the of Western states and it was to serve their purposes. The historic details of its growth is the evidence of its continuous response to needs at successive stages of political and economic European life. This fact can explain the only selective acceptance of international law by the post-colonial African states and erstwhile communist states. The international law they found at their births was in many respects unsuitable to their needs and interests. They laid claim to pre-colonial sources of international law. As was to be expected, changes in the character of the international society, especially its political system, were always accompanied by changes in the institutions and content of international law. For example, before the rise of nation-states in the fifteenth and sixteenth centuries, there was neither room nor need for a comprehensive body of rules regulating relations between the then existing political entities. Only a few limited subjects (mainly relating to warfare) were controlled by legal norms, which were hardly worthy of the name 'international law'. The Holy Roman Emperor and the Pope reigned over the Western world and under their overall rule, extraordinary complex sets of feudalistic relationships of dominance and subjection criss-crossed an equally complex politically fractionated Europe.

Relations between lords, seigniors, princes, and other possessors of power were of a personal nature. Their rights and duties referred to specific, limited subjects in a given geographic area, so that several lords could have different jurisdictions and competences in the same territory. Exclusivity or monopoly of all political power within a territorially defined area was unknown. Only exceptionally was a ruler able to amass a sufficient volume of power to control a given territory exclusively, without its being split up into different jurisdictions of several rulers. In such cases, a ruler was able to prevent the exercise of power by others in his territory; to lay claims to the coastline or even the high seas contiguous to his territory (as, for example, Venice did for the Adriatic Sea and England for the North Sea) and eventually to territories conquered overseas.

Mainly as a result of new economic forces-foremost the growth of urban economies and the resumption of trade across Europe and beyond-the Holy Roman Empire broke down. It brought the collapse of the least nominally centralized political order of Europe, foreshadowing the need for a different legal system. The reality of a unified Christian community with one law and order for all mankind faded away, but enough of the idea survived to affect the development of international law for several centuries to come. The Treaty of Westphalia in 1648 was the turning point. It opened the possibility of independent statehood. Kings and princes eagerly exploited it, correctly calculating that future new states would consider their personal dominion, enhancing their power and wealth.

The use of new centres of independent power gave rise also to the need for laws regulating their coexistence and relations. But, until the age of absolutism had passed, these laws had to refer to the person of the rulers more than the political entities. Gradually, the relationships of subordination and super-ordination under the Universalist reign of emperor and pope were replaced by a system of coordination among sovereign rulers. The feudalistic entities with their relatively uncertain borders gave way to states based upon sharply defined territory. In this territory, kings and princes had exclusive personal power over people and things. Laws were now needed to safeguard the individuality and

inviolability of the new states, the power of their rulers, and the orderliness of their relations. Some of these laws were taken over, in adjusted form, from the ancient Jewish, Greek, and Roman worlds. Others were gradually generated as need and practice demanded.

As important as the formulation and application of new legal norms was the spirit in which statesmen and writers conceived the development of international law. It was inspired by Roman law, Christianity, and the classic tradition (Renaissance). This inspiration perpetuated into the new age, religious and moral values and a sense of (Christian) community that were responsible for softening the use of power by considerations of a "divine" or "natural" social order and humanitarianism. The surviving sense of community did not prevent or even mitigate hostilities among European states. As a group, however, these states felt superior to peoples outside their select circle. They all felt justified, when the occasion arose, to exclude these peoples from the realm of international law. Imperialism and colonialism with virtually unlimited means were legitimate in this legal system, which only tried to regulate these enterprises as they affected the European states among themselves. It was not until the middle of the nineteenth century that some "non-Christian" states were fully admitted to the select circle, and until the middle of the twentieth century most traces of this superiority complex had been eradicated.

2.0 OBJECTIVES

After you have studied this unit, you should be able to:

identify the different processes of international law.
understand the evolution of modern International law.
understand the limitations of International Law
be familiar with the enforcement process of International Law

3.0 MAIN CONTENT

3.1 Origin

There was little scope for an international law in the period of ancient and medieval empires. Its modern emergence coincided, with the rise of

national states after the Middle Ages. Rules of maritime intercourse and rules respecting diplomatic agents soon came into existence. At the beginning of the 17th century, the great multitude of small independent states, were finding international lawlessness intolerable and, prepared the way for the favorable reception given to the *de jure belli ac pacis* [the law of war and peace] (1625) of Hugo Grotius - the first comprehensive formulation of international law. Though not formally accepted by any nation, his opinions and observations were regularly consulted, and they often served as a basis for reaching agreement in international disputes. The most significant principle he enunciated was the notion of sovereignty and legal equality of all states.

Development to World War I- The growth of international law came largely through treaties concluded among states accepted as members of the "family of nations," which first included the states of Western Europe, then the states of the New World, and, finally, the states of Asia and other parts of the world. The United States contributed much to the laws of neutrality and aided in securing recognition of the doctrine of freedom of the seas. The provisions of international law were ignored in the Napoleonic period, but the Congress of Vienna reestablished it and added much more, particularly in respect to international rivers and the classification and treatment of diplomatic agents. The Declaration of Paris abolished privateering, drew up rules of contraband, and stipulated rules of blockade. The Geneva Convention (1864) provided for more humane treatment of the wounded. The last quarter of the 19th century saw many international conventions concerning prisoners of war, communication, collision and salvage at sea, protection of migrating bird and sea life, and suppression of prostitution. Resort to arbitration of disputes became more frequent. The Declaration of London contained a convention of prize law, which, although not ratified, is usually followed. At the Pan-American Congresses, many lawmaking agreements affecting the Western Hemisphere were signed.

3.1.1 Effect of the World Wars

In World War I, no strong nations remained on the sidelines to give effective backing to international law, and the concept of third party arbitration was again endangered; many of the standing provisions of

international law were violated. New modes of warfare presented new problems in applying the laws of war. Attempts after the war to effect disarmament and to prohibit certain types of weapons also failed, as the outbreak and course of World War II showed. The end of hostilities in 1945 saw the world again faced with grave international problems, including adjustment of boundaries, care of refugees, and administration of the territory of the defeated enemy. The inadequacy of the League of Nations and of idealistic renunciations of war led to the formation of the United Nations as a body capable of compelling obedience to international law and maintaining peace. After World War II, a notable advance in international law was recorded: it defined as prescribed punishment for war crimes. Attempts at a general codification of international law, however, proceeded slowly under the International Law Commission established in 1947 by the United Nations.

3.1.2 Recent Developments

The nuclear age and the space age have led to new developments in international law. The basis of space law was developed in the 1960s under United Nations auspices. Treaties have been signed mandating the internationalization of outer space (1967) and other celestial bodies (1979). The 1963 limited Test Ban Treaty prohibited nuclear tests in the atmosphere, in outer space, and underwater. The Nuclear Nonproliferation Treaty (1968) attempted to limit the spread of nuclear weapons. The agreements of the Strategic Arms Limitation Talks, signed by the United States and the USSR in 1972, limited defensive and offensive weapon systems. This was first of many international arms treaties signed between the two nations until the dissolution of the Soviet Union. Other treaties have covered the internationalization of Antarctica (1959), narcotic interdiction (1961), satellite communications (1963), and terrorism (1973). The Law of the Sea (1983) clarified the status of territorial waters and the exploitation of the sea-bed. Environmental issues have led to a number of international treaties, including agreements covering fisheries (1958), endangered species (1973), global warming and bio-diversity (1992). Since the signing of the General Agreement on Tariffs and Trade (GATT) in 1947, there have been numerous international trade agreements. The European Union (prior to 1993, the European Community) has made moves toward the establishment of a regional legal

system. In 1988, a Court of First Instance was established to serve as a court of original jurisdiction on certain economic matters. The establishment of the International Criminal Court (2002), with jurisdiction over war crimes, crimes against humanity, and related matters, marked a major advance in international law despite the United States' repudiation of the treaty under President George W. Bush.

3.2 Nature and Scope

The value and authority of international law is entirely dependent upon the voluntary participation of states in its formulation, observance, and enforcement. Although there may be exceptions, most states enter into legal commitments to other states out of enlightened self-interest rather than adherence to a body of law that is higher than their own. The formation of the United Nations created a means for the world community to enforce international law aqauint members that violate its charter.

Traditionally, states were the sole subjects of international law. With the proliferation of international organizations over the last century, they have in some cases been recognized as relevant parties as well. Recent interpretations of international human rights law, international humanitarian law, and international trade law have been inclusive of corporations, and even individuals.

International law includes both the customary rules and usages to which states have given express or tacit assent and the provisions of ratified treaties and conventions. International law is directly and strongly influenced, although not made, by the writings of jurists and publicists, by instructions to diplomatic agents, by important conventions even when they are not ratified, and by arbitral awards. The decisions of the International Court of Justice and of certain national courts, such as prize courts, are considered by some theorists to be a part of international law. In many modern states, international law is by custom or statute regarded as part of national (or, as it is usually called, municipal) law. In addition, municipal courts will, if possible, interpret municipal law so as to give effect to international law.

Because there is no sovereign supranational body to enforce international law, some older theorists, including Thomas Hobbes, Samuel Pufendorf, and John Austin have denied that it is true law. Nevertheless, international law is recognized as law in practice, and the sanctions for failing to comply, although often less direct, are, with certain exceptions similar to those of municipal law; they include the force of public opinion, self-help, intervention by third-party states, the sanctions of international organizations such as the United Nations, and, in the last resort, war.

National states are fundamentally the entities with which international law is concerned, although in certain cases municipal law may impose international duties upon private persons, e.g., the obligation to desist from piracy. New rights and duties have been imposed on individuals within the framework of international law by the decisions in the war crimes trials, the treaty establishing the International Criminal Court, the genocide convention, and by the Declaration of Human Rights.

3.2.1 Fundamental conflicts within international law

As a philosophical, political, and constitutional matter, sovereign states derive their autonomy through inherent legitimacy rather than by a decree of the international community. Though states may therefore choose to voluntarily enter into commitments under international law, sometimes they will accept legislative process outside their own consent. It follows that they will follow their own counsel when it comes to interpretation of their commitments under international law.

Some scholars and political leaders have recently argued that international law has evolved to a point where it exists separately from the mere consent of states. There is a growing trend towards judging a state's domestic actions in light of international law and standards. A number of states vehemently oppose this interpretation, maintaining that sovereignty is and ought to be the dominant value. Similarly, a number of scholars now discern within domestic law, legislative and judicial process that paralles those of international laws. Opponents to this point of view maintain that states only commit to international law with express consent and have the right to make their own interpretations of its meaning; and that international courts only function with the consent of states.

3.2.2 Interpretation of International Law

Where there are disputes about the exact meaning and application of national laws, it is the responsibility of the courts to decide what the law means. In international law as a whole, there are no courts which have the authority to do this. It is generally the responsibility of states to interpret the law for themselves, and there is rarely agreement in cases of dispute.

Accordingly, the Vienna Convention on the Law of Treaties writes on the topic of interpretation that: "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." (article 31(1)). This is actually a compromise between three different theories of interpretation:

The textual approach is a restrictive interpretation which bases itself on the "ordinary meaning" of the text, the actual text has considerable weight.
A subjective approach considers the idea behind the treaty, treaties "in their context", what the writers intended when they wrote the text.
A third approach bases itself on interpretation "in the light of its object and purpose", i.e. the interpretation that best suits the goal of the treaty, also called "effective interpretation".

These are general rules of interpretation; specific rules might exist in specific areas of international law.

3.2.3 Enforcement by states

There are a number of enforcement media, but our concentration would however be limited to that of states. Apart from a state's natural inclination to uphold certain norms, the force of international law has always come from the pressure that states put upon one another to behave consistently to and honor their obligations. As with any system of law, many violations of international law obligations are overlooked. If

addressed, it is almost always purely through diplomacy and the consequences upon an offending state's reputation. Though violations may be common in fact, states try to avoid the appearance of having disregarded international obligations.

States may also unilaterally adopt sanctions against one another such as the severance of economic or diplomatic ties, or through reciprocal action. In some cases, domestic courts may render judgment against a foreign state (the realm of private international law) for an injury, though this is a complicated area of law where international law intersects with domestic law.

States have the right to employ force in self-defense against an offending state that has used force to attack its territory or political independence. States may also use force in collective self-defense, where force is used against another state. The state against which force is used may authorize the participation of third-states in its self-defense. This right is recognized in the United Nations.

4.0 CONCLUSION

In this unit, we have examined the differences and linkages between municipal and international law, and how international law came into being. In examining the boundaries of international law, we have seen that there are no clearly demarcated boundaries. Municipal laws exist side by side with international law, and may apply to individuals depending on their circumstances.

But as far as the comparison between the practice of international law in pre-colonial Africa and modern times goes, we would discover that there are similarities in terms of nature, sources and purposes. The departure is concerned with the subject, differences in characteristics of States, emergence of other actors, and novel developments associated with new challenges in the international system

5.0 SUMMARY

In this unit, you have studied the nature of pre-colonial and modern

international law, its origin and impact of world wars and contemporary development. In the process, the fundamental conflicts within the international law were highlighted.

SELF ASSESSMENT EXERCISE

1. Distinguish between International Public law and International Private Law. How may they be different?

6.0 TUTOR- MARKED ASSIGNMENT

1. Comprehensively describe the major developments of international law.
2. Explain the different theories of interpretation in international law.

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UNIT 4 SOURCES OF MODERN INTERNATIONAL LAW DISTINGUISHED

CONTENTS

1.0 INTRODUCTION

Unlike modern international law, the sources of pre-colonial law are not traceable to any codified documents. One of the reasons is that the period lacked institutionalized organs, like the International Court of Justice, that could have aggregated the desires and decisions of state-actors. Thus, the sources of international law in the pre-colonial Africa advisedly, were flexible, and not the outcome f a pre-arranged negotiation of states concerned, like it obtained in modern time. For modern day international law, the sources could be found in Article 38 of the International Court of Justice, but essentially three of the sources are substantive while there are two subsidiary sources of determining the rule of international law. The course would allow us an insight into the possibility of locating precedence in the earliest international legal arrangement as exemplified by a Treaty of Peace, Alliance and Extradition concluded by Pharaoh Rameses 11 of Egypt with the King of Cheta in the 14th Century. In this unit therefore, we would examine the correlations between the modern sources of international law, such as; international treaties and conventions, general principles of law recognized by civilized states, customs, judicial decisions and judicial writings of scholars, as dictated

by Western states and the sources as applied to pre-colonial African states.

2.0 OBJECTIVES

At the completion of this study unit, you should be able to:

determine the sources of modern International Law
understand the linkage between the modern sources of International Law and judicial writings of scholars
be familiar with the nature of International Treaties
distinguish between the different sources of International Law

3.0 MAIN BODY

3.1 Sources

International law has three primary sources: international treaties, custom, and general principles of law. See Article 38, Statute of the International Court of Justice

International Treaties

Treaties are formal agreements between states. They comprised of obligations that states expressly and voluntarily accept between themselves in treaties.

Customs

Customs are regular practices, usages, traditions of a society. Customary International law is derived from the consistent practice of States accompanied by *opinio juris*, i.e. the conviction of States that the consistent practice is required by a legal obligation. Judgments of international tribunals as well as scholarly works have traditionally been looked to as persuasive sources of custom in addition to direct evidence of state behaviour. Attempts to codify customary international law picked up momentum after the Second World War with the formation of the International Law Commission (ILC). Codified customary law is made up of the binding interpretation of the underlying custom by agreement

through treaty. For states not party to such treaties, the work of the ILC may still be accepted as custom applying to those states.

General Principles of Law

General principles of law are those commonly recognized by the major legal systems of the world. Certain norms of international law achieve the binding force of peremptory norm (*jus cogens*) as to extend to all states. Legal principles common to major legal systems may also be invoked to supplement international law when necessary.

Some writers have referred to Article 38 of the **Statute of the International Court of Justice**, as the "Bible of the Poor". It is commonly referred to by persons who seek quick answers despite of the complexity of international relations, constitutes nevertheless a good starting point for the understanding of the sources of international law. This article confirms that international law finds its origin in the following three sources:

- international conventions of general or particular nature;
- international custom, as evidence of a general practice accepted as law;
- the general principles of law recognized by civilized nations.

International law experts have added the "unilateral acts" as another source of law declaring that Article 38 of the Statute has omitted. Contrary to this opinion, other international lawyers would maintain that these unilateral acts constitute specific expressions of the will of States leading eventually to agreements which are then governed by the rules applicable to international conventions.

Finally, the idea of justice and equity originating in the philosophy of natural law is not to be discarded as a source of international law, since it is the opinion of the **International Court of Justice** itself that whatever the legal argumentation of the judge, his or her decisions have to be just and in that sense must correspond to the demand of justice and equity. Moreover, the judges of the **International Court of Justice** are expressly authorized to decide a case *ex aequo et* bono, if the parties agree thereto, i.e. to found their judgments on equity principles (Article 38 (2) of the

Statute of the International Court of Justice).

International treaty law as codified by **Vienna Convention** on the Law of Treaties, 1969 is also open for considerations by the justices (Preambular para. 4 and 5 and Article 44 (3)). Moreover, the concept of *"jus cogens"* seems also to be an angle of incidence for natural law ideas.

it must be stressed that the basis of sovereignty and therefore independence, as well as the equality of all States constitutes the theoretical foundation of international relations. Although public international law, by definition, does not belong to civil law, international legal debates are often reminiscent of the discussions known in the civil law, particularly in the context of the law of contracts.

However, this cannot be said for measures taken on the basis of Chapter VII of the **Charter of the United Nations**. Although they are foreseen in an international treaty - in particular by Article 25 of the Charter - these measures deserve to be highlighted because of the legal obligations they impose on the whole world, their political significance and the remarkable development they have undergone since the Gulf War, 1991. The measures taken by the Security Council and which are expressly based on Chapter VII of the Charter encompass military as well as economic sanctions against certain States e.g. Ethiopia, Eritrea, Iraq, Yugoslavia, Sierra Leone etc or against insurgents e.g. Angola's UNITA. (See resolution 1173/1998 of 12 June 1998) in extreme cases sanctions have been imposed on political parties in government e.g. the Afghan faction of the Taliban. (See Resolution 67/1999 of 15 October 1999). The Security Council has also been known to create special tribunal for purpose of prosecuting war crimes or crimes against humanity. Example is the Special Tribunal for the territory of former Yugoslavia (Res. 827/1993 of 25 May 1993) and Rwanda (See Resolution 955/1994 of 8 November 1994). The Council has gone further and created special administrative zones like in East Timor (See Resolution 1272/1999 of 25 October 1999) or in Kosovo (See Resolution 1244/1999 of 10 June 1999). Currently and since 2001, the Council has initiated measures against terrorism in general (See Resolution 1373/2001 of 28 September 2001).

All these have expanded the sources of international law and they are

supplemented by two subsidiary instruments for the determination of rules of law (Article 38 (1) (d) of the Statute), namely:

a. **Judicial Decisions** The decisions of the International Court of Justice have binding force only between the parties and in respect of the particular cases submitted to the Court - Article 59 of the Statute) and

b. the teachings of the most highly qualified publicists of the various nations.

International Treaties and Conventions

International treaties and conventions are seen as agreements between subjects of international law. To qualify as such, there must be the existence of pertinent elements e.g.

the capacity of the parties to conclude treaties,
parties must have intended to act under international law,
there must be a meeting of wills between the parties and
the parties must have the intention to create legal obligations.

However, not all treaties end up as rules of international law. The essential ingredient to watch out for is whether the treaty was agreed upon multilaterally. It is only multilateral treaties, signed, ratified or adhered to, by a large number of states that can be regarded as law-making treaties, as no nation is bound by a contractual agreement that it has not legally accepted. Treaties may be used to abolish or modify existing custom or law or to add a completely new law. However, even a law making treaty is subject to the limitation which applies to other treaties: it does not bind states who are not parties to it. Therefore, except in the almost impossible event of every state in the world becoming a party to one of these treaties, the law which it creates will not be law for every state. The real justification for ascribing a law-making function to a treaty is that it does in fact perform the function which legislation performs in a state, though it may do so only imperfectly. It is only a machinery which exists for the purposive adapting of international law to new conditions and in general for strengthening the force of the rules of law between states.

Customs

For a long period of time, international law was largely composed of customary rules. These legal norms arose through usage and practice over a fairly long period, and become international law when it has been repeated by many states over a period of time. Secondly, when states have generally acquiesced in such behaviour by one another. Lastly, when governments begin to behave as if they have a legal obligation. However, most new nations are no longer recognizing the efficacy of customary international law and the proliferation of law making treaties has also in recent time obliterated the acceptance of customary international law.

General Principles of Law

The general principles of law recognized by civilized nation is a source of international law, despite the controversy trailing the inclusion of this source. The General Principles of Law must fulfill the following obligations to be accepted as a source of international law. First, it must be a general principle of law distinct from a legal principle of more limited functional scope. Second, it must be recognized by civilized nations and lastly, it must be common to all or most national systems of law.

Judicial Writings/Decisions

These are regarded as subsidiary sources of law, for they are only useful as a means of educating the rules of law. The judgments and advisory opinions of the Court are often cited by international lawyers as the authoritative pronouncements on international law. Judicial writings of renowned scholars can be evidence of international law as well as playing subsidiary role in developing rules of law. In some cases, the opinions of leading international law scholars are often quoted as persuasive authoritative source. It should also be emphasized that such works are not independent source of law, although they sometimes lead to the formation of international law.

How pre-colonial African municipal law impact on the sources of modern day international law, especially in the areas of treaties and customs are some of the questions we are poised to answer in the next segment of the course. Article 59 emphatically states that an international decision is binding only upon parties to the case and in respect of that particular case. Precedents are not therefore binding authorities in international law. This is such that, when any system of law has reached a stage at which it is thought worthwhile to report the decisions and the reasoning of judges, other judges inevitably give weight, though not necessarily decisive weight, to the work of their predecessors. For judicial writings, there are two basic contributions to international law. The first is that it provides useful evidence of what the law is, and the second is that it provides speculations on what the law ought to be. Their role is highly revered for their writings may help to create opinion which may influence the conduct of states and thus indirectly in the course of time modify the actual law.

3.2 Performance of International Law in Africa

International law is the system of rules governing the relations among sovereign states and providing the common principles of humankind. The first dimension of the system corresponds to historical international law. In the post-historical international system, sovereign states are not the only entities provided with rights and obligations, and capacity for action. In the system of international law, this requires adaptation in the concept of the law. Generally, with a number of qualifications, such a function of the law remains valid. The second dimension of the law, identifies universal interests which were established and protected as such by the law, as an inherent characteristic of the post-historical or contemporary international law. The protection of human rights and the criminalization of offenses against them- and of the common heritage of humankind -sea, air and outer space, and the earth's environment-, are basic components of this second dimension. International law has failed Africa in terms of both dimensions.

The formation of the state system in Africa is primarily the result of a process of destruction of the native social and political systems and of the

imposition of artificial constructs, concerning boundaries, population, and governmental institutions. Political decolonization was not meant, and could not possibly mean, to erase such legacy. When the Organization of African Unity endorsed the principle of title to territory -*uti possidetis juris*- as the basis for the delimitation of territorial boundaries, in agreement also with the pattern which was emerging in that respect in the jurisprudence of the International Court of Justice, it did so for the good reason that an alternative approach aiming at a comprehensive revision of what the colonial powers had done, entailed basically launching the continent in a free fall of absolute uncertainty. That does not mean the principle, as applied to the African context, was comparatively sound or just. On the contrary, the compulsive nature of the decision amounted to a sanctioning, by Africa itself, of its own loss of identity. A significant measure of identity, identifiable as such in its standing within the international community, is perhaps the most basic objective outcome sought for through the application of the criteria of statehood. The impact of wars of imperial conquest on the formation of the state is not absolutely unique of Africa's political system experience. Absolutely unique are the complete exogenous nature of the conquest wars and the reintroduction of the institution of slavery, which had been abolished in Europe and Asia hundreds of years earlier. The effective instrumentation of international law, through a sophisticated treaty architecture designed to maintain the colonial rule and to guarantee the interests of the colonial powers, was also fairly unique because of its deliberation and efficacy. No state and inter-state system in any other region or continent of the world has been so directly determined by any comparable construction of colonial international law. After the adoption by the U. N. General Assembly in 1960 of the *Declaration on the Granting of Independence to Colonial Peoples and Countries*, followed by the U. N. determined implementation measures, the *international law of decolonization* obviously aimed at redressing some critical aspects of the defects of the colonial international law. The change concentrated, on the political and external aspects of independence. The substantive components of the identity of the new international *personae* emerging through the decolonization process have remained somewhat fixed by the efficient architecture of the colonial treaty law. Whether under contemporary international law such law is valid or not is not beyond dispute.

4.0 CONCLUSION

For a good understanding of the sources of International law, cognizance must be taken of the fact that treaties and Conventions can be seen as subjects of international law. However, for the treaties to be recognized as law-making treaties, they must be universally accepted. Also, customary rules, general principles of law, judicial decisions and writings of legal luminaries are all veritable sources of International law. In this unit, we have examined the various sources of modern International Law and the nature of International treaties.

In addition, we have taken a look at the importance and relevance of international law on the modern day African society, arriving at the position that Africa has not fully benefited from the supposed comfort that international law is expected to provide. The political history of Africa since it entered into contact with the West has been dominated by extreme predicaments- occupation, colonialism, imperialism, etc. It is also a unique trait of the continent that the same condition prevails today with worse intensity. The failure of international law in relation to Africa has exogenous causes and conditions. It is a function of the nature of African conquest and colonization, of slavery, and of the colonial apportionment agreed at the Berlin Conference table. From those exogenous factors derive precise fixtures of Africa's standing in postwar world politics. It remains the economic plundering by the metropolis in the pre-decolonization years, the political suppression and master mindedness of the formation of autochthonous elites in the pre-decolonization years, the political suppression in the decolonization and post decolonization years: decolonization without democracy, the establishment of apartheid with initial and protracted Western acquiescence. The failure of international law is caused also by endogenous structural conditions: the rules are flawed. The flaws are procedural, in that the rules fall short of meeting established operating criteria, and established operating criteria do not produce adequate rules. The flaws are also substantive: the rules are not legitimate, they are unjust, as they do not meet the yearnings of the society. The flaws of the rules are also teleological: the outcomes of the application of those rules are manifestly inconsistent with system principles, and those outcomes are also contrary to the system's functional goals (certainty and

predictability, efficiency, effectiveness, and justice).

Finally, we must have observed some similarities in the sources of international law in both pre-colonial Africa and in modern times. However, the nature of the source is more flexible in the former period than the latter. Perhaps more importantly, it should be noted that the modern African society has been short-changed in the present nature of international law, having been under colonial rule during the birth of modern international law.

5.0 SUMMARY

This unit centred on sources of modern international law, and distinguished the pre-colonial from modern times.

SELF ASSESSMENT EXERCISES

1. What are the various sources of Modern International Law?
2. What obligations must be fulfilled before a General Principle of Law can be accepted as a source of International Law?

6.0 TUTOR-MARKED ASSIGNMENT

1. What are the various sources of modern International Law?
2. What do you understand by a Law-making Treaty?

7/0 REFERENCES/FURTHER READINGS

J. Brierly, The Law of Nations: An Introduction to International Law of Peace, Oxford, Clarendon Press, 1949.

G. Finch, The Sources of Modern International Law, NY, William Hein and Co. Inc., 2000.

MODULE 3

UNIT 1 CLASSICAL WRITERS ON INTERNATIONAL LAW

CONTENTS

1.0 INTRODUCTION

In spite of Africa's claim as the purveyor of modern civilization, the records of the historical r\trajectories of the continent have been untraceable. Undoubtedly, there would have been great scholars, writers,

lawyers, and son on, but it has become impossible to track their contributions to the growth and development of the African continent. Akinjide contends that: “Since their civilization knew the art of writing, almost entirely Arabic letters, there must have been some interesting treaties now lost to us”. Thus today, there exists no other choice than to appreciate the contributions of classical writers from outside of Africa to international law and diplomacy, and this forms the subject of this unit.

2.0 OBJECTIVES

After you have studied this study unit, you should be able to:

familiarize ourselves with contributors to the development of International Law
get acquainted with the processes of development of International Law
understand the relationship between International Law and other disciplines
capture the whole essence on International Law

3.0 MAIN CONTENT

3.1 Classical Writers

Some personalities are reputed to have contributed to the development of most disciplines that we study in contemporary times. These include the sciences, philosophy, religion, law, management, etc. Historians have done well to record the contributions of personalities in the development of such courses. This explains why we often read of, for instance, Socrates’ contribution to philosophy, Newton’s ideas on physics, Aristotle, Pythagoras, Oedipus, etc. In the same way, a handful of scholars made indelible marks on the development of International Law, but we have, however, isolated four based on the broad coverage of their writings on international law. Unfortunately, there is no documented history of pre-colonial African legends who contributed to the discipline. This does not in any way detach from the quality of the contribution of these Europeans, moreover, since the development of modern international law is easily traceable to Europe.

Brierly's account (19: 45) of these contributors identified the initial confusion that had predated the commencement of international law as a discipline. International Law emerged as a separate course of study in the latter part of the sixteenth century. Prior to this period, writers have mixed issues relating to modern international law, especially with relevance to war and diplomacy, but did not find it expedient to differentiate the extraneous variables from the domestic ones. Furthermore, the legal aspect was intertwined with both the theological and ethical standards. Indeed, Francisco de Vitoria, who was a professor of theology at Salamanca from 1526 to 1546 made quite remarkable contribution during this epoch. His work, *Reflectiones theological*, published after his death was an admixture of theology and international law. However, the person that made the first major departure from the trend but whose work was not immediately recognized was Allmerica Gentile. He was known as Gentiles, a professor of civil law in Oxford University, who wrote *De jure belli*, published in 1598. His distinctive contribution was in the delineation of international law from ethics and theology, and its treatment as a branch of jurisprudence. However, he was only able to pave the way for a new thinking for other determined scholars to follow.

3.1.1 Hugo Grotius

Grotius was born in South Holland in 1583 and lived for approximately sixty-two years. At age sixteen, he obtained a doctor of law degree. When he was twenty-four, he became an advocate-general for Holland and Zeeland, an historian, theologian and a poet. He participated greatly in political and public affairs of his place of birth- Holland, eventually became an Ambassador of Sweden at the French Court.

His greatest gifts to mankind are contained in his two publications on international law. These are; *De jure praedae* in 1604 and *De jure belli ac pacis* in 1625. His works touched on interstate commerce, jurisdiction, wars, etc. The former being a reaction to the claim of a Portuguese ship seized by the Dutch East India Company. Overtime, he had built a reputation for himself and his scholarly contributions were usually easily appreciated. A contributory factor to his prominence, which impacts

greatly on the acceptability of his writings, was his Dutch origin. Holland at this time had become a leading country in Europe.

On wars, Hugo Grotius said: 'I saw prevailing throughout the Christian world a license in making war of which even barbarous nations should be ashamed; men resorting to arms for trivial or for no reasons at all, and arms were once taken up no reverence left for divine or human law, exactly as if a single edict had released a madness driving men to all kinds of crime'.

On justice, He wrote:

> 'Justice is the highest utility, and merely on that ground neither a state nor the community of states can be preserved without it. But it is also more than utility, because it is part of the true social nature of man, and that is its real title to observance by him'.

In applying the above principle to the conduct of war, he contended that;

> 'It is so far from being right to admit, as some imagine, that in war all rights cease, that war ought never to be undertaken except to obtain a right; nor, when undertaken, ought it to be carried on except within the bounds of right and good faith… Between enemies those laws which nature dictates or the consent of nations institutes are binding'.

He defined natural law as;

> 'the dictate of right reason, indicating that an act, from its agreement or disagreement with the rational and social nature of man, has in it moral turpitude or moral necessity, and consequently that such an act is either forbidden or commanded by God, the author of nature'.

In reality, Grotius based international law on natural law, which for him, embraces civil and even divine law. In explained that each society naturally chooses its own form of government, but all nations are subject

to the same basic or natural law and as natural law is founded in divine wisdom: there cannot be conflict.

By and large, his writings greatly impacted in the contents of modern international law. Most of the contentious issues he raised were picked up and fine tuned by his successors, in order to meet the challenges of the times. Specifically, his insistence that the open sea cannot be subjected to the sovereignty of any state still holds much appeal today, 'and many of the temperament of war that he suggested have been incorporated into international law'. Indeed, he left a worthwhile legacy.

3.1.2 Richard Zouche

Richard Zouche was born at Anstey, Wiltshire, 1590 and educated at Winchester and afterwards at the University of Oxford, where he became a fellow of New College in 1609. He was admitted at Doctor's Commons in January 1618, and was appointed regius professor of law at Oxford in 1620, principal of St Alban Hall and chancellor of the diocese of Oxford in 1641 he was made judge of the High Court of Admiralty.

Before he died in March 1, 1661, Zouche wrote extensively on law related issues, and his work on international law conferred immense prominence on him. The work titled- *jut et judicium feciale, sive jus inter gentes*, was published in 1650 and its impact reverberated throughout the globe. It became known as 'the first manual of international law' being characteristically detailed on every aspect of international law.

Though, accepting the profundity of the law of nature as one of the foundations of international law, the author displayed apparent preference for deducing international law from precedents of state practice. This preference earned him the title of 'precursor' of the positive school of thought on international law. This refers to international lawyers that regard the practices of state as the only source of international law.

His contribution to the development of international law as a field of academic study is invaluable and this can be gleaned from his distinction between the law of peace and the law of war, as well as his perception of law as an abnormal relation between states.

3.1.3 Emerich de Vattel

He lived between 1714 and 1769. He was a Swiss national that served in the diplomatic service of Saxony. He was a bridge between diplomacy and international law, having intended his law-informed writing as a manual for men of affairs. His work, *Le Droit des gens* published in 1758, though not original, being a replication of other thinkers, was by no means a great influence on the development of international law.

He initiated the doctrine of legal equality of state into the lexicon of modern international law. In his view, the state of nature is the appropriate doctrine for the understanding of interstate relations. This is because, 'nations being composed of men naturally free and independent, and who before the establishment of civil societies lived together in the state of nature; nations or sovereign states must be regarded as so many free persons living together in the state of nature'. To buttress this standpoint, 'since men are naturally equal, so are states'.

He emphasized that, the law of nations in its origin is merely the law of nature applied to nations, it is unchangeable, and treaties and customs that are contrary to it are unlawful. Some form of flexibility could however be observed in his assertions. This is derived from his conclusion that natural law itself establishes the freedom and independence of every state, and therefore each is the sole judge of its own actions and accountable for its own conscience. Other states may make requests for a reformation of its conduct, which might in fact be much less. He refers to this as the voluntary law of nations, because there is a presumption of acceptance by states as against other elements of natural law, which he termed as necessary law.

He subscribed to some specific beliefs which could be regarded as advancements on the thinking of his predecessors. For instance, he advocates for a more humane view of the rights of war. Furthermore, he disagreed with the patrimonial view of the nature of government advanced by Grotius. For him, 'this pretended right of ownership attributed to princes is a chimera begotten of an abuse of the laws relating to the inheritances of individuals. The state is not, and cannot be, a

patrimony, since a patrimony exists for the good of the owner, whereas the prince is only appointed for the good of the state'.

Specifically, Brierly's contributions to the development of international law is his postulate that:

> by necessary law a state has a duty to maintain freedom of commerce, because this is for the advantage of the human race; but by the voluntary law it may impose such restrictions upon it as suits its convenience, for its duties to itself are more important than its duties to others. By necessary law, again, there are only three lawful causes of war, self-defence, redress of injury, and punishment of offences; but by voluntary law we must always assume that each side has a lawful cause for going to war, 'for the princes may have had wise and just reasons for acting thus, and that is sufficient at the tribunal of the voluntary law of nations'.

3.1.4 Samuel Pufendorf

He was a professor of international law at Heidelberg in Germany, and later at Lund in Sweden. He is generally regarded as the founder of the 'naturalist' school of thought in international law. This recognition was derived from his publication of *De jure naturae et gentium* in 1672. His thinking was skewed in favour of a non-binding force on the behavioural patterns of nations, having their origin from nature. There appeared a linkage with Grotius' thinking, but yet had little influence on his system; for his law of nature was a law of reason directing men at all times, whether organized in political societies or not, and which in this sense has the conception of validity.

Samuel Pufendorf was born in Saxony on January 8, 1632 to a Lutheran clergyman. He studied at Leipzig and Jena and held the first modern professorship in natural law, at the University of Heidelberg. Pufendorf was successively professor of natural law at Lund in Sweden and Swedish historiographer royal. He ended his career as Prussian court historian and died in Berlin in 1694. In addition to fundamental works in Protestant

natural law, much admired by Locke, being a jurist, Pufendorf contributed importantly to German constitutional theory and wrote major historical works.

Educated at Grimma, he was sent to study theology at the University of Leipzig. Its narrow and dogmatic teaching was repugnant to him, and he soon abandoned it for the study of public law. He relocated to Jena, where he formed an intimate friendship with Erhard Weigel, the mathematician, whose influence helped to develop his remarkable independence of character. Pufendorf left Jena in 1637 and became a tutor in the family of Petrus Julius Coyet, one of the resident ministers of King Charles X of Sweden, at Copenhagen.

At this time Charles Gustavus was endeavouring to impose an unwanted alliance on Denmark, and in the middle of the negotiations he opened hostilities. The anger of the Danes was turned against the envoys of the Swedish sovereign; Coyet succeeded in escaping, but the second minister, Steno Bjelke, and the rest of the staff were arrested and thrown into prison. Pufendorf shared this misfortune, and was held in captivity for eight months. He occupied himself in meditating upon what he had read in the works of Hugo Grotius and Thomas Hobbes. He mentally constructed a system of universal law; and, when, at the end of his captivity, he accompanied his pupils, the sons of Coyet, to the University of Leiden, he was enabled to publish, in 1661, the fruits of his reflections under the title of *Elementa jurisprudentiae universalis libri duo*. The work was dedicated to Charles Louis, elector palatine, who created for Pufendorf at Heidelberg a new chair - that of the law of nature and nations, the first of the kind in the world. In 1667 he wrote, with the assent of the elector palatine, a tract, *De statu imperii germanici liber unus*. Published under the cover of a pseudonym at Geneva in 1667, it was supposed to be addressed by a gentleman of Verona, Severinus de Monzambano, to his brother Laelius. The pamphlet caused a sensation. Its author directly challenged the organization of the Holy Roman Empire, denounced in the strongest terms the faults of the house of Austria, and attacked the politics of the ecclesiastical princes. Before Pufendorf, Philipp Bogislaw von Chemnitz, publicist and soldier, had written under the pseudonym of "Hippolytus a Lapide," *De ratione status in imperio nostro romano-germanico*. Inimical, like Pufendorf, to the house of

Austria, Chemnitz had gone so far as to make an appeal to France and Sweden. Pufendorf, on the contrary, rejected all idea of foreign intervention, and advocated that of national initiative. In 1670 Pufendorf was called to the university of Lund. His sojourn there was fruitful. In 1672 appeared the *De jure naturae et gentium libri octo*, and in 1675 a résumé of it under the title of *De officio hominis et civis*.

In the *De jure naturae et gentium*, Pufendorf took up in great measure the theories of Grotius and sought to complete them by means of the doctrines of Hobbes and of his own ideas. His first important point was that natural law does not extend beyond the limits of this life and that it confines itself to regulating external acts. He combated Hobbes's conception of the state of nature and concluded that the state of nature is not one of war but of peace. But this peace is feeble and insecure, and if something else does not come to its aid it can do very little for the preservation of mankind. As regards public law Pufendorf, while recognizing in the state (*civitas*) a moral person (*persona moralis*), teaches that the will of the state is but the sum of the individual wills that constitute it, and that this association explains the state. In this *a priori* conception, in which he scarcely gives proof of historical insight, he shows himself as one of the precursors of Rousseau and of the *Contrat social*. Pufendorf powerfully defends the idea that international law is not restricted to Christendom, but constitutes a common bond between all nations because all nations form part of humanity.

In 1677 Pufendorf was called to Stockholm as historiographer royal. To this new period belong *Einleitung zur Historie der vornehmsten Reiche und Staaten*, also the *Commentarium de rebus suecicis libri XXVI., ab expeditione Gustavi Adolphi regis in Germaniam ad abdicationem usque Christinae* and *De rebus a Carolo Gustavo gestis*. In his historical works Pufendorf is very dry; but he professes a great respect for truth and generally draws from archives. In his *De habitu religionis christianae ad vitam civilem* he traces the limits between ecclesiastical and civil power. This work propounded for the first time the so-called "collegial" theory of church government (*Kollegialsystem*), which, developed later by the learned Lutheran theologian Christoph Mathkus Pfaff, formed the basis of the relations of church and state in Germany and more especially in Prussia.

This theory makes a fundamental distinction between the supreme jurisdiction in ecclesiastical matters (*Kirchenhoheit or jus circa sacra*), which it conceives as inherent in the power of the state in respect of every religious communion, and the ecclesiastical power (*Kirchengewalt or jus in sacra*) inherent in the church, but in some cases vested in the state by tacit or expressed consent of the ecclesiastical body. The theory was of importance because, by distinguishing church from state while preserving the essential supremacy of the latter, it prepared the way for the principle of toleration. It was put into practice to a certain extent in Prussia in the 18th century; but it was not till the political changes of the 19th century led to a great mixture of confessions under the various state governments that it found universal acceptance in Germany. The theory, of course, has found no acceptance in the Roman Catholic Church, but it none the less made it possible for the Protestant governments to make a working compromise with Rome in respect of the Catholic Church established in their states.

Pufendorf was at once philosopher, lawyer, economist, historian and statesman. His influence was considerable, and he has left a profound impression on thought, and not on that of Germany alone. But the value of his work was much under-estimated by posterity. Much of the responsibility for this injustice rested with Leibniz, who would never recognize the incontestable greatness of one who was constantly his adversary, and whom he dismissed as "*vir parum jurisconsultus et minime philosophus*." It was on the subject of the pamphlet of Severinus de Monzambano that their quarrel began. The conservative and timid Leibniz was beaten on the battlefield of politics and public law, and the aggressive spirit of Pufendorf aggravated yet more the dispute, and so widened the division. From that time the two writers could never meet on a common subject without attacking each other.

4.0 CONCLUSION

This unit has exposed us to the beliefs of and inspirations of classical scholars in the field of international law. Through this medium, we have become familiar with the specific area of contribution by each of the scholars.

5.0 SUMMARY

In this unit, there has been examined the relationship between international law and other disciplines. It also discussed the developmental process, the various scholars and theories they proffered.

SELF ASSESSMENT EXERCISES

1. Briefly differentiate between the contributions of Hugo Grotius and Samuel Pufendorf to the development of modern international law.

6.0 TUTOR MARKED ASSIGNMENT

1. 'Without people, international law would not have been in existence'. Comprehensively discuss the contributions of all the individuals you were exposed to in class, to the development of international law.

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UNIT 2 SETTLEMENT OF INTERNATIONAL DISPUTES IN PRE-COLONIAL AFRICA AND MODERN TIMES

CONTENTS

1.0 INTRODUCTION

Diplomacy can be regarded as the application of peaceful conduct to inter-state relations. As we are aware, wars and conflicts have always been part of inter-state relationships. In pre-colonial Africa, there were wars of conquest, attrition, annexation, etc. However, they have never had to last for eternity. Wars are ended when any or both of the belligerents call for truce. The call for truce is preceded by the need to enhance the diplomatic channels, so as to mitigate the possibility of reoccurrence and pacify the warring factions. The aim of diplomacy was therefore to carry out the policy of a government by means of negotiation; its achievements are usually expressed in either informal understanding or specific treaties. The solemnity with which treaties were entered into made them sacred and binding, whether at the local or external level. Their importance was usually emphasized with the swearing of oaths, which were formidable undertaking to observe the covenant or treaty.

It would be appropriate at this juncture to elaborate on treaties as a diplomatic means of settling dispute in pre-colonial Africa. Smith's thesis (1989:18) submits: "The majority of the treaties about which there is evidence were designed to conclude hostilities between states. An early treaty of the first kind was that concluded between the Hausa states of Kano and Katsina, c. 1650, to end a long series of wars; another was the boundary agreement in the late sixteenth century intended to end Idris Aloma's Kanem wars and which, although apparently ineffective, was perhaps the first written border agreement in the history of the Central Sudan. The peace treaties of 1730 and 1748 between Oyo and Dahomey (the second concluded through the good offices of the director of the Portuguese trading fort at Whyday) are well-known; they aimed at a comprehensive settlement and laid down the annual tribute to be paid to Oyo by Dahomey.

This format of dispute settlement has been improved upon as a result of development in the international system. For instance, unlike the prevalence of state actors in the pre-colonial era, international actors now participate in every area of the globe – dispute, settlement inclusive. The major remarkable difference in dispute settlement in the early days is not the means of settlement, but rather, the actors involved and the method.

The creation of the Court represented the culmination of a long development of methods for the pacific settlement of international disputes, the origin of which can be said to go back to classical times. Article 33 of the United Nations Charter lists the following methods for the pacific settlement of disputes between States: negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, and resort to regional agencies or arrangements, to which good offices should also be added. Among these methods, some involve appealing to third parties. Historically speaking, mediation and arbitration preceded judicial settlement. The former was known in ancient India and in the Islamic world, whilst numerous examples of the latter are to be found in ancient Greece, in China, among the Arabian tribes in the early Islamic world, in maritime customary law in medieval Europe and in Papal practice.

The modern history of international arbitration is, however, generally recognized as dating from the so-called Jay Treaty of 1794 between the

United States of America and Great Britain. This Treaty of Amity, Commerce and Navigation provided for the creation of three mixed commissions, composed of American and British nationals in equal numbers, whose task it would be to settle a number of outstanding questions between the two countries which it had not been possible to resolve by negotiation. Whilst it is true that these mixed commissions were not strictly speaking organs of third-party adjudication, they were intended to function to some extent as tribunals. They re-awakened interest in the process of arbitration. Throughout the 19th century, the United States and the United Kingdom had recourse to them, as did other States in Europe and the Americas.

The *Alabama Claims* arbitration in 1872 between the United Kingdom and the United States marked the start of a second, and still more decisive, phase. Under the Treaty of Washington of 1871, the United States and the United Kingdom agreed to submit to arbitration claims by the former for alleged breaches of neutrality by the latter during the American Civil War. The two countries specified certain rules governing the duties of neutral governments that were to be applied by the tribunal, which they agreed should consist of five members, to be appointed respectively by the Heads of State of the United States, the United Kingdom, Brazil, Italy and Switzerland, the last three States not being parties to the case. The arbitral tribunal ordered the United Kingdom to pay compensation, which award was duly complied with. The proceedings served as a demonstration of the effectiveness of arbitration in the settlement of a major dispute and it led during the latter years of the 19th century to developments in various directions.

The Hague Peace Conference of 1899 marked the beginning of a third phase in the modern history of international arbitration. One chief feature of the Conference was the remarkable innovation that the smaller States of Europe, some Asian States and Mexico participated. The emergence was to discuss peace and disarmament and it ended by adopting a Convention on the Pacific Settlement of International Disputes, which dealt not only with arbitration but also with other methods of pacific settlement, such as good offices and mediation.

The Permanent Court of Arbitration was established in 1900 and began operating in 1902. A few years later, in 1907, a second Hague Peace Conference, to which the States of Central and Southern America were also invited, revised the Convention and the rules governing arbitral proceedings. Some participants thought that the Conference had not gone far enough and ought not to confine itself to merely improving the machinery created in 1899. For instance, the United States Secretary of State, Elihu Root, had instructed the United States delegation to work towards the creation of a permanent tribunal composed of judges who were judicial officers and nothing else, who had no other occupation, and who would devote their entire time adjudicating over international cases by judicial methods. The United States, the United Kingdom and Germany submitted a joint proposal for a permanent court, but the Conference was unable to reach agreement upon it. It became apparent in the course of the discussions that one of the major difficulties was the acceptable way of choosing the judges. None of the proposals made could to command general support. The Conference confined itself to recommending that States should adopt a draft convention for the creation of a court of arbitral justice as soon as agreement was reached "respecting the selection of the judges and the constitution of the court". Although this court was never in fact to see the light of day, the draft convention that was to birth to it enshrined certain fundamental ideas, which some years later, were a source of inspiration for the drafting of the Statute of the PCIJ. The court of arbitral justice, "composed of judges representing the various judicial systems of the world and capable of ensuring continuity in arbitral jurisprudence" was to have had its seat at The Hague and to have had jurisdiction to entertain cases submitted to it pursuant to a general treaty or in terms of a special agreement. Provision was made for summary proceedings before a special delegation of three judges elected annually and the provisions of the convention were to be supplemented by rules to be determined by the Court itself.

Commercial Dispute

International trade and commercial disputes arise from international trade and commerce. There are disputes arising from or relating to international sale of goods; carriage of goods by sea, air or land; international financing and banking, marine insurance and provision of international

insurance services; tariff and trade restrictions under GATT and the WTO Agreement; regional economic cooperation; foreign investment; operations of MNEs; enforcement of international trade and commercial treaties; and any other matters which fall into the category of international trade and commerce. Although international trade and commercial disputes may arise from all forms of trade and commerce, most commercial disputes in fact come from the areas of international sales of goods, contracts for the carriage of goods, international banking and finance, insurance contracts, international licensing or distribution agreements, international supply of services, international construction of works and foreign investment.

International commercial and trade disputes are settled through three major means: negotiation (consultation), litigation or arbitration. Conciliation or mediation is sometimes also used. Occasionally countries resort to economic sanctions or 'trade war' which involves measures and counter-measures of an economic nature. The use of military force as a means of resolving dispute is rarely seen today. In relation to the matters of international trade disputes, the modes used in settling the disputes, could be generalized into two categories; litigation and non-litigation means. (also called Alternative Dispute Resolution or ADR).

Alternative Dispute Resolution (ADR)

Conflicts arise between two or more individuals, corporations or groups when the fulfillment of the interests, needs or goals of one side are perceived to be incompatible with the fulfillment of the interests, needs or goals of the other side. Often disputes end up in litigation and thus usually expressed in a great deal of delay. Therefore it is only natural that a more viable solution has to be found, an alternative means.

'Alternative means' refers to non-judicial methods of dispute resolution, which are alternatives to litigation. Although any methods which do not fall within the formal judicial means of dispute resolution may be regarded as alternatives to litigation, 'alternative means' generally refers to arbitration, consultation (negotiation) and conciliation (mediation). International arbitration is a commonly used alternative to litigation for settling international commercial disputes. Consultation is always a

necessary step in the settlement of a dispute. Conciliation is somewhere between arbitration and consultation, but it is conducted by a third party.

2.0 OBJECTIVES

After you have studied this study unit, you should be able to:

familiarize you with the various attempts at dispute settlements.
understand the necessity of ensuring a peaceful international environment.
understand the differences between the various forms dispute settlement.
understand the similarities between the various forms of dispute settlement

3.0 MAIN CONTENT

3.1 Negotiation (Consultation)

Negotiation means to confer with another for the purpose of arranging some matters by mutual agreement; to discuss a matter with a view to settlement or compromise. In life there is no shortage of disputes, as they happen at all level: between husband and wife, between neighbours, between employees and their employers, between developers and environmentalists, between groups within a country and between nations themselves.

There are at least three main styles of negotiation which are commonly utilized, each style in its turn giving rise to the use of appropriate strategies. These strategies are not necessarily unique to specific styles, and are capable of being used interchangeable but clearly distinguishable, each having distinct objectives; ‘competitive’, ‘co-operative’ and ‘problem-solving’. The negotiation could be carried out by another or by own representation.

3.1.1 Competitive Style of Negotiation

The courtroom litigation or adversarial model exemplifies this style resulting in the equation: total winning for one party minus the total loss for the other party equal to zero. What one party gains another must lose in a situation where resources are essentially limited and must be divided between parties. It is assumed that the parties must be in conflict and since they are presumed to be bargaining for the same scare items, negotiators assume that any solution is predicated upon division of the goods. Thus the competitive negotiator makes compromise reluctantly because it may 'weaken his position' through position loss or image loss. He tends therefore to make high initial demands, few compromises and have a generally high level of aim for him or his client.

However competitive strategies have a number of limitations. They may force parties into defensive positions, thus hinder the development of new or creative solutions. The competitive style can also lead to serious disadvantages for the competitive negotiator and his client, if the other side responds equally to this strategy, would fail to implement any decision or feel resentful towards the opposing negotiator in future negotiations. Other dangers of this approach include the possibility that in repeated encounters it will be increasingly unsuccessful, making increasing number of cases of ending up in trial.

3.1.2 The Co-Operative Style Of Negotiation

While the competitive negotiator seeks to force the opposing party to a favorable settlement, by impressing on his opponent that the opponent's case is not as strong as he had previously thought, the co-operative style encourages a negotiator to make compromise, to built trust in the other party and in turn encourage that party to also make compromise. In each negotiation, compromise is made in anticipation that the opponent will make the same and end up with a solution through compromise.

Strategies involved would be to make compromises, sharing of information and adopting behaviour which is fair and reasonable. Therefore a negotiator normally explain the reasons for his compromise and proposals; attempts to reconcile the parties' conflicting interest,

which in turn being measured against standards which both parties could agree on e.g. legal merits of the case and fairness between parties.

The advantages of the co-operative style of negotiation are as follows:

i. it tends to produce fewer breakdowns in bargaining and recourse to litigation
ii. it produces more favourable outcomes for both parties.
iii. it leaves a friendly environment where parties can once again do business again.

Co-operative style is however subject to certain difficulties in operation where the parties to the negotiation are unequal in status or power or where one party will not bargain for joint or mutual gain.

3.1.3 The Problem-Solving (or Integrative) Style of Negotiation

A style also called 'Principle negotiation', a problem solving approach that can be used in any negotiation situation. It is not a compromise based approach but seeks to maximize the parties' potential for problem solving, in order to increase the joint benefit and expand the quality of resources. For example in the commercial dispute an action of breach of contract may involve not just monetary compensation for the cost of obtaining substitute goods but also issues relating to loss of future business and business reputation. Through negotiation they would both discover different needs and objectives, one party could increase its option in a negotiation without necessarily reducing those of the other side. This is in contrast to the zero-sum model where gain for one party must necessarily be a loss for the other. Another example over commercial disputes is where one party wishes to make deferred payment over time, because of lack of funds, while the other party may be willing to accept staggered payment, for tax reasons.

As part of the means for settling International commercial deputes, settlement through negotiation offers a number of potential benefits to the parties involved. It may avoid the delays, economic cost and uncertainty associated with trial and the 'winner takes all' nature of the legal system. Furthermore, negotiation reduces the pressure on the court system and

thus benefiting those parties whose cases do require litigation. Under the international trade transactions where parties reside in different countries with different legal systems and trust and reputation are very important elements, problem-solving offers the best solutions for business continuity.

3.1.4 Mediation

This is when disputing parties appoint a skilled third party – the mediator – to assist them in finding a mutually acceptable solution to their differences. Mediation is now recognized as an alternative to adjudication and a much cheaper method for achieving a lasting resolution of all kinds of inter-personal, commercial, industrial and community disputes.

Most people who have had experience of litigious persons know that very often in the inception of the dispute the matter might be very easily settled if some mutual friend could bring them together and talk the matter over. Certain officers may be appointed or designated mediators to whom parties to a dispute may have recourse for settlement. They may be persons who from their wisdom and experience of the world command the confidence of the persons who are likely to litigate. In most contemporary industrialized Asian countries, mediation continues to be the predominant means of dispute resolution. For example, in Japan, Taiwan and China, mediation is regarded as the best process, and is often directly supervised by state appointed officials or the courts.

In recent years in the industrially developed Western nations of Europe, North America and Australasia, an alternative and truly facilitative, consensual and non-judgmental mediation process has emerged which is based upon the principle of agreement and self-determination of the parties. This new model of Mediation is now widely recognised by many individual and corporations as not only cheaper alternatives to litigation but also as providing a less risky and more effective means for achieving a truly final resolution of their disputes. The principal characteristics of mediation are that it is accessible, voluntary, confidential and facilitative.

3.2 Conciliation

The conciliator in conciliation functions differently from mediator. A conciliator plays a more pushy role. This is because a conciliator would ask the parties to the dispute if they are prepared to try and reach an amicable settlement. If he gets a positive response, the conciliator would hold a meeting with the parties to outline their point of view, while he listens, takes down notes and if needed asks questions. When the session is over the conciliator would then talk over the issues with each of the parties and they would invariably agree to settle. A solution would then be proposed to the parties. The conciliator's role can be more interfering in that he/she may draw up the terms of the agreement reflecting a fair compromise of the dispute.

3.3 Good Offices

It is the intercession of a third party (a state, an international organization, or a private individual) in a dispute between parties that are at war or at any rate are not on speaking terms. The aim of good offices is to bring the parties into direct negotiations for the settlement of their disputes. Any party to a dispute may ask for good offices. Nobody has a duty to offer good offices, even when asked to do so. The offer is always advisory, is never binding and cannot be considered an unfriendly act. Presumably for these reasons, the dispute (or war) continues unaffected in any way by the offer. Some parties or States find the good office service as "meddling' in other people's affair.

Good offices, conciliation and mediation are procedures that are undertaken voluntarily if the parties to the dispute so agree. Good offices, conciliation or mediation may be requested at any time by any party to a dispute. They may begin at any time and be terminated at any time. Once procedures for good offices, conciliation or mediation are terminated, a complaining party may then proceed with a request for the establishment of a panel.

4.0 CONCLUSION

From this unit, we have been able to garner that in spite of the seeming anarchic nature of the international system, actors within make efforts in peaceful co-existence. The numerous options listed above, are not exhaustive; they are a pointer to the yearning of the spirit of accommodation and tolerance that exist in the system. Behind all of the façade, are more effective bilateral options, usually being explored to step the tide of disagreements and conflicts between or among actors on the international arena.

5.0 SUMMARY

We have discussed various ways of settling conflicts in international law in both pre-colonial and modern Africa. In particular, we made references to Alternative Dispute Resolution, Arbitration, Negotiations and their varieties, mediation, conciliation, etc.

SELF ASSESSMENT EXERCISES

1. Explain the term, ‘Alternative Dispute Resolution’
2. When would a third-party intervention be necessary in resolving an international dispute?

6.0 TUTOR-MARKED ASSIGNMENT

1. Comprehensively explain the different forms of settlement mechanisms open to actors on the international arena.

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UNIT 3 RECOGNITION IN INTERNATIONAL LAW: PRE-COLONIAL AND MODERN AFRICA

CONTENTS

1.0 INTRODUCTION

Recognition is a process whereby certain facts are accepted and endowed with a certain legal status, such as statehood, sovereignty over newly acquired territory, or the international effects of the grant of nationality. The process of recognizing as a state a new entity that conforms to the criteria of statehood is a political one, each country deciding what criteria it would consider before bestowing the status of recognition on the aspiring entity. There are basically two variants of recognition- the recognition of a state can be either explicit or implicit (tacit), "de jure" or "de facto". It is customary for one state to recognize another by means of an explicit formal declaration, e.g. vis-à-vis the government of the new state. Diplomatic recognition- is an act by which one state acknowledges an act or status of another state or government, thereby according it a degree of legitimacy and expressing its intent to bring into force the legal consequences of recognition. Things which can be recognized include: belligerent rights of a party in a conflict, the occupation or annexation of territory, or maritime flags. Most importantly a state can recognize another state or the government of a state. Recognition can be accorded de facto or de jure.

The case of Democratic Republic of Congo (former Zaire) gives a robust interpretation of the complexities involved in the recognition of states. The government of Zaire changed on May 16, 1997. President Mobutu Sese Seko, dictator since 1965 of the third largest state in Africa, had faced prolonged attack by domestic opponents, and his position in the country had become precarious months before he finally relinquished power. Indeed, the entire domestic governmental order in Zaire went through a spell of uncertainty as substantial areas either fell to the rebel forces of Laurent Kabila or saw the disappearance of organized government altogether. When the anti-Mobutu army at last securely installed itself, foreign ministries which had in recent years foresworn issuing statements of recognition toward new governments formally acknowledged both the new Kabila regime and its decision to change the name of the country to "Democratic Republic of Congo". Numerous factors over the last twenty years indicated that recognition of governments was falling into desuetude, but international response to the change of government in Zaire/Congo suggests that the phenomenon may yet hold a place in law and statecraft.

2.0 OBJECTIVES

After you have studied this study unit, you should be able to:

get acquainted with one of the technicalities defining interstate relations.
understand the distinction between the recognition of government and recognition of states.
learn the internationally acceptable characteristics of statehood.
understand the theoretical perspectives on recognition.

3.0 MAIN CONTENT

3.1 Types of Recognition

De Facto Recognition- A "de facto" recognition is derived from actions and contacts between two states if they enter into a relationship on a political level. The following acts are considered as acts of this nature:

diplomatic activities by representatives of the states involved in connection with tasks between states, relationships etc.;
statements of a state on politically relevant issues and problems of the other state such as statement on mutual delimitation;
recognition and official endorsement with a visa of passports issued by the other state as traveling documents.

In addition, the opinions of internationally renowned experts on international law are considered a justification of the claim to the existence of a state - at least as a fundamental statement. The claim to the existence of a state might be a unilateral act at first - on the basis of such an expert opinion; acts in terms of the above-mentioned examples, however, also turn this claim into a "de facto" recognition.

De Jure recognition- "De jure" recognition, in contrast, is a mutual treaty such as between two states. This is an additional treaty to international regulations which already exist on an international level, are thus applicable anyhow and draw consequences derived from international law automatically.

Apart from this determination of special agreements between contractual parties (states), the execution of this formal act offers a series of advantages which also primarily serve the purpose of the self-portrayal of certain personalities. Moreover, special agreements also include the assumption of additional obligations which could potentially rather delimit a party's action potential.

3.2 Recognition of Government

This implies recognition of the state being governed, but not vice versa. Recognition of states de facto, rather than de jure is rare, and questions center around recognition of governments. De jure recognition is of course stronger, while de facto recognition is more tentative and more connected with effective control of the recognized state over its territory, as when the United Kingdom recognized the Soviet Union de facto in 1921, but de jure only in 1924. Another example is the state of Israel in 1948, whose government was immediately recognized de facto by the

United States (and later Britain), and "one-upped" three days later by Soviet Union de jure recognition. Recognition is not necessary when a government changes in a normal, constitutional way, but is in the case of a coup de' tat or revolution, and can become particularly important for the permanence of the new government then. For instance, the Taliban government of Afghanistan was recognized by only three countries, while far more recognized the government of ousted President Burhanuddin Rabbani, and it lasted only from 1996 to 2001.

Recognition can be implied by other acts, like the visit of the Head of State, or the signing of a bilateral treaty. If implicit recognition is possible, a state may feel the need to explicitly proclaim that its acts do not constitute diplomatic recognition, as when the United States commenced its dialogue with the Palestine Liberation Organization in 1988.

The doctrine of non-recognition of illegal or immoral factual situations is called the Stimson Doctrine, and has become more important since the Second World War, especially in the United Nations as a method of ensuring compliance with international law, for instance in the case of Rhodesia in 1965. Withdrawal of recognition is an even more severe act of disapproval of another state than the breaking of diplomatic relations. Another example is the United States non-recognition of the WWII annexation of the Baltic States by the Soviet Union. It continued to recognize the independence of these three states until surprisingly with the collapse of communism in the Soviet Union, these states once more came into being in fact, rather than just on paper.

The formal recognition of a state in the context of international law involves a legally applicable declaration of the intention of one state to recognise another entity as a "state" as defined by international law. Such recognition amounts to a unilateral declaration, since the decision whether or not to recognise another state is in principle a matter for the free appreciation of each individual state. The recognition of one state by another is in practice particularly important in cases when there is doubt as to the legal existence of a (new) state, e.g. following a splitting off of a part of a territory (secession) or the collapse or partitioning of an existing state.

Although the end of the main period of decolonization considerably reduced the need for and importance of the recognition of new states, it again became an issue in the 1990s with the breakup of the Soviet Union and of the Socialist Federal Republic of Yugoslavia, two events which spawned a host of new states. Today the community of nations numbers a total of one hundred and ninety states recognised in accordance with international law.

The formal recognition of a state presupposes that the state in question truly meets the requirements of international law in the matter of statehood. The prevailing doctrine imposes three requirements: a national territory, a citizenry and a state authority, i.e. an internally and externally effective and independent government embodying the sovereignty of the state. The sole criterion for assessing the quality of statehood in this context is the actual situation on the ground ("principle of effectiveness").

The recognition of a state before these conditions are met (premature recognition) is contrary to international law and devoid of legal effect. The state that prematurely recognises another state violates the principle of non-interference in the internal affairs of another state (Art. 2, Subsection 4 of the UN Charter).

The act of recognising another state today has the nature of a declaration: through recognition a state declares that in its view the country it is recognising is a "state" within the meaning of international law, and should thus equally be considered as subject to that body of law. Whether or not it is the act of recognition itself that alone confers statehood (so-called constituent effect of recognition) is a question that has still not been resolved in terms of jurisprudence. In practice the existence of a state is not however dependent on any such prior recognition. The determining factor is solely the actual and concrete presence of the three concomitant characteristics of statehood, i.e. a national territory, a citizenry and a state authority.

In more recent state practice however "recognition" has often been dependent on the fulfilment of certain conditions such as observance of

the UN Charter or the respect paid to such matters as the rule of law, democratic principles and human rights. These are not criteria for recognition in international law however, but rather preconditions of a political nature that have been formulated with a view to the commencement of relations between states.

In a political sense, recognition can be somewhat ambiguous. How else does one describe the recognition of a government, while that of the state is withheld? In recognising a government a state grants the authority to a group of persons to act as the organ of the state in question and to represent it in relations governed by international law. As already stated, the only requirement international law makes for the recognition of a government is its effective exercise of sovereign authority -above all the control over a substantial part of the territory and control of the administrative apparatus. Exceptions are made in certain cases such as in a civil war, when a legitimate government may partially or entirely lose the power to rule over the state and may even be forced to take refuge abroad (government in exile). In practice the evicted government will to some extent continue to be recognised as the legitimate government (so-called "de jure" government), even though it has lost the effective control of the state (at least temporarily) and this control is now being exercised in situ by a different, new government (so-called "de facto" government).

A state that recognises a new government and maintains normal diplomatic relations with it is only taking a position on the question of the new government's effectiveness, not its legitimacy as such. The case of Switzerland is one whereby the state detracts from getting embroiled in the controversy of state/government recognition. It has been Swiss practice since the end of the Second World War to recognise in principle only states, and not governments. When the government of a country changes, Switzerland as a matter of principle does not agree to explicitly recognise the new government, limiting itself as a rule to an uninterrupted continuation of relations with the state in question and thus with the new government. The Swiss practice is thus above all based on the principle of effectiveness.

3.3 Views on Recognition

Governments are not international legal persons "in their own right" but the "human agents" responsible for conducting the affairs of states on the international plane. This distinguishes "government" from “state". The state is an international legal person, the formation and disappearance of which directly implicates international law. How a state is formed and the relationship of recognition to this process have generated quite enormous debate among scholars.

The role of recognition in the conduct of inter-state relations cannot be overemphasized. The corpus of traditional international law scholarship contains two conflicting orientations toward this issue: the "constitutive" view, which holds that an entity's very legal existence as part of the international system is "constituted" by the recognition of the other entities making up that system; and the "declaratory" view, which holds that the international system encompasses and renders rights and responsibilities to such entities that exist as a matter of fact, and that, therefore, recognition by member states of new entities is nothing more than a "declaration" of an already existing legal fact that, in turn, implies an already existing legal relationship. The pure constitutive view is typically associated with the positivist conception that law among nations arises exclusively as the product of sovereign consent. No new state need have any relation to another unless it has accepted the other into the community of nations. The declaratory view, to the contrary, appears to comport better with a natural law conception of the international system as automatically entailing rights and responsibilities for whatever entities present themselves in fact. It draws a distinction between the political relations among nations, which each sovereign state is free to order as it sees fit, and the irreducible substructure of legal relations among them, which requires respect for the sovereignty of existing states. If recognition is to be constitutive, the controlling opinion must be that of some substantial preponderance of states, not of the individual state. International law aspires to assure at least some minimal global order, not merely order among such states as decided freely to acknowledge one another's sovereign rights.

The declaratist position, after all, traditionally entailed the legal acknowledgement of which is to say, imputation of right to existing fact, without regard for the manner in which such fact came into existence. The

establishment of a meaningful international law of peace and security requires a collective denial of recognition of the fruits of illegal acts; otherwise, violations of international law are permitted to create rights in international law. If such an eventuality were allowed, the resulting loss of integrity of the pre-colonial African states would erode whatever influence international law may have had on the behavior of the states, since one finds no benefit in respecting the system's demands when others are rewarded for defying them. Thus, in order for there to be the necessary unity of legal and factual relationships, brute facts must be permitted to create and destroy legal relationships, but not limitlessly. Neither the declaratory nor the constitutive position, as traditionally articulated, lays the groundwork for dealing with this fundamental tension.

The declaratory theory assumes that territorial entities can be by virtue of their mere existence readily be classified as having the one particular legal status, and thus, in a way, confuses "fact" with "law". The constitutive theory, although it draws attention to the need for cognition, or identification, of the subjects of international law, and leaves open the possibility of taking into account relevant legal principles not based on "fact", incorrectly identifies that cognition with diplomatic recognition, and fails to consider the possibility that identification of new subjects may be achieved by way of general rules, rather than on an ad hoc, discretionary basis. The strict declaratory position accords with the strict constitutive view in regarding recognition as a discretionary political act, but denies that such political recognition by states individually or collectively could have legal effect. By this logic, a declaration of recognition is dispensable altogether; it is reduced either to a formality, or to a gesture of assurance of enjoyment of already existing rights, or to a declaration of willingness to enter into diplomatic relations. Whether a state or government exists or not is a separate question governed solely by the facts. Yet, ascertainment of an entity's legal status as a state (or government) *vel non* requires the prior determination of difficult circumstances of fact and law, and there must be an entity to perform that task. In the absence of a preferable solution, such as the setting up of an impartial international organ to perform that function, the latter must have been fulfilled by states in existence.

4.0 CONCLUSION

Though the issue of the recognition of states in international law is a very serious matter, it has been difficult to have a clear-cut criteria or globally acceptable opinion on the vexed issue of state recognition. Neither the constitutive or declaratory views have been without its criticisms. However, we should note that for a state to be globally accepted as a legal entity it requires the recognition of the key multilateral bodies like the United Nations, the Organization of American States or the African Union (AU) as the case maybe.

We have just discussed the issue of state recognition in international law. The challenge is to be able to apply this for instance, to the self determination struggles of the various nationalists movements in the world, and especially in Africa.

5.0 SUMMARY

The focus of this unit has been the concept of state and its recognition in international law in pre-colonial as well as modern Africa.

SELF ASSESSMENT EXERCISE

1. Discuss the ‘Constitutive’ and ‘Declaratory’ Views on state recognition in International law.

6.0 TUTOR-MARKED ASSIGNMENT

1. Outline the terms of defacto recognition.
2. Distinguish between defacto and dejure recognition.
3. Explain the differences between recognition of government and recognition of state.
4. Attempt a critique of the Constitutive and Declaratory theories of the recognition of states in International Law.

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UNIT 4 JURISDICTION OF STATES IN INTERNATIONAL LAW

CONTENTS

1.0 INTRODUCTION

The traditional focus in international relations is that which pays attention to the behaviour of states as the basic actors. This is linked to the notion that the major actors in the international system are nation-states. Different experts and scholars of international relations/affairs provide quite an elaborate description of the state and of its emergence. Among experts, there is no unanimous definition of the state. However, there is a high level of consensus on its basic characteristics as well as its origin.

What is done here is to provide a few definitions of the concept of state and then give a comprehensive definition based on these collections. Some have attempted to describe the state as “territorially based political unit characterized by a central decision-making and enforcement machinery (government and administration)”. Essentially therefore, the

state is viewed as a legal entity (sovereign) which neither has external superior or internal equal. With reference to classical Greece, the identity of the state is correlated with or taken as the inhabitants of a place rather than the place itself. States are regarded as sovereign in their territories under their jurisdiction, that is, the states or its government, controls what goes on within its borders. The possibility of external interference is foreclosed in reference to the state of the state.

The state could also be described as an area or territory which is under the single rule of a government. It has also been conceived as the most inclusive organization which has formal institutions for regulating the most significant external relationships of the men within its scope. It is the basic political unit of a group of people who are organized in a defined territory for the pursuit of common welfare, the maintenance of law and order and the carrying out of external relations with other actors in the international system. Comprehensively, the state is a political organization confined within an identified land space, maintained by administrative machinery which exercises unrestricted control over its constituent members and is co-equal with any other state.

States and nations are often confused. However, many have attempted to resolve the riddle by identifying the basic essential characteristics of the state. These include; territory, population, government and sovereignty. The distinction between the state and the nation is that the latter lacks both sovereignty and specific territory but only possesses a homogeneous population.

The origin of the modern state is traceable to the signing of the Treaty of Westphalia in 1648 marking the end of the Thirty years War in Europe. This treaty gave the modern states their defining character as well as setting the scope of their jurisdiction. It provides that only sovereign states could engage in international relations. Moreover, for a state to be recognized as such, it must possess a geographical territory, definite population and effective military power to fulfill international obligations. An important aspect of the treaty is the emphasis on the equality of all sovereign nations.

2.0 OBJECTIVES

After you have studied this study unit, you should be able to:

understand the various ideas on the concept of state.
explain the rights and limitations of states.
understand the linkages between the symbols of jurisdiction.
distinguish between the notion of states and nations

3.0 MAIN BODY

3.1 Territoriality

As earlier mentioned, a key pre-requisite of statehood is the possession of a fixed territory (both water and land). A state has an unchallenged right to exercise authority over and throughout the extent of its territory. For this reason, territory became in the legal realm the necessary point of departure in settling or resolving most problematic issues of international relations. In the earliest period of western history, the acceptable title of territory (right of ownership) was effective control of a territory and the ability to defend it. In modern times, international law contains a certain number of rules regulating the manner in which states, can acquire and maintain exclusive jurisdiction over a sizeable portion of the globe which they may claim as their own. In tune with geographic imperatives, the rule of international law has established land boundaries, jurisdiction over the oceans, and most recently over the air.

Although, this single concept is enshrined as one of the main conditions concomitant to statehood and for most sovereign states this condition is apparent enough, yet the process of colonisation has rendered the notion of territory in some entities extremely problematic. Modern international law has been slow to address these notions of territoriality since it is framed from a particular perspective that does not have to address these kinds of problems. Rather, in seeking to address the growing spate of violence induced by conflict over territory it has invoked legal notions that were first developed during the Roman era. Roman property regimes and their resultant principles, notably *uti possidetis juris* have been applied and re-applied in different contexts to become the problematic bedrock of the treatment of territory within modern international law. This

anomaly has often prompted the regular cries for the review of international law concerned with territory. All the same, land, sea and air remain important part of territorial definition.

On the issue of land (lithosphere), customary international law recognizes four (4) major principles by which a state acquires title to land areas. These are prescription, cession, conquest and occupation. Prescription implies the state exercises jurisdiction over a specific area for a long time (habitually) without any serious challenge or counterclaim from other states. It is the only principle through which existing nation states can justify their "territorial sway" or influence over a place.

Furthermore, title to territory is also readily acquired by act of cession. This is equally an acceptable standard by international law. Numerous cases abound in modern times, for instance, France ceded Louisiana to the U.S.A., Lagos was ceded as a colony by the then Oba of Lagos in 1861. The act of cession comes in two basic types. It could be as a result of conquest during war, or it could be outright purchase by an interested member of the international community. For instance, it is on record that Alaska in the USA was bought from Russia.

The act of conquest used to be an attractive option for powerful states. This style was however abolished by the Stimson Doctrine of 1932. The underlining principle of the doctrine was that the acquisition of any territory which runs counter to the laid down international conventions and treaty obligations should not be recognized by members of the international community. This was as a result of the repressive and undignified methods of its application.

Occupation

The acquisition of unexplored and previously unclaimed lands is the basis of the principle of occupation. While some hold that discovery and exploration confers the discoverer - state "inchoate title" others charge that it must be by "effective occupation". The issue is yet to be resolved, perhaps cases of such instances have become far in between. A classical example is the scramble and the partition of Africa in the 19th century.

The case of maritime jurisdiction is equally important. There are distinct provisions of international law that deals with jurisdictional details as far as the oceans and seas are concerned. According to customary international law, territorial waters extend to a distance of three nautical miles from the shore and beyond this point is the part of the high seas, which is not under the exclusive control of any one country. However, there are parts of the ocean considered part of the state territory (that is, territorial waters), the high seas, etc.

Air

Jurisdictional stipulations as regards the air, is relatively less ambiguous. The air space over territory (land) and territorial water is under the jurisdiction of the state beneath it. Over the high seas, the planes are part of the territory whose flag they bear but once they enter a national airspace, they are subject to the law of the state they are. Therefore, they do not possess a blanket right to enter ports, they must be licensed. For security reasons, states continue to assert and guard their "unlimited" jurisdiction over airspace, thus minimizing freedom of air traffic.

3.2 The Seas

The fact of the state's sovereignty and autonomy is no license to unrestricted claim to the gift of nature. Issues on the ownership and control of water ways and resources embedded have generated hotly contested debate on the jurisdiction of any state over the seas. However, various efforts have been made by the comity of nations to finding an acceptable resolution to the misgivings among states. These controversies can be gleaned by the initial efforts at establishing laws for inter-state relationships pertaining to territorial waters.

In international law, the principle is based on the notion that outside its territorial waters a state may not claim sovereignty over the seas, except with respect to its own vessels. This principle, first established by the Romans, gives to all nations in time of peace unrestricted use of the seas for naval and commercial navigation, for fishing, and for the laying of submarine cables. From the late 15th to the early 19th century, Spain, Portugal, and Great Britain attempted to exclude commercial rivals from

parts of the open sea. Protests by other nations led to a revived acceptance of freedom of the seas. One of its strongest advocates was the United States, especially in its dispute with Great Britain preceding the War of 1812. In time of peace, freedom of the seas cannot be restricted lawfully except by international agreements, such as those regulating fisheries or the right of visit and search. During war, however, belligerents often assert limitations of the principle in order to facilitate the more effective conduct of hostilities, and it is then that the sharpest disagreements arise. Subjects of contention between neutrals and belligerents include the right to seize neutral property and persons aboard an enemy ship, the mining of sea lanes, and the exclusion of neutral vessels from enemy ports by blockade. The Law of the Sea Treaty establishes a 12-mile (19-kilometer) territorial limit for coastal nations and establishes an international authority to regulate seabed mining, among other provisions.

Until recently, the problems relating to the use of the oceans by nation-states, and private actors were relatively uncomplicated. The principle of freedom of the seas governed navigation, fish were plentiful and most of the states individually claimed jurisdiction over seas to a length not more than a three-mile territorial sea adjacent to their shores. From 1945 upwards, the conditions have changed as some states claim jurisdiction over the adjacent waters and seabed to a distance up to 200 miles; there is high threat to aquatic lives; and increased spate of ocean pollution as well as the vast reservoirs of petroleum trapped under the continental margins. To worsen the problems, there have emerged two views on the jurisdiction over the sea usage: the first declares the oceans and seabed as “the common heritage of mankind” and reducing national jurisdictional claims to a narrow range of territorial waters and sea beds. On the other hand, there are the coastal states and private interests with a “sweeping” claim of national jurisdiction of almost a fourth of the ocean and sea bed area, where lies 90% of mineral and fishing resources.

To give relief to this tension, in 1958 an international convention was put in pace, setting the limits not by the natural contours but at a water depth of 200m and extension to the average width more than fifty miles (that is, the law of the sea conference). Behind this maiden international arrangement have followed other laws of the seas and conventions. For example, convention on the continental shelve, convention of the

territorial sea and the contiguous zone, a convention on the High seas; and a convention of fishing and the Conservation of the Living Resources of the High Seas, among others. All of these were between 1962 and 1966. A remarkable incidence took place in 1967, when Ambassador Arvid Pards of Malta made a proposal to restore order in the circumstances surrounding ocean usage, more especially in the interest of developing states. From then on, various sessions to fine-tune previous Laws and Convention have taken place. The treaties have covered all aspects of ocean access and usage. There are also provisions for compulsory submission of disputes not settled by negotiation to a variety of arbitral or judicial procedures including the new International Tribunal for the Law of the Sea and a Seabed Disputes Chamber.

3.3 Legal Equality

A state may exist, functioning as an operative political community without gaining the legal status of a state. The transformation into a legal personality begins when it is admitted and recognized as such by the comity of nations. Before the end of the 19th century, jurists agreed almost unanimously that nation states enjoyed the possession of certain fundamental rights. These include a right of equality, of existence, of external independence, of self-defense, of territorial supremacy (sovereignty), of intercourse and of respect.

From the foregoing, one of the oldest “rights” states have laid claims to has been the right of equality. This has been asserted since the time of Hugo Grotius. It is of course obvious that states are not equal in may respects, differing in land size, population, resources, access to oceans, armament, and other factors of power. However, what is imperative is the equality in law, that is, legal equality. On this basis, the Permanent Court of International Justice made a distinction in 1935 between “equal in fact” and “equality in law”. Focus, however, is on the equality in law, what Article 2 of the United Nations Charter refers to as the “Sovereign Equality of its Members”.

The meaning of Equality in Law is that all recognized states are treated equally in all matters without prejudice. More specifically, they all enjoy the same rights and are ideally co-equal in the international community.

As such a state has one vote (unless it has agreed to the contrary) whenever a question has to be settled by consent among states. In other words, the vote of the smallest state carries the same weight as the vote of the largest and most powerful members of the community of nations, in principle. It also translates to the idea that no state may claim jurisdiction over another state, hence no state can be sued in the law court of another state or placed under the tax paying control of another state. Besides, it affects the adoption and application of new rules of international law: no state is bound by a new rule that it does not expressly or implicitly assents to or accede. The actual import of all this is captured in the doctrine expounded by Chief Justice John Marshall in the case of **The Antelope:**

> "No principle of general law is more universally acknowledged, than the perfect equality of nations. Russia and Geneva have equal rights. It results from this equality, that no one can rightfully impose a rule on another".

Some have argued that in reality, equality in laws does not mean that each state has to treat all other states alike but all that is required is that every state is assured the equal protection of the law, non-denial of access to judicial or arbitral procedures on the grounds of relative weakness, form of government, size and other physical characteristics.

3.4 Sovereignty

In the identification of what makes up a state in international law, sovereignty is arguably the most paramount. The concept of sovereign underscores the independence or autonomy of the state to make and implement decisions within its territory without interference from other states. It is the supremacy of any given state to conduct its internal or domestic affair without any external meddling.

A more holistic view sees sovereignty as the exercise of supreme authority in a political community. It has had a long history of development, and it may be said that every political theorist since Plato has dealt with the notion in some manner, although not always explicitly. As earlier implied, a sovereign state is often described as one that is free and independent. In its internal affairs it has undivided jurisdiction over

all persons and property within its territory. It claims the right to regulate its economic life without regard for its neighbors and to increase armaments without limit. No other nation may rightfully interfere in its domestic affairs.

This description of a sovereign state is denied, however, by those who assert that international law is binding. Because states are limited by treaties and international obligations and are not legally permitted by the United Nations Charter to commit aggression at will, they argue that the absolute freedom of a sovereign state is, and should be, a thing of the past. In current international practice this view is generally accepted. The United Nations is today considered the principal organ for restraining the exercise of sovereignty.

Internationally, it connotes a state's place in the international and its capacity to act as an independent and autonomous entity. Essentially, the notion of "national" or "external" sovereignty has come to embody the principles of nationalindependence and self-government. Besides, international laws give all nations equal recognition. Put differently, nation-states in the international system are legally equal. This explains the loose nature of the world state-system which has no structural hierarchy, per se, although there are powerful states and weak states. What this translates to is the retention of sovereignty only in form rather than in substance contrary to what the Westphalia Treaty envisaged. Therefore, the internationalist strand of the critics of sovereignty argues that contrary to the assumption underlying the notion of sovereignty, states are not really free to do as they please because their behaviors are restrained by internationally accepted standards andthe growing interdependence of nations. Hence, Morgenthau contends that "sovereignty" is nothing but a formal standard of how nations should treat one another rather than the description of reality. Thus, the extent of the jurisdiction of states in Modern International Law with respect to the notion of sovereignty depends largely on a number of factors such as the status or position of the state in the international system; parties involved in the assertion of sovereignty, propriety of state actions, etc.

4.0 CONCLUSION

This unit has inundated us with spatial limitations of any state as agreed to by states, through the instrumentality of international law. The spatial limitations cover land and its resources, the seas and its resources and air-space. The agreement on this score became extremely important as a result of series of conflict that arose because of non-delineation of borders. Although, international law has not yet provided an answer to the multifarious issues thrown up by jurisdiction, it has however become an important reference point in the determination of international disputes that arise from this source.

5.0 SUMMARY

The important issue of jurisdiction of State received your attention in this unit with particular focus on the period of pre-colonial Africa to modern times. You have learnt the key pre-requisites of Statehood, the position of seas and water ways and sovereignty.

SELF ASSESSMENT EXERCISES 1

1. Explain the concept of jurisdiction in international law.

6.0 TUTOR-MARKED ASSIGNMENT

1. According to Morgenthau, “sovereignty” is nothing but a formal standard of how nations should treat one another rather than the description of reality. Discuss
2. Explain the different methods through which a state can claim ownership of a territory.

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MODULE 4

UNIT 1 CONTENDING SCHOOLS OF THOUGHTS ON INTERNATIONAL LAW

CONTENTS

1.0 INTRODUCTION

In this unit, we shall examine the nature of international law with respect to the views of classical schools of thought on the subject. The naturalist and positive schools of thought hold much appeal in this enterprise. However, we shall not limit the discussion on these two. Traditionally, international law has been defined as that body of principle and rules generally accepted by civilized states as binding upon their conduct. It is the sum of the rights that a state may claim for itself and its nationals from other states, and of the duties which in consequence it must observe toward them.

The dictum that international law governs the relations between states creates the erroneous impression that the boundaries of international law are clearly delineated. The impression is further strengthened when international (public) law is distinguished from international private law (or conflict of law), which applies to relations between individuals of different nationalities or, more generally, to cases involving two or more municipal (national) legal systems; or when international law is distinguished from municipal law, which applies to individuals within the territory and under the jurisdiction of one state. Such a clear delineation between various types of law could not have been and is not feasible in practice. It is correct that international law refers basically to states in their relations as entities. But in many situations such law is relevant to municipal law, and the reverse is true as well. For instance, let us assume a case in which the municipal law question of an individual's nationality would affect the right of a state to protect its citizens' rights against foreign states under international law. A somewhat more feasible distinction would be between the law that must have been applied in a municipal and in an international court. Ordinarily, it must have been that a national judge would apply municipal law and an international judge international law. In fact, neither of them may, in appropriate cases, be relieved from looking into aspects of both legal systems and including them in their decisions.

From the various assertions in this enterprise, it has become obvious that international law has emerged from an effort to deal with conflict among states, since rules provide order and help to mitigate destructive conflict. The existence of law, however, does not mean that conflict is any easier to resolve. Instead, as law becomes more elaborate and constraining, it becomes increasingly contentious. The powerful do not wish to be constrained in their ability to respond to threats. At the same time, developing countries see much of international law as being crafted largely without their input, primarily due to the so-called democratic deficit in intergovernmental organizations, which now are typically the negotiating venues for the creation of new law.

Perhaps the first question to ask is whether in fact international law is law at all. The primary distinction between municipal and international law is that the latter often lacks an enforcement mechanism. There is no

government to enforce the law, as there is in domestic situations. International law is often as much a source of conflict as it is a solution to them. Most forms of international law are contested. Rarely is it agreed upon universally. As will be seen below, it is not enforceable unless powerful countries see it in their interest to do so. What is more, cross-cultural differences make its interpretation and implementation difficult. Another question is whether international laws can be considered law if they are not translated into domestic laws where there is greater potential for enforcement. By adapting international law into domestic statutes, governments theoretically provide enforcement mechanisms. There are also instances in which domestic law not only does not contain international law, but is in fact in contradiction to it.

Despite all of this, international law is often followed. This can be attributed in part to Great Power backing, but also much of international law is based on customary practice. International law may be enforced by states taking unilateral action if it is in their interest or through multilateral measures where sufficient consensus exists. Reciprocity can play a role, as benefits in other areas may be gained from following laws. In addition to ad hoc efforts to enforce international laws, a number of formal courts have been established for that purpose.

States have long relied on treaties and other international agreements for security against war. The first important move beyond laws of war was the Kellogg-Briand Pact, signed by sixty-three countries in 1928, which condemned "recourse to war for the solution of international controversies" and foreswore war as an instrument of policy. However, the conflicts of the 1930s made this agreement moot.

The principles of international law often prove to be in tension with one another, however. This confusion was exacerbated by subsequent treaties, such as the 1948 convention for the Prevention and Punishment of the Crime of Genocide. One of the clearest appeals to international law emerged with respect to Iraq's 1990 invasion of Kuwait. The Iraqi invasion was a clear violation of Kuwaiti sovereignty, and the ensuing Gulf War was a multilateral effort to enforce international law. The growing role of international law can be seen in the creation of the "no-fly zones" in Iraq via U.N. Security Council Resolution 688 of April 1991,

which served as the legal precedent for a range of initiatives later in the decade, from Somalia to East Timor.

The question of terrorism has also become a difficult one for states to deal with using international law, particularly as targets become increasingly international. Some steps have been taken to address these issues. A number of conventions have been created to deal with issues ranging from aircraft hijacking to hostage-taking and abductions, but all suffer from lack of enforcement. Part of the difficulty in dealing with terrorism is a general lack of consensus over what groups and tactics would fall under such law. The law, however, still largely reflects an overly state-centric view that makes it difficult to deal with the growth of transnational groups. Taking action against groups often requires infringing on sovereignty, another core principle of international law.

One of the most dramatic developments in international law has been the growth of laws focusing on the individual, which provide protection and require accountability. Whereas in the past, international law focused primarily on regulating state behavior and defining states rights, it has increasingly been involved in identifying individual rights and holding individuals accountable. This trend began after WWII. The identification of individual responsibility in the Nuremberg Trials after World War II was followed by the creation of the Universal Declaration of Human Rights by the United Nations. In the years that have followed, there has been a proliferation of international covenants that have specified additional rights.

Our focus in this part of the course is to situate the different views on the propriety, piousness, effectiveness and the practicability of the principles of international law, within the prisms of divergent paradigms.

2.0 OBJECTIVES

After you have studied this study unit, you should be able to:

become familiar with theoretical notions on international law.
juxtapose theory against reality in international law.
understand the differences between the normative and scientific

views of international law.
understand the effect of theoretical assumption on empiricism.

3.0 MAIN CONTENT

3.1 Monism and Dualism/Pluralism

In the monist view, there is only one legal system in the world. International and municipal laws are its parts. The question is only which of these two is superior to the other. In the dualist view, international and municipal laws are two separate legal systems. Although each can incorporate parts of the other, they are separate entities. Dualists argue that municipal law originates in customs and laws within the state, while international law originates in customs and treaties between states. The monists answer that law is conceptually one for all legal systems. They also deny the additional argument of the dualists that the subjects of the two systems differ: states for international, individuals for municipal law. Instead, they maintain, all law ultimately addresses itself to individuals. They extend this point also to the relations that the two systems regulate: in the end these relations are also between individuals, whether they act as single or collective entities. The dualists, finally, contend that the subject matter or manner of functioning between the two legal systems differs. Municipal law is hierarchically organized. It is a command from a sovereign to the citizens. International law is a law between sovereign states, between equals, not between a superior and an inferior. Some monists add that because international law defines the jurisdiction of municipal law (e.g., its jurisdiction over which men and what territory), it is the higher law, proving that the legal order is one. Other monists place municipal law above international law by arguing that international law is the external branch of municipal law under which all state organs operate. State practice, though not uniform, tends to follow the monist view. This is due less to theoretical considerations than to inevitability. Occasionally, both types of law must be referred to for reaching a decision. Otherwise, the untenable situation could arise in which the same case was subject to two different legal systems and contradictory decisions resulted. In principle, municipal courts must use municipal law. As it were, in order to prevent conflicts between legal systems or, for that matter, obligations of states to their citizens as well as the international society, many states

have constitutional provisions or practices, which in some form make international law part of municipal law.

3.2 Positivism

The concern of this group of thinkers is the source through which international law originates. The positivists were generally skeptical about the abstract and vague nature of higher principles that the naturalist claim exists. They contend that international law could be traced to more than what God wanted or did not want. For them, it goes beyond divine direction. They believe that one could understand the true source of international law if one takes a critical look at the practices and customs of princes. The positivists do not want to have anything to do with the naturalist and their propositions. They prefer reference to concrete and positive human actions as the source of international law. As such, what nations actually did provided more relevant and substantive norms for the conduct of international relations.

Like today's positivist thinkers, the idea of the substantive tradition of states as a source of international law has been in existence through the ages. In their view, international law is meant to be obeyed by law, whether the system is anarchic or not. From positivism is thought to follow the principle that legal relations between two entities who are not subject to a superior legal order can arise only as the result of mutual recognition of legal personality. International law thus operates only within the bounds of membership of a concord of sovereign actors who are free to exclude (and, it must follow, to abuse) all who lie outside. In spite of the rejection of the extreme voluntarist position, wherein, states are expected to determine their interest in participating in the respect accorded international law, however, hardly amounts to a full-scale embrace of natural law. For the positivist, law is the command of a sovereign backed by force, unlike the naturalist, where law is handed down by some supernatural force. Municipal law then conforms to the toga of real law, since the violation of its dictates can be sanctioned, without recourse to the complications encountered in the application of international law. Since the international system has no supreme authority, the idea of law as international is therefore, deficient. Note that their point of departure is that, in case, there is an agreement on the existence of

international law, the source could not be some extra-terrestrial body, but rather, earlier practices and conduct of states. However, their basic contention is that municipal law is more law than international law, because of the existence of substantive sanctioning authority.

Great scholars like Alberico Gentili (1552-1608), Richard Zoucha (1590 – 1660), Cornelius Vaw Bynkarshoek (1973 – 1743) and Johan Jacob Moser (1701 – 1785) all separated law from theological thinking and studied such positive sources of law as treaties and customs. One prominent positivist, John Austin (1790 – 1858), went so far as to argue that law could be derived only from a sovereign authority. Law had to be "handed down" from a superior, which of course meant that in his view international law was not true law, since there was no world government authority, handing the principles down to different states.

3.3 Naturalist/Moralist

The naturalist/moralist approach stems from the medieval period and was championed by such great legal philosophers as Samuel Pufendorf (1632-1694), Emerich de Vattel (1714 – 1767), James Lorimar (1818 – 1890). These scholars, in varying degrees accepted the basic notion that international obligations are derived from a higher law. The ultimate explanation and validity of human law rests on the principles of natural law, such that whatever the nature of the law, it is of divine source.

The naturalists believe that international law originates from the law of nature, the creator they said had laws that had to be obeyed. The religious theologians originally advocated for the existence of divine law. They claim that these laws came from God and are thus binding on all monarchs (princes & Kings). International law thus according to them evolved from the God-made laws which we could see and obey. If you could trace international law to God, the laws would be binding on monarchies because they do believe God was superior to them. As time want on, the nature of the argument changed, not all laws made by God would be determined immediately. Some laws they argued need not be traced to the Holy book but be based on reason and not be forced on humans by humans. Natural lawyers depend heavily on religious teachings to find out those laws monarchs must accept. They argue that

some laws just have to be complied with because they come from God. In contrast to the position of the positivists, the naturalists would not discountenance the existence of International Law on the basis of the absence of a coercive enforceability by a political entity which is juridically superior to the state.

3.4 Utopians

Prior to the First World War, the utopians engaged discourses on inter-state relations with the perspective on the possibility of achieving a peaceful, law abiding and harmonious state of relationship between actors on the international arena. However, the World War I challenged utopian theories of international relations and international law. The ideas were primarily based on the notion of international morality and faith in international legalism. The principles received tremendous bashing as an aftermath of the war. It became obvious that the system was composed of actors that were determined to protect their national interests at all cost, irrespective of the damage this might cost other state-actors. Before long, alternative theories that emphasized reality- power politics, began to sprang up.

The Utopians still believe that in spite of the anarchic nature of the system, there is still room for improved harmonious relationships, if concerted efforts are undertaken by states to strengthen the institutions and remodel existing international laws to cater for the yearnings of all and sundry.

3.5 Idealists

The defining characteristic of idealism is that it views international politics from the perspective of moral values and legal norms. It is concerned less with empirical analysis (that is, with how international actors behave), than with normative judgments (that is, how they should behave). For this reason, idealism is sometimes seen as akin to utopianism.

The idealist proposition is underpinned by internationalism, that is, the belief that human affairs should be organized according to universal and

not merely national, principles. This, in turn, is usually reflected in the assumption that human affairs, on both the domestic and international levels, are characterized by harmony and co-operation.

The idealist rejects the past and draws analogies from the domestic environment which he argues should and can be transposed to the international arena, since there is order in the domestic society, in the same way international institutions and laws should provide a framework for the realization of international order. The mode of operationalizing municipal law could in fact be replicated on the international arena, if only the concerned parties could agree to this supposition.

Consequently, the idealist believes that collective security, in the mould of international law should be strengthened in order to save succeeding generations from the scourge of war. Power politics could indeed be reconstructed to conform to the principles of peaceful co-existence, which happens to be highly held by all of humanity.

4.0 CONCLUSION

This has been an attempt to place the various contentions on international law, as it relates to its sources, existence and practice within the prism of existing theoretical abstractions. While some of these theories are based on norms, and subjective assertions, others are based on unfolding realities on the international arena. However, it is pertinent to note the commendable efforts of some of the theories in de-emphasizing the force and anarchy as variables in international relations. In this respect, they have based their assertions on the necessity for peaceful co-existence between and among states.

It is imperative to note the incontrovertible stand of actors as regards schools of thought on international law in pre-colonial Africa. The traditional authorities placed more emphasis on the obedience of municipal laws; as such the Monist ideology was prevalent in the era. Similarly, the view was more naturalist/moralist than positivist, idealist or utopian. This can be garnered from the regular act of recourse to deities and gods in the actualization of the objectives of the states.

5.0 SUMMARY

You probably have enjoyed the interesting discourse of the contending schools of thoughts in international law. The contentions are considered from different perspectives e.g. monism, dualism, pluralism, moralist, naturalist approach, idealism, etc.

SELF ASSESSMENT EXERCISES 1

1. Outline the two major contending views on the nature of International Law.
2. What is the major difference between the naturalist and positivist views of International Law.

6.0 TUTOR-MARKED ASSIGNMENT

1. Compare and contrast the basic contentions of the monist and pluralist views on international law.
2. “International Law is Positive Law”. Discuss.

7.0 REFERENCES/FURTHER READINGS

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UNIT 2 UNDERSTANDING DIPLOMACY

CONTENTS

1.0 INTRODUCTION

Diplomacy as a concept has a long history and is yet to dissipate in relevance or currency. Diplomacy, or the peaceful management of international relations, is an ancient and vital field of human endeavor which has always tended to be shrouded in secrecy. The meaning, essence and role of diplomacy in international affairs is surrounded by a dualist controversy i.e. the subjective views of its “goodness” or “badness”. To some it is rationalist pacifism while to others, it is a manifestation of realism. What is incontrovertible is its linkage with international law, and by extension international relations.

We shall be looking at this part of the work from the different interpretations that have been given to diplomacy. Secondly, the pathology in the sense of processes would also draw our attention. The term had been conceived as foreign policy, negotiation, as a tool of foreign policy and as the totality of the functions of diplomats. Hence, diplomacy must have been seen as the relationship between two or more states. These relationships would have covered every area of endeavor-the economic, political and socio-cultural. Moreover, the conduct of negotiation equally falls under this umbrella, as in, the act of the

resolution of conflicts through careful and patient diplomacy. Furthermore, it is applied as a tool of foreign policy, wherein, special skill or tact, care or politeness or in an unsavory sense, duplicity and guile are employed to achieve the national interest of a state. Finally, the overall functions of appointed personnel of government designated as diplomats and ably supported by the home-governments and recognized as such by the host-government could be captured under this arrangement. This part of our course would therefore attempt a study of the method of conducting foreign policy, by putting into consideration, the latent and manifest national interest of states. Because, as we have discovered diplomacy is the means and methods through which a state conducts its business with others in the system. Furthermore, this part of the course would also help us in coming to terms with the two methods of diplomatic conduct, viz; bilateral and multilateral diplomacy.

Diplomacy is one of the policy instruments of international relations or foreign policy in the bid to achieve certain national goals and objectives regarded as the national interest. In a more analytical manner, it can be perceived as that body of generally routine official interactions among non-warring states by which they communicate their policies, attempt to gain concessions (by means of argument, promises, threats, the exchange of benefits, or the impose of penalties) secure and protect the right of their citizens and business abroad, gathering information on each other and seek solutions to common problems.

Some scholars have identified different types of diplomacy, however note that, all of these types are intertwined and overlapping. They include:

Summit Diplomacy

This is a form of negotiation, whose major actors are the leaders of respective countries. In other words, it is the direct interaction of the heads of government of concerned countries.

Conference Diplomacy

Conference Diplomacy involves intercourse (exchange) among foreign ministers (secretariat through correspondence), private talks at foreign

ministers' conferences. It could also be through ambassadors' meetings with appropriate officials or delegates with ambassadorial rank and plenipotentiary powers at international meetings. Most international relations take this form.

Parliamentary Diplomacy

This is the most multilateral in nature. Herein, deliberations are governed by rules resembling a typical national parliament. Activities such as debates and actions on draft resolutions, elections of official determination of budget, political maneuvering through the formation of blocs of power are identified as the basic conducts in parliamentary diplomacy.

2.0 OBJECTIVES

After you have studied this study unit, you should be able to:

intelligently discuss the evolution of diplomacy.
understand the dynamics of diplomacy.
understand the conduct of foreign policy as against the practice of diplomacy.
outline the relationship between diplomacy and foreign policy.

3.0 MAIN CONTENT

3.1 Origin

From the very first beginning of international relations, it must have become apparent that negotiations would be severely hampered if the emissary from one side were killed and eaten by the other side before he had had time to deliver his message. The practice must have therefore been established even in the remotest times that it would be better to grant such negotiators certain privileges and immunities, which were denied warriors. Thus, such methods as negotiation and third party interventions, such as; 'Good Offices', mediation, arbitration, diplomacy and conciliation would be examined. How were contractual obligations met and carried out? Same goes for inter-state agreements, general principles

and methods of dispute settlement.

Although, most Euro-American literature would situate the birth of modern diplomacy in Greece, there are evidences of diplomatic practices in Africa before its advent in Greece. In an emotive tone, Ekpebu (1999:18) contends: "Africa's international relations had, before the emergence of Europe, scaled through their own city states, national units and empires carved out of these units, like the great unit of Songhai, Ghana, Mali and Kush". Despite the fact that evidences are meager, reports of travelers show that African States were in the habit of sending their representatives on diplomatic missions to one another. At times referred to as ambassador, the officials also bear such titles as messenger, linguist and herald. According to Smith (1989: 7-8): "The earliest reference to diplomatic relations in West Africa seems to be the account by al-Saghir (writing in the early tenth century) of the sending of ambassador (called Muhammed ibn Arafa) by ninth-century Imam of the Tabert in North Africa to an unnamed Sudanic state; possibly Gao. Then follows al-Bakri's description of the mosque in the royal capital of eleventh-century Ghana which was set side for the use of Muslims who visit the king on missions, and thee are indications that political relations were maintained in the late eleventh or early twelfth century between Ghana and the Almoravids in Morocco. In the sixteenth century there is the reception at the court of Timbuktu of ambassadors from other princes".

For the Eurocentric version, it is on record that the nature and nearness to one another of the numerous Greek city/states encouraged the development of inter-city-state relations in Europe. The political and commercial relations among the states gave rise to the appointment of intermediaries or ambassadors who could plead the cause of the states they represented in the popular assemblies of the other city-states. These intermediaries had to be orators and they enjoyed privileges and immunities such as the inviolability oftheir person. A major characteristic was that ambassadors from a state to another at the same time. Moreover, negotiations were conducted in public. Much later was the introduction of the practice of taking hostages in order to guarantee the implementation of treaties, and subsequently, the practice of ultimatum was equally introduced.

Modern diplomatic practices manifest many elements, which are a legacy or hand-down from Greek and Roman tradition. These include the establishment of foreign diplomatic mission and sending missionaries to transact particular business, though on a non-permanent basis. Also the origin of diplomatic archives which now forms the core of the foreign office structure is credited to the economic transactions of ancient times. It was besides, their practice to issue state letters of recommendation, passport, safe conduct etc to the foreign representatives or emissaries.

Beyond the administrative aspect of the evolution of diplomacy, there are views on the actual origin of the practice of diplomacy. Though it is difficult to state specifically and categorically the precise beginning it is undeniable that it has a very long history rooted in inter societal relations, especially among city states which were before the emergence of modern nation states, which were a product of the 1648 Westphalia Treaty.

Some scholars have traced the history of diplomacy to the story of creation alleging that the archangel was the first to be involved in the art of delivering messages from God. Different myths have also been put forward from different civilizations, popular among which is the Greek tradition. As such some scholars resolve that unlike medicine, diplomacy has no founding fathers. Diplomacy is alleged to begin in some dark, primordial forest of pre-historic era, of two groups of savages fighting over hunting boundaries, stolen cattle or abducted women. Eventually, they got tried of slaughtering one another and became scared of the prospect of mutual extermination. They attempted sending armistice (peace proposal). Of course, there was difficulty transmitting the proposal to the other side, because of the danger involved in advancing towards an enemy armed. Therefore those charged with the earliest diplomatic assignment surrounded themselves with an awe-inspiring air of superiority, donned with distinctive clothes and decorated with religious emblems to show they were sacrosanct and therefore different from other men.

Every age has thereafter produced its own form of diplomats. There was the era of diplomats who were a little more than glorified town criers. Under the ancient Greek city state system, the activity of diplomacy was more demanding. The diplomatic representatives took on the garb of

advocacy, skilled in conducting negotiation by public debate. This art was criticized to be “ambiguous vacuity” in that it included “the art of talking without saying anything”. The Romans had no time for such ingenious ineffectiveness and as such, provided treaties to cover practically all aspects of their external relations with other countries. One major contribution of the Roman diplomacy was to spread and strengthen the idea that treaties, like ordinary contracts, ought be held sacred and obeyed. Foreign ambassadors received Roman draft of treaty. If there was too much argument, they were given deadlines after which they were stripped of diplomatic privileges, dubbed “spies” and repatriated back to their country.

The Byzantine Empire, more than the Romans depended on diplomacy. If Rome was too strong to bother much about diplomacy, they were weak to survive without diplomacy. With the Byzantine Empire surrounded by vigorous, blood thirsty and belligerent barbarians, its only hope lay in playing off one potential enemy against another, and this act called for accurate information about what went on in the heads and minds of neighboring rulers. This challenge was met by appointing more-or-less permanent ambassadors at foreign courts, asking for periodic or regular report back home. The report would be meticulously perused, policy decided and instructions swiftly dispatched to the ambassador on the next line of action. This process is regarded as first attempt ever made to use diplomacy in a systematic and professional way. These innovations were copied from the Byzantine Empire by Venice, spreading to the Italian states, to Spain, France and then to the rest of the civilized world.

The conduct of diplomacy among the Italian States of the Renaissance produced an unfortunate tradition of duplicity, cunning, and unscrupulous maneuvering for advantage which has been continuously linked to diplomatic activities of the modern world. However, the character of modern career diplomacy owes more to the French than the Italian examples. From the French experience came the practice of public and secret diplomatic maneuvering and the maintenance of permanent embassies and numerous missions.

3.2 Techniques

Diplomacy seeks to resolve conflict of interests among nations and to guarantee national interests in the international system. This is mostly in non-violent manner. To achieve this, certain instruments are employed. The instruments of the state craft include negotiation, persuasion, propaganda, mediation and conciliation, economic pressure, invocation of international judicial procedure, collective action through international security agencies, threat or demonstration of force, forceful measures short of war, full blown war, or self-imposed isolation among others.

Negotiation

This involves the discussion among sovereign nation-states on issues of conflict or areas of co-operation to bring about some results, mostly in terms of agreed rules of conduct in their interaction or reciprocal obligation. Negotiations may proceed at any one of several levels and sometimes simultaneously at two or more levels i.e. could be directly between head of government (summit level), correspondence or talks between foreign ministers (conference) or at plenary level among ambassadors of countries at international fora, e.g. UN General Assembly.

Persuasion

Another basic technique of diplomacy is persuasion. This is an act of persuading or eliciting desired response or favorable reaction from the representative of another government by inducement, appeals to reason, magnanimity, self respect, pride or even fear. At times, it could involve moral suasion or dissuasion of a country from embarking on a disastrous action. Through manipulation of words or press statement, statesmen and diplomats seek favorable responses to their policies and actions. At the failure of persuasion, attempts are made for compromises.

Propaganda

This is the deliberate manipulation of symbols with the purpose of affecting men’s ideas, attitudes or behavior in a particular way. It consists of messages in a context of action. It is aimed at psychological manipulation of opponents and attraction of sympathy, widespread support and approval. The purpose is to inspire the audience to act in a

particular way. Most often it involves the distortion and upending of facts and reality. It was a prominent instrument during the cold war era.

Mediation and Conciliation

When nations can not achieve or reach agreements through their own resources, a third party may offer its good offices to help the disputant reach a compromise by providing an amicable platform for settlement. It does not only act as a channel of communication, it also offers suggestions for resolution.

Coercion

It is one of the forceful acts, which does not involve physical violence, but instituted to get the cooperation of the other parties involved. It could be withdrawal of diplomatic relations as a coercive element. It may also involve issuing of an ultimatum. It could involve the imposition of economic sanction on opponents for defaulting on negotiated or bargained outcomes.

Judicial Proceedings

This is the instrument of a nation state availing itself of the international judicial court system, in most cases, following the ineffectiveness of bilateral diplomacy. Cameroon adopted this in its relation with Nigeria over the Bakassi Peninsular.

3.3 Mechanisms

This constitutes the means by which diplomacy is conducted, and more specifically with the platform or avenue for diplomacy. Some of the mechanisms for conducting modern diplomacy include:

Treaties

One of the mechanisms of diplomacy is established treaties of the past. The nations entering into negotiation rely on them as useful guides for

their decisions. This is the case in both multilateral and bilateral diplomatic intercourse. Countries negotiate to produce treaties which act as the mechanism regulating future interactions and bargaining.

International Community

Another mechanism of diplomacy is the international community, which provides the avenue for negotiation and discussion of areas of interest among countries. It is mostly suitable for multilateral diplomacy. The instruments of diplomacy such as invocation of international judicial procedures, collective action through international security agencies, mediation and conciliation, negotiation and persuasion are features of this mechanism. This mechanism could also be regional. All of these take the "confidential" manner approach.

3.4 Institutions of Diplomacy

Here, attention is given to the organizational structure or configuration and system of personnel and resources a nation-state employs to carry out its diplomatic activities. These institutions are principally two, they include a base in the home country and outposts in host countries. In the home country, this could be called the ministry of or for foreign or external affairs. And the head of such ministry could either be called the minister or the secretary of state, depending on the country in question. In the host state, the country is expected to establish mission, consulates and other agencies abroad governed by custom, tradition and specific agreement between states. Customarily, a state establishes an embassy or legation usually called a mission in the capital of other states.

The diplomatic body/institution (diplomatic corps) comprises the head and the diplomatic staff of the entire mission accredited to a government. The highest rank being the ambassador, followed by Legalese or ministers in charge of legation, others are envoys internuncios and charges d' affairs. Most of the low ranking officers of the foreign mission are civil servants with security of office.

The functions of the diplomatic institution include national representation, protection of national interest, gathering and collating of

relevant information as well as communicating such to the home government. They also negotiate on behalf of their home government and promote friendly relations in general with other countries.

The home ministry of foreign affairs oversees the activities of the foreign offices providing them with specially trained officers belonging to the army, navy or air force and such other ministries of government as well as special attachés. All the diplomatic institutions are organized in a bureaucratic manner for effective functioning. The home ministry works in conjunction with other agencies of government based on the professional prompting they receive from the diplomatic missions abroad. It is equally charged with coordinating the foreign policy activities of government.

The foreign mission of any country is the base of its home country in the host-country, thus, it acts as the ears, the hands and mouth of its home-government. The mission is headed by an ambassador, responsible for gathering information about the country in which it is located and for supplying such to its home government. Equally, it makes recommendations based on the agents' knowledge and experience as to the various policy options open in any particular case. Although the mission itself is not a policy making body, it however helps to shape policy to some extent since the government has to depend considerably on reports from the missions for the background and basis of many of its judgments and decisions.

4.0 CONCLUSION

It is obvious that the practice of diplomacy as we know it today originated from several sources, the necessity of human beings to live harmoniously with one another, the development of the city states, and the necessity to enthrone certain etiquettes of relations between states. As the years went by, of course, to these were added many other dimensions of diplomatic practice that have come to be recognized and accepted by states in the international community. By and large, this unit has pronounced the importance of diplomacy as an instrument of international relations.

5.0 SUMMARY

Evolution and dynamics of Diplomacy form the centre piece of this unit. It touched on negotiation, persuasion, propaganda and other mechanisms by which international law seeks to resolve conflicts and guarantee natural interests in the international system.

SELF ASSESSMENT EXERCISES

1. What are the main features of diplomacy in the Greek city-states?

6.0 TUTOR MARKED-ASSIGNMENTS

1. List and explain the different types of diplomacy.
2. Outline and explain the various techniques of diplomacy.
3. Comprehensively discuss the origin of diplomacy.

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UNIT 3 WHO IS A DIPLOMAT?

CONTENTS

1.0 INTRODUCTION

In common understanding diplomacy involves the application of skills or shrewdness in the conduct of international affairs. For the fact that the leadership of any of the states in the international system can negotiate, discuss and relate with all other nations all at once by itself, it is expedient for each state to appoint individuals equipped with the skills, knowledge of the nation's goals and interest, and other requisites to represent the concerned State in other countries and at international gatherings.

The necessity for such an engagement was not lost on the rulers of the traditional African societies in pre-colonial Africa. Similar to what obtains presently; the diplomats were the representative of monarchs and were therefore appointed by them. These were persons of impeccable character, wit and intelligence, with mandates to represent the interests of their states as dictated by the monarchs. Indeed, there is negligible difference between the caliber and quality of diplomats between the two eras.

Diplomats are government officials who represent the country at foreign

capitals, international organizations (such as the UN) or International Conferences. Any body involved with the act of diplomacy i.e. negotiation on behalf of a particular country is a diplomat in its own right. It is noteworthy that such individual does so with the approval of the head of government of the concerned state. A distinction is nonetheless important between the roles of the professional and non professional diplomats. The professional diplomat is described as an individual whose principal career is centered around a set of skills designed to enhance his effectiveness in the conduct of foreign affairs. For the professional, these skills are exercised within the context of transnational and trans-cultural milieu. This category includes the civil servants and specialists who staff the foreign offices, embassies, legation and consulates abroad. They handle routine aspects of foreign relations such as preparing studies, reports and instruction, drafting cables etc. They may, however, also perform non diplomatic roles such as serving as policy adviser on security-related national councils. In discharging their roles they bring to bear the knowledge of diplomacy. Those in this category (i.e. professional diplomats) begin their careers at junior level and rise gradually but regularly to higher ranks. These do not include the ambassadorial personnel.

For the non professional diplomat, the service does not constitute a career to them. Their primary career may be that of a political leader, lawyer, scholar or civil servant. For a specific period his position may involve him in the active conduct of foreign relations. As such a foreign affairs minister who represents the country at international summits and conferences assumes the role of non professional diplomat. Also, a Minister of Agriculture or Finance assumes a non professional diplomatic status when negotiating on behalf of the country with international financial institutions such as the International Monetary Fund and the International Bank for Reconstruction and Development. Other important offices within this category include the following:

Head of State/Government
Foreign Secretaries/Ministers

2.0 OBJECTIVES

After you have studied this study unit, you should be able to:

understand the distinctions between professional and non-professional diplomats.
familiar with the multifarious functions of a diplomat.
appreciate the knowledge depth of diplomats.
appreciate the relevance of diplomats in international relations.

3.0 MAIN CONTENT

3.1 Head of State/Government

These are political leaders who gain access to the position of conducting diplomacy only for a restricted term of office. They are not armed to become career diplomat. However, they boost their ability in the business of diplomatic conduct by surrounding themselves with trained career diplomats.

3.2 Foreign Secretaries/Ministers

These are also political appointees who assume and vacate office at the behest of the political leadership of a given state. Their lives in office are filled with a continuous round of diplomatic conversation, visits to other countries, attendance at conferences, and preparation for series of important negotiations. They are responsible for advising the heads of government and keeping them informed on issues of external relations. They also administer large bureaucracies in their foreign offices and service. Examples include Ambassador Olu Adeniji of Nigeria and Condelezza Rice of the US.

Special Emissaries- these are individuals occasionally appointed to represent a country at important ceremonial events or to conduct special negotiation. The appointment of these individuals is the prerogative of the head of state and enables him to obtain a direct contact with other heads of governments. This situation often arises if the special emissary is perceived to be more skilled in the area of negotiation than the accredited

ambassador or high commissioner.

An issue of critical importance has to do with the categorization of ambassadors; this is in noting that they are usually political appointees, but in some cases, they possess strong knowledge of diplomacy, having been properly grounded in the area. Sometimes, they could be retired or serving civil servants of a foreign affairs ministry/office.

3.3 Qualifications

Considering the nature of demand of the art of state craft or diplomacy, the selection of diplomats through crude methods is at the peril of such country's national interest. The dictates of the profession involves a combination of tact and trick, thus a diplomat is expected to be astute, shrewd and be a good negotiator.

Apart from obvious personal qualifications such as flexibility, sophistication and persuasive skills, professional diplomats must be well versed in several fields of knowledge/study. This is to enhance the efficiency and effectiveness in representing and presenting his national interest well enough. Again, the vastness of knowledge would enable him to foresee errors, detect pit falls, avoid suicidal commitment and bargain for maximum advantage possible for his country. It involves aptitude to learn and judge matters.

Knowledge of the major languages of the world is an asset, and fluency in French and English for the most part is essential. As the selection of the diplomatic agents varies from country to country, the language emphasized may also differ based on where the agents are to be posted and in relation to what country. Also important, the level of the diplomatic representative is given consideration.

In joining the diplomatic service, it is required that the candidate should be a subject or citizen of the country. Also, the diplomat is necessarily a graduate possessing requisite university honors degree or its equivalent. He is also expected to be a thinker and a doer; a man of action and of learning; a man who is ongoing, but not insincere, studious and reflective but not withdrawn.

He is supposed to be a man of good composure i.e. a gentleman. He should not be too pleased with himself or easily offended. He should be able to distinguish between the consideration and treatment that he receives on the account of his official position and his personal dues. He should be inherently frank, honest and be able to inspire trust and confidence in others. Trust worthiness is essential to diplomacy hence a diplomat should be able to earn it from others.

3.4 Functions and Duties

What do diplomats do all day? This question becomes pertinent in the wake of the notion that the conduct of diplomacy is routine. As an instrument of foreign policy, the diplomacy of ancient times must have presented the diplomats with some basic responsibilities. This part of the course examines the role and responsibilities of the ambassador and other members of an embassy; explores the resources and techniques available to them; and reviews the way diplomats relate to the government they serve and the country to which they are accredited.

The specific functions laid out for them to accomplish, include; representation, negotiation, information and protection. The representative function is one of the paramount functions of the diplomat. The ambassador represents both the power and the person of his head of state. He is accorded almost the same courtesies, privileges and immunities as are normally accorded visiting heads of state. He does not speak for himself, but he is expected to carry out faithfully the instructions given him by his government. His representative functions have now included attending ceremonial occasions, sporting or cultural events in which his country is involved. As a result of the wide range of events in which he is expected to participate, it is not uncommon to have other members of the diplomatic mission, particularly the senior ones, performing similar tasks. For the negotiation function, the diplomat is expected to be a reservoir of knowledge in almost every subject under the sun. This is because the subject of negotiation can range from treaty to other less important arrangements - political, economic, technical or the resolution of disputes. However, these days, the more technical aspects of negotiation are left to specialists while diplomats take care of the formal

part. Information is equally a primary function of diplomats. This leaves them with the task of keeping their governments informed on conditions at their posts as well as the policies of the governments of accreditation. Information and data are the raw materials of foreign policy and diplomats are to ensure that their sending states receive frank, adequate and precise information to ensure that there are minimum discrepancies between the objective environment and the policy makers' image of the environment. Their duty does not stop at gathering information, they have to assess and analyze whatever information gets to them. It is necessary to sound out feelings, assess trends, intentions, motivations, responses and attitudes. The success of a diplomat will largely depend on the quality of his information and its analysis. These in themselves also depend upon the scope and sources of the information at his disposal. The relationship, which he has cultivated with various sections of the society- the media, government officials, etc., will affect the scope and variety of his information. Lastly, diplomats are expected to be at the head of the protection units of their citizens in their countries of accreditation. In fact, they equally protect the national interests of their government. This may involve making representations to their host governments or local authorities on behalf of their national or firms who have been denied their contractual or international rights. It also often includes consular functions like the issue of passports and visa, the relief or repatriation of stranded nationals or giving advice to their nationals who are having difficulties with the host government's law enforcement agents.

In addition, we should be able to examine how the different immunities and privileges granted diplomats, in order to effectively perform their functions are observed. The need for some privileges and immunities for diplomatic agents has long been recognized as compulsory. Unless a mission is protected and enjoys adequate security, it will be almost impossible to carry out its multifarious functions. Such include inviolability, jurisdictional immunity, freedom of communication and exemptions from duties and taxes. The ambassadors and all the diplomatic agents, their families, suite, servants, residence, property, archives, documents and their official or private correspondence carried by their couriers or messengers are inviolable. The receiving state is under obligation to ensure that they are specially protected. Even in case of outbreak of war between the diplomat's country and his country of

accreditation, it is incumbent upon the receiving state to take every necessary precaution against insult or violence directed against him and to allow him withdraw with his suite in all security. Furthermore, diplomats and their suite are immune from criminal, civil and administrative jurisdiction of the receiving states. The immunity from jurisdiction of diplomatic agents may however be waived by the sending state in an express manner. Equally, for the proper functioning of a diplomatic mission, diplomatic agents are allowed to communicate freely and in all security with the sending state. The mission can use any appropriate means, including diplomatic concerns and messages in code or cipher to communicate with the sending state. The receiving state has no right to impede, violate or censor the mission's means of communication. Lastly, diplomatic agents are exempt from all dues and taxes, personal or real, national, regional or municipal. The receiving state is also under obligation to permit entry and grant exemption from all custom duties, taxes and other related charges on articles for both the official use of the mission and for the personal use of the diplomats and their families. Obviously, some of these privileges would have been granted by receiving states in the interaction between pre-colonial African states, without which it would have become impossible to carry out diplomatic activities.

The role or functions of a diplomat is inseparable from what purpose diplomacy is meant to achieve in the broad or sense. From the ambassadors through to the charges d' affaires, they perform essentially the same functions.

Protection-the primary function of the diplomat is to protect and advance the rights and interest of his country and its nationals abroad. He does this by alerting his home government of threats and discrimination against his country and nationals. Also, he ensures that the reputation of his country is not compromised or stained. This involves efforts at image laundering and countering or correcting adverse opinions and negative perception of outsiders.

The officers of the diplomatic mission are continually called upon to give counsel to their own citizens who seek such helpful service and to redress infringed rights of their compatriots. Under disturbed and unstable

political conditions, the protection functions become a heavy responsibility. When civil war or international war is inevitable, it is his duty to make sure all the citizens of his country are kept in places of safety or return home.

Representation

It is the responsibility of an envoy to represent his country and the interest of his government whether sent to an international gathering or not. It is to him that foreign officials as well as private individuals and groups must look as the official source of information and interpretation. He conveys the mind of his country to other states and communicates the outcome to his home government. He must be able to do this with tact, clarity and precision. In playing the role as both the symbol and spokesman of his government, he seeks to cultivate friendship and widespread understanding for his state by developing close and personal association with the leaders of government, business, society, education and political life. Senior diplomats are expected to represent their countries on many social or ceremonial functions ranging from Independence Day to opening of local parliament, university celebration, launching of cultural centers, and commissioning of developmental and technology-related projects.

Observation and Reporting

The diplomats constitute the antenna and satellites of the country abroad. They enable their intelligent policy and decision making process by documenting important events, making useful observation and providing the government with relevant and timely reports on sensitive issues. This enables the government to identify where their friends stand when trouble is to be envisaged. It is one of the principal assignments of the foreign mission to maintain a regular flow of reports to the home office. These cover a wide range of subjects on current economic, political, social and military condition, inimical or pending legislation, technological achievement, trend in education, new products and industries, new markets, opportunities for investment, etc. In the erstwhile communist countries, before the collapse of the Soviet Union and end of the cold war, this function of observation and reporting took the form of using

diplomatic personnel for espionage and subversion, as evidence by series of recurrent expulsion of communist diplomats as *persona non grata*.

Negotiation

The traditional role assigned the diplomat is the role of engaging in bargaining certain controversial and keenly contested issues to the advantage his country. This has often been described as the classical and central diplomatic function. Like attorneys, they devote their skills and energy to the cause of achieving the best agreement for their country.

3.5 Relevance

We can imagine what the relations among countries or nation states would look like without their representatives in other countries. The import of not having enough information on other countries and the high incidence of complexities that could arise is at best, inconceivable. The essence of negotiation has been to minimize the spate of conflict and war through cross communication and dialoguing. If this was absent the stability of the world system and peace would be frequently challenged.

Again, the fact of diplomacy makes possible for diplomats to project their national image, build mutual trust and thereby work concertedly to solve common problems at different levels, bilaterally or multilaterally.

With the break-through of modern information and communications technology (ICT) some have argued that the relevance of diplomacy and diplomats has diminished. This however remains to be proved. This is because the technological advancement has only created conditions and situation for the diplomats to better meet the challenges of this dynamic world. It is to be seen how technological advancement can properly manage the challenges thrown up by issues of arms reduction, joint space projects, and solve the problems of globalization. Indeed, the power of people-to-people cannot be overemphasized.

4.0 CONCLUSION

In this unit, we have examined the various functions of diplomats, and

also the privileges and immunities that are granted them. It will be interesting to compile a comprehensive list of all the privileges and immunities granted diplomats in the present times. However, the challenge still remains for us to determine whether any of these or all existed in pre-colonial African diplomacy. We have also gained an insight into the nature of relationship that exists between a sending and receiving state. In the final analysis, we have discovered that recent technological developments on the globe have enhanced the powers and capabilities of diplomats, rather than diminish his importance.

5.0 SUMMARY

The core of this unit is "The Diplomat", who he is, his functions, duties and relevance.

SELF ASSESSMENT EXERCISES

1. What are the various functions of a diplomat?
2. With concrete examples, distinguish between professional and non-professional diplomats.

6.0 TUTOR-MARKED ASSIGNMENT

1. Comprehensively explain the functions of diplomats.
2. Examine the necessity for immunities and privileges for diplomats.
3. Representation is a paramount function of a diplomat. Discuss

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UNIT 4 HISTORICAL EVOLUTION OF PRE-COLONIAL AFRICA DIPLOMACY

CONTENTS

1.0 INTRODUCTION

We shall be exploring the pre-history and the oriental antiquity of diplomacy. This is because of its lustrous and invaluable contribution to the development of diplomacy. Our interest is further emboldened by the words of Harold Nicholson, that even in pre-history there must have come moments when one group of savages wished to negotiate with another group of savages if only for the purpose of indicating that they had had enough of the day's battle and would like a pause in which to collect their dead and bury their dead.

As against the European style diplomatic conduct, we are expected to have a proper understanding of this part by juxtaposing the structure and form with our earlier knowledge of the setting of pre-colonial African states. As it were, there are two machineries of diplomacy that are responsible for effective diplomatic representation of any government, viz; the home ministry and the foreign mission.

Diplomacy, the fundamental means by which foreign relations are conducted and foreign policy implemented, far from being an invention

of capitalism or of the modern nation –states or of classical antiquity either, it is found in some of the most primitive communities, a feat which requires a measure of accommodation to the interest of others.

The evidence for the conduct of international relations in pre-colonial West Africa before the 19th century is unhappily meager. Yet it is clear from the reports of early travelers that long before then African states were in the habit of sending their representatives on diplomatic missions to each other. These officials are usually described as ambassadors, though other words such as messenger, linguist and occasionally heralds were used for them.

The earliest reference to diplomatic relations in Africa seems to have emanated from the Western part of the continent, being the account by al-Saghir (writing in the early 10th century) of the sending of an ambassador (called Muhammed Ibn Arafa) by a 9th century Imam of Tabert in North Africa to an unnamed Sudanic state, possibly Gao. The emergence of diplomatic relations usually emanates from a gradual process of people-to-people contact, before developing into official governmental collaborations. Pre-colonial Africa was no exception to this rule. It is a fact of history that before official diplomatic relations started across borders, individuals had developed contacts with peoples from other places who share common interest with them. In most cases however, this common interest is usually related to trade and commerce. Therefore, it is on record that the emergence of official diplomatic relations in Africa preceded individual economic/trade relations. It is pertinent to once again, demonstrate the trend through which these activities underwent, by recalling some of them.

Timbuktu and Gao sometime gained prominence as the political centres of gravity in Africa. They are largely beautiful with an active trading life and abundant crops, including special kinds of cucumber. There was also Tagadda, another wealthy market town that imported fabrics and other goods from Egypt, and reportedly mined copper which were cast locally and shipped South and East to Hausa land and Bornu. The Hausa cities, Kano, Katsina, Zaria, and others, did not become important as caravan center until the sixteenth-century decline of Songhai. They were located in combined woodland and farming country that produced abundant citrus

fruit and cereal crops raised by the tall, black-skinned, broad-faced people of the region. Eventually Kano would become the leading market of the central Sudan with its houses of sun-baked mud, its market, its mosque, its great walls, and its complement of cultivated and prosperous merchants.

The most celebrated of these savanna cities, at least outside the Sudan, was Timbuktu, founded about 1100 A.D. by Tuareg nomads as a communications outpost just North of the Niger near the top of the river's great bend. Timbuktu had grown with the fortunes of Mali and had survived the persecutions of Songhai's empire builder, to become an important center of commerce and scholarship by the early sixteenth century. It was visited at that time by a renowned traveler, Leo Africanus, who set down a faithful description of its appearance and the life of its people just as it was being developed by the great A*skia,* Muhammed Toure, as a regional capital where he Islamic civilization of the Sudan might thrive.

Political authority within the black African civilization of the savanna had evolve over time at two differing level, each of which was rooted in the idea of mutual relationship between individuals or groups. One level comprised the village community which was the essential economic unit of this rural civilization. Within the village, authority rested with such individuals as the heads of families, the members of the council of elders, and the chief. Within their sphere the village leaders continued unchallenged, for the connection between the village and the enlarged state was made at quite a different level of political relation.

This second level was the lineage or the age grouping involving individuals who possessed common ancestry or identical age grade. The number of these groups, spread out over a number of villages, shared a fixed status such as rulers, nobility, slaves, and others, performed hereditary occupational roles long associated with their family group – farmers, merchants, craftsmen, hunters, and so – forth – or in the case of the age set, inherited different civic functions as they passed through successive age grades. State making occurred when the leader of one of these affiliations, the head of an age group, or the chief of a warrior clan, for example, succeeded by persuasion or more usually by force in

imposing his authority on a growing number of independent villages. Such a configuration, based upon duties and responsibilities within a group membership, constituted a vastly different form of polity than the idea of state defined by territorial dimension and the imposition of authority by one civilization, nation, or political association upon another.

Under this system many political grouping based on lineage and age-set relationships could coexist within the same state, having little impact upon each other or upon the village community. A lineage could profoundly change its character, perhaps by adopting Islam, without having any marked effect on the rest of the society. The ruler was concerned, therefore, not with total domination of a particular territory but with maintaining clan relationships on which he could rely for such services as troop requisitions, tribute, labour on the royal lands, or servants for his court. For most territories, the state had no boundaries, only spheres of influences. It had no name, only the title of its ruler. It had no body of law, only the fixed obligations based upon kinship or other inherited status. To be sure, the system had certain innate weaknesses, although such weaknesses have also been apparent in other political configurations. Under this arrangement, there was no kind of relationship on the government-to-government basis, until after the individual contacts had become solidified through trade and other forms of benign interactions.

2.0 OBJECTIVES

After you have studied this study unit, you should be able to:

understand the morphology of pre-colonial African Diplomacy.
ability to draw similarities and dissimilarities between the diplomacy of both epochs.
ability to link diplomacy to foreign policy.
understand the role of trade and commerce in diplomatic relationships.

3.0 MAIN CONTENT

3.1 Dynamics

The oldest approach to preserving peace is through diplomatic contact, with envoys or representatives sent from one monarch/ruler to another. This approach was well appreciated in pre-colonial Africa, after the initial contacts had been made in individual capacities, as enunciated above. The basic elements inherent in the practice of diplomacy include:

The Conclusion and Observance of Treaties- taking the situation in pre-colonial West Africa as an example, this was mainly done through symbolic means. An example that readily comes to mind is that in 1730, King Agaja of Dahomey sent ambassadors with large gifts of coral, together with one of his beautiful daughters to the Alaafin (King) of Oyo. The gesture was reciprocated by the Alaafin by sending one of his daughters in return as a wife for Agaja. The actions were symbols of a successful brokering of peace.

The Making, Maintenance and Breaking of Alliances - a formidable demonstration of this act was when the ruler of Wassa succeeded in bringing about a league of the coastal states between Cape Apollonian and the Volta in order to prevent the supply of guns to the Asante. Another alliance against the Ashante was engineered by Fante diplomacy on the death of Ashantehene Opoku Ware in 1750. In the Yoruba country, entreaties sent by the Ekiti and Ijesa kings to other monarchs in the formation of the anti-Ibadan coalition of 1878 known as the Ekiti Parapo was another good example of indigenous alliance.

The Establishment of Boundaries

This serves as another demonstration of dynamism in the operationalization of diplomacy in pre-colonial Africa. Many powerful states or kingdoms in pre-colonial West Africa adjusted or created boundaries which made the less powerful states or kingdoms their tributary. For instance, the old Oyo Empire was a dominant pre-colonial West African state that extended its boundary as far as the Dahomey (the present day Benin Republic).

The Development and Protection of Trade

The development and protection of trade having been the engineering pivot of diplomacy, commercial relations continued to play prominent role in the development of ad-hoc diplomacy. It assisted in the expansion of foreign relation matters into deliberate and long-term foreign policy objectives, and also in the tentative steps which were taken in pre-colonial West Africa towards continuous diplomacy. The trade in kola-nuts a product of the Guinea forest much in demand by the Muslims of the Western Sudan illustrates the connection between commerce and diplomacy.

The Payment of Tribute

This is another element of the dynamic character of pre-colonial diplomacy in West Africa. There are indications that the Alaafin of Oyo appointed ambassadors to pay extended visits to, and possibly reside in Dahomey in the latter part of the 18th Century in order to collect the tribute due to him under his treaties and to report any Dahomey military successes so that he might demand a share of the spoil. Similarly, the Oba of Benin placed agents in such peripheral parts of his territory as the Yoruba town of Akure, to collect the tribute.

3.2 Mechanisms

The basic mechanisms employed in the conduct of diplomacy in pre-colonial Africa are not different from the ones in use in modern terms. The only differences could only be the strength and the nature of the environment under which the mechanisms are employed. These mechanisms include:

Negotiation

This was carried out both on the bilateral level and on the basis of third-party intervention. An interesting example of negotiation through a third-party was in 1777 when a new Ashantehene, Osoi Kwance, sent ambassadors to the king of Wassa asking him to ascertain whether the Fante were willing to accept the presents usually made on a king’s death.

Immunity

The practice of diplomacy requires a measure of immunity for the person and possession of the diplomatist, and at the least his protection against arbitrary detention. Literature is awash with evidences of the provision of diplomatic immunity in the Yoruba law of old. Like in contemporary times, diplomatic outposts were allowed between two hostile tribes. The ambassador's safety was assured, if he does not act either as a spy or become hostile.

Protocol

This is associated with the treatment of diplomatists and other visitors, even in pre-colonial Africa. Like the European court, there was great variety in the etiquette of the different kingdoms of West Africa, but here again a pattern can be observed. For example, it was usual for kings to converse only indirectly with their visitors and subject. In Dahomey, the two biggest officials of the Migan and the Mau spoke respectively as intermediaries for the king to the people and for the people to the king.

Communication

The problem of communication with strangers led to the employment in negotiation of those who were skilled in foreign tongues. Ambassadors, like rulers, often had to rely on or chose to speak through interpreters and, as probably in diplomacy elsewhere, there was a tendency for the interpreters to become the negotiators. For instance, in the 19th century the Ashanti court and government were remarkable for their sense of written communication. Letters were regularly sent in Dutch to Elmina in English to Cape Coast and in Arabic to the rulers and Imam of the northern hinterland. There was even a Danish bureau.

On occasion, diplomatic communication took the form of symbolic messages conveyed by object such as the horse's tail sent to the French emissaries by the Egba in 1884 as a sign of alliance or by Cowries and other miscellaneous item arranged in a significant pattern, as in the congratulatory message sent by the Awujale of Ijebu land to Oba Akitoye of Lagos after the latter's restoration in 1851.

Intelligence

Like military operations, diplomacy requires the support of intelligence. By its nature some actions are dark and hidden, and it is difficult to adduce evidence. In any event, intelligence was realized to be an important asset in international dealings, and the counter part of the warmth with which foreigners were received in West Africa was the suspicion of any seemingly unusual actions or question by them. The Ashante found it necessary to keep watch of their servants abroad.

Flattery

Flattery was a familiar diplomatic mechanism in pre-colonial Africa. It included the attribution of 'strong names', the giving of present, which was obligatory, both to ease negotiations and as a token of friendly relations. For example, Dahomey attempted on more than one occasion in the 18th century to avert the hostility of Oyo by sending 'great presents' and Allada, threatened by Dahomey, retained the support of Oyo by directing a stream of presents to the Alaafin.

3.3 Institutions

Little direct evidence can be found as to the location of the responsibility for the conduct of foreign affairs among Africans. It can be assumed, however, that this must have varied in accordance with the exceedingly diverse forms of government which prevailed in pre-colonial times. Some traces can be detected of the theory commonly found in Europe that such matters were primarily the concern of the executive arm of government.

In a monarchy, the king usually exercised at least nominal authority over foreign affairs. For instance, in the Oyo Empire, the control of foreign affairs was vested in the king, any consultation with the council known as the Oyo Mesi only implied that the Alaafin was uninterested in the matter under discussion. In the Gold coast, issues of foreign affairs were normally discussed by the kings or rulers in council with their chiefs.

In metropolitan Oyo, military power was exercised by the Oyo Mesi, whose leading member, the Bashorun, commanded the army of the

capital. In Ashante, the constitution requires or admits an interference of the Aristocracy in all foreign politics, extending even to a veto on the king's decision, but they watch rather than share the domestic jurisdiction.

3.4 Structures

The status of those responsible for diplomatic duties in African societies varied, but in every case they must have been among those close to the rulers of the communities, often members of the royal household. Sometimes they were great men of the land, even princes from the royal household might be sent on a mission, as in the Congolese envoy to Rome in 1514, or the Ashante representative at Cape Coast. Among the Igbo, priests were appointed as ambassadors in negotiations to end the small-scale inter-communal wars.

Except where the external influences of Islam or Western Europe were strong, there was no trace of even the most vestigial foreign office to serve as a centre for the information and execution of foreign policy. Yet examples of recognized diplomatic staffs can be found in pre-colonial West Africa. Possibly the most highly organized staff was that of the Alaafin of Oyo. This was the group of household slaves known as the Ilori, also called 'half-heads' from the custom of shaving one side of their heads into which magical substances were inserted. Numbering some hundreds of both sexes, each male pairing with a female, the Ilori performed multifarious duties, but whereas the junior had administrative and menial tasks within the palace, the senior males acted as body guard to the Alaafin and also as his messengers to the outside world. All bore titles, some of which had a significant relation to their calling. Another Yoruba court employing 'half-heads' was Ife, where the Ooni's messengers were known as Emese, the antiquity of their order being attested by the terracotta representations found in the town.

The diplomatists of Africa generally carried credentials or badges of office in such form as a whistle, a fan or a sword. The best known of these are the staffs of Ashante and Dahomean ambassadors. They were often covered in gold or silver leaf and decorated with symbolic emblems. A favorite Ashante device for a staff was that of a hand holding an egg, to convey the warning that neither the king nor his representative should

press a matter too hard nor treat it too lightly.

4.0 CONCLUSION

We have examined the nature and character of pre-colonial African diplomacy, and the relationship between the quasi home and foreign missions. What has come out in bold relief is that the origin of pre-colonial Africa diplomacy cannot be extricated from people-to-people relationships. The outcome of such relationship has been mutual economic benefits. These contacts were explored by the rulers of the communities to enhance the prospect of diplomatic relations. Whatever was developed in pre-colonial times has in modern times been transformed according to the dictates and demands of contemporary politics and international relations.

5.0 SUMMARY

In this unit, you learnt about diplomacy and its evolution in pre-colonial Africa.

SELF ASSESSMENT EXERCISE

1. Discuss the development of diplomacy in Pre-colonial Africa.

TUTOR-MARKED ASSIGNMENTS

1. Compare and contrast the mechanisms of diplomacy in pre-colonial Africa and contemporary times.
2. People-to-people contact preceded government-to-government contact in pre-colonial Africa. Discuss.

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MODULE 5

UNIT 1 CONDUCT OF WARS IN PRE-COLONIAL AFRICAN SOCIETY

CONTENTS

1.0 INTRODUCTION

War is a state of open hostility between nations, which extend beyond mere feuding. Such hostility leads usually to violence and to destructive

(or intended destructions) action. Skirmishes, raids, pitched battles and even campaigns, are not wars but incidents comprised within a war. A war may, though rarely, be decided by a single battle, but that battle is something less than the total state of hostility within which it takes place.

Apart from the case of the complete collapse of one of the contestants, a war, even when undeclared must usually be ended by agreement, more or less formal, between the belligerents to make peace or at least to observe an armistice, and in exceptional cases it had died through exhaustion or inertia of the belligerents. Like all societies, where there are interest to be protected, pre-colonial African societies had no choice, in some cases, but to engage in war to protect their interests.

Wars are by no means a recent development. Its origin can be traced to human interactions. While the reasons and the methods may vary, the intentions of the warring parties are always one and the same, that is, to subdue the opponents. Before the series of wars that raged in Europe in recorded history, there had been countless number of wars involving communities in pre-colonial Africa. This unit would cover the relevant issues in battles fought during that period, starting with the periodization of the era.

2.0 OBJECTIVES

After you have studied this study unit, you should be able to:

- outline the manner in which wars were fought in pre-colonial Africa.
- enumerate the various types of wars that existed in pre-colonial Africa.
- obtain an insight into the periodization of warfare.
- isolate the of factors that contributed to warfare.

3.0 MAIN CONTENT

3.1 Pre-historic Warfare

This refers to wars conducted in the era before writing, states and other

such large social organizations. When humans first began fighting wars is a matter of great debate among anthropologists and historians. There are examples of Neanderthals with spear points embedded in their skeleton, and some archaeological evidence of other early groups of humans having killed each other. These are isolated incidents and are far more likely evidence of murder between individuals, rather than war between groups. It is also quite likely a number of these deaths were the result of hunting or other accidents.

Of the hunter-gatherer societies still in existence today some lead lives of great violence, frequently raiding neighbouring groups and seizing territory, women, and goods from others by force. Other groups, such as the famous Bushmen of the Kalahari live in societies with no warfare and very little murder. Which of these states was more common among early humans is still unknown, and a matter of deep debate.

The main weaponry of early humans was at first simple clubs and spears. These were heavily used for hunting from 35,000 BC, but there is little evidence there was much war in this era. Of the many cave paintings from this period none depict humans attacking other humans, there is no archaeological evidence of large scale fighting.

Beginning in about 12,000 BC combat was transformed by the development of bows, maces, and slings. The bow seems to have been the most important weapon in the development of early warfare, allowing attacks to be launched with far less risk to the attacker. While there are no cave paintings of battles between men armed with clubs, the development of the bow brings the first depictions of organized warfare with clear illustrations of two groups of men attacking each other. These figures are clearly arrayed in lines and columns with a distinctly garbed leader at the front, some paintings even portray still recognizable techniques like flankings and envelopments.

The mace seems to have enjoyed a period of primacy, but quickly the development of leather armour greatly limited its effectiveness, leaving projectiles and edged weapons paramount.

The first archaeological record of what could be a battle is located on the Nile in Egypt near the border with Sudan. Known as Cemetry 117 it is at least seven thousand years old. It contains a large number of bodies, many with arrowheads embedded in their skeletons, indicating they may have been the casualties of a battle. Some question this site, arguing that the bodies may have accumulated over many decades and may be the evidence of the murder of trespassers, but not war. That about half the bodies are female also causes some to question their origin.

What is common among those groups that still remain and fight frequently is that warfare is highly ritualized, with a number of taboos and practices in place that limit the number of casualties and the duration of a conflict.

With the development of agriculture and the domestication of animals societies became more clearly war-like. Agriculture created large enough surpluses to enable farmers to spend some of the year as warriors, or to support a dedicated class of fighters.

Nomadic cattle and horse herders were even more likely to engage in combat, as their mounted warriors could gain much plunder by attacking the agriculturists of the river valleys.

Perhaps to dissuade the nomadic raiders, or to counter other pastoralists, fortifications and city walls began to be built, with earliest known being those of Jericho, built around 8000 BC. However, this wall was more probably for flood defense or to protect against wild animals than for defense against warriors.

Quite a number of societies are notable for the thousands of fortifications constructed to enhance a group's standing in the near continuous fighting on those islands. In an era before siege weapons had been very advanced, and when attackers had limited supplies and time, fortifications seem to have been a successful method of securing a population and livestock, though the fields and homes would likely be pillaged by the attackers. These substantial fortifications show that there was considerable social organization to prehistoric peoples; extra evidence for them also being able to conduct organized warfare.

The onset of the Chalcolithic saw the introduction of copper daggers, axes, and other items. For the most part these were far too expensive and far too malleable to make efficient weapons, and are today believed to have been largely ceremonial. It would not be until the development of bronze that metal weapons became common place.

The size of prehistoric armies is a matter of debate. Those who deny the very notion of prehistoric war argue that population densities were too low to have anything larger than raiding parties of a few dozen men. Others argue that settlements would have likely fielded several hundred men, and an alliance of a few cities would produce a sizable force. Certainly these groups were large enough that all the elements of warfare such as tactics, logistics, and organizational structure would have been essential to the success of an expedition.

3.2 Ancient Warfare

The difference between prehistoric and ancient warfare is less one of technology than of organization. The development of first city-states, and then empires, allowed warfare to change dramatically. Beginning in Mesopotamia, states produced sufficient agricultural surplus that full-time ruling elites and military commanders could emerge. While the bulk of military forces were still farmers, the society could support having them campaigning rather than working the land for a portion of each year. Thus, organized armies developed for the first time.

These new armies could help states grow in size and became increasingly centralized, and the first empire, that of the Sumerians, formed in Mesopotamia. Early ancient armies continued to primarily use bows and spears, the same weapons that had been developed in prehistoric times for hunting. Early armies in Egypt and other parts of Africa followed a similar pattern of using massed infantry armed with bows and spears.

3.3 Declaration

As elsewhere, the act of warfare in pre-colonial Africa was initiated by the establishment of conventions. Of these the ‘formal declaration of war’

was perhaps the most important, giving an enemy time to prepare for an attack and an opportunity for parleying and for sending women, children and the elderly to safety.

Among the centralized states of West Africa, the decision to make war was a deliberate one, taken usually not by the ruler alone but with the advice of his council, and solemnly promulgated. For example, before hostilities opened, the Ashantehene placed himself on the advice of the elders in order to pronounce a declaration of war. Such deliberation amounted to a conscious sacrifice of the advantage of surprise in attack. The Fante, sent a herald to the enemy to declare war and to make proposal for the time and place of battle, while in a war between the Dahomeans and the old Whydahs with their Popo allies in 1743 the captains of the respective armies are said to have first held a dispassionate convention at the head of their troops and drunk a toast together before the opening of hostilities.

This was not confined to the more highly developed states. In the 16th century, the Igbo, Ijaw and other peoples of south – eastern Nigeria also gave notice to their enemies of an intention to go to war with them, laying plantain leaves and piles of powder and shot on the paths and arranging for the times and places of battle though those battles, usually taking place on the local boundaries, might be little more than bush tournaments.

Apart for the formal declaration of war in pre-colonial Africa, there was also the informal declaration of war. In this case the enemy state was attacked without notice or warning. The most vivid example of this were the Muslim ‘holy wars’ from the 17th century on ‘infidels’ and ‘unbelievers’. The most prominent was that led by Busman Dan Folio and his sons which between 1804 and about 1831 created a vast empire in Northern Nigeria on the ruins of the Hausa and other states and also challenged the ancient Islamic state of Boron.

3.4 Types

The intentions and the weapons engaged in waging a war determine the nature of the war. There are different types that are constrained by the character of the warring parties, the season the war is supposed to be

waged and the religious beliefs of the belligerents could be classified as follows:

Seasonal

Certainly up to the mid 19th century military activities in Africa seemed almost always to have been confined to the dry season, lasting from about October to May in the Savannah and from November to March on the coast and in the forest. The coming of the rain might halt a successful campaign in mid-career, as in the case of that conducted in 1765 by Ashante and the Fante in temporary coalition against Akyeni.

Ceremonial War

This pattern of mainly short wars, taking place within one campaign varied by some longer but intermittent struggles between the richer and more highly organized states, prevailed throughout Africa in the 17th and 18th countries and was probably much the same in earlier times. For example, the campaign which a new ruler of the Hausa state to Marad was required to mount within two weeks of his accession to the thrown. But for this case, the objective was real enough, being the recapture of their old capital, Katsina.

Religious war

This pattern of war was mainly orchestrated by the Muslims. The Muslim 'holy wars' or Jihads' are well documented in African history. According to the 'hadith', Holy War is the peak of religion and from the 7th century onwards, beginning in Mauritania and Senegal, there occurred a series of jihads. Also, the Moroccan invasion of Songhai at the end of the 16th century was apparently a holy war.

Professional/Sophisticated War

Towards the end of the 17th and 18th centuries, professional armies largely displaced militia and were dependent on expensive and improved weapons and ammunition, and wars tended to be in longer duration. Such wars took no account of the seasons, the troops remained in the field

though accommodated in camps which increasingly came to resemble permanent villages, and continued to harass their opponents throughout the year. Example of this was the Ijaye war of 1860-1865, in which the Egba marched to the aid of the Ijaye in June 1860 at the wettest time of the year. In this category also, was the sixteen years Ekiti Parapo war of 1877 – 1893, against Ibadan.

3.5 Limits of Combat

The most outstanding limitation against wars in pre-colonial Africa was climatic conditions. It was climatic conditions which most often regulated hostilities in West Africa, campaigns were in general regular dry season event, like Idris Aloma of Borno's war in the 16th century against the Bulala in Kanem or the annual marches of Oyo against Dahomey in the 18th century. The wars ceased because of climatic changes (i.e. from dry to rain season), such cessations of hostilities were not due only, and perhaps not primarily, to the difficult condition created by the heavy downpours of the tropical climate, but were occasioned also by the need for the soldiers to return to work on their farms, since the end of the dry season was the time for planting.

Other limitations on warfare came into being as a result of certain religious activities. At that time, certain days and seasons were deemed improper for Muslims to engage in war. In fact fighting was discouraged, if not actually prohibited during the three or four sacred months declared by Islamic teachings. But this had little practical effect, especially when one imagines the thought of Usman Dan Fodio, when he commanded his followers to 'slay the Idolaters whenever you find them'. Also, the Ashante have very numerous holy days in which wars were prohibited.

4.0 CONCLUSION

Literature is awash with stories of wars in pre-colonial Africa, this gives the impression that the continent is occupied by people that are the most warlike of the race of man, and for him war, the satisfaction of his psychic needs, was a way of life. However the causes of war in pre-colonial

Africa were as multifarious as elsewhere, rooted in the interests of individuals and of groups and in converging sequences of events.

A fundamental cause of most African wars (and indeed, the most prevalent cause or reason of wars in any part of the world) was the desire of the more prosperous societies for territorial expansion and to exercise a measure of physical control over their neighbors. A typical example is the frequent Oyo expeditions against Dahomey in the 18th century. In most part of Africa, territorial aggrandizement was by no means the necessary or normal sequel to victory in such wars, perhaps more often a loose tributary relationship, such as Oyo imposed on Dahomey and others of her neighbors, was preferred to annexation and the extension of state boundaries.

The acquisition of wealth (or the competition for 'scarce resources' to put it more broadly) was an ambition of equal or nearly equal importance to that of power over other peoples. This might entail the occupation of farm land and the extension of grazing rights and so was bound up with territorial expansion.

Another common reason was the exaction from the conquered of tribute, which in suitable circumstance was preferable though akin to the taking of booty.

Access to trade and control of trade routes were similarly strong motives for war. Trade and war fed upon each other in a self-sustaining process which reinforced the domination of the warrior aristocracies. One object of Idris Aloma's expedition to the Kauar Oasis in the late 16th century seems likely to have been to assure the supply to Borno from the region of rations and to keep open trade with Fezzan, Egypt and the Mediterranean coast. Trade rivalries were a principal source of hostility between the Fante states themselves and between the Fante and the Ashante.

Some other reasons for waging wars include the plunder of moveable property and, of far greater importance, the taking of captives. The latter included women intended as wives for the victors, which was a demanding task in a polygamous society. Under Islamic rules of war the

enslavement of captives was permitted, and the capture of pagans' as slave material became a prime object of Muslim 'holy' wars.

Ideological reasons- most wars which took place in central and western Sudan were ideological wars because they led to Islamic revolutions in these areas. Apart from the Sudanese example, ideologies seem to have played little part in bringing about wars in West Africa.

Indigenous religions were apparently not interested in evangelizing beyond their ethnic boundaries. But prominent West African cases of conflict partly motivated by religion were the wars of the Dahomeans in the 18th and 19th centuries. The principal objective of which was to take captives, who were subsequently to be sacrificed to the ancestors of the ruling dynasty.

In the final analysis, it is pertinent to maintain that all nations and societies would embrace the option of war when their interest is threatened by external forces.

5.0 SUMMARY

In this unit, you learnt about warfare, in ancient Africa. This involved the types of war, its declaration and limits of combat/hostilities.

SELF ASSESSMENT EXERCISES

1. What are the variables that determine the types of war in pre-colonial Africa?

6.0 TUTOR-MARKED ASSIGNMENT

1. With relevant examples, explain the primary reasons for war in pre-colonial Africa.
2. Attempt a linkage between warfare in pre-historic times and pre-colonial Africa.

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UNIT 2 WARS IN MODERN TIMES

CONTENTS

1.0 INTRODUCTION

The dominant forces in the international system are the nation-states which are driven and guided by the principle to protect their national interest defined according to the realists, in terms of power. The relations among nation-states are either peace or confrontation. The latter, though not a very regular feature of the World state system, has given many scholars and world leaders a cause for concern because of its destructive nature, more so at a time when there exist the weapons of mass destruction (WMDs). All nations-states have their national interests or vital interests which are non-negotiable. At a point these interests work in contradicting direction leading to tension and eventually war. Some scholars believe that under the standardized condition of interstate life, it is impossible for a state to operate and the system to function except on the fundamental basis of physical coercion or violence most clearly expressed in terms of war. War was at some point in time described as one of mankind's favorite occupation. It is that single collective effort which has taken more human lives than any other. This is because as some other scholars argue, war is the ultimate resort of states that can see no other way to have their interest met. This informed the notion that war belongs to the province of social life. It is part of the intercourse of the human

race, being a political instrument, and as such a continuation of political activity by other methods.

Therefore, given the above war means different things to different people. Some perceive it as a plague which ought to be got rid off in human experience and existence. To others it is a crime which deserves punishment. On the other hand, there are those who take war for granted, regarding it either as an interesting adventure, a useful instrument, a legitimate and appropriate procedure or a condition of existence which one must be prepared for.

Modern warfare is a complex affair, involving the widespread use of highly adavanced technology. As a term, it is normally taken as referring to conflicts involving one or more first-world powers, within the modern electronic era. However, this is not to say that third-world countries do not also engage in war, although they are more prone to the use of low-tech weaponry and guerilla tactics. This complex subject can be broken down and divided into a variety of categories and subcategories.

Drawing from history, however, war is neither a constant nor a periodic recurrence, but one which changes in character, frequency and intensity under different conditions. In this regard war can be seen as a violent contact of distinct but similar entities e.g. battles between two primitive tribes, and between two modern nations. Narrowly, in contrast, it can be perceived as the legal condition which equally permits two or more hostile groups to carry on a conflict by armed force. It is therefore, open and declared armed hostility between and among sovereign states.

Extensive work has been done by various scholars on the nature and cause of war. Broadly speaking, however, they fall into three categories of explanation. These include:

Human Nature

This class of people stresses the need to situate the causes of war in the inherent character of mankind. Sometimes, these explanations have metaphysical, spiritual or theological under-tone. They argue that human race is a product of the fallen Adam from Eden therefore he is “eternally

prone to violence". There are also psychological, psychoanalytic or, now popular, socio-biological explanations. The constant feature of this understanding is that it is reductionist or microcosmic in view by restricting explanation to the behavior and attitudes of humanity.

Socio-Cultural Explanation

The analysis is perched on the socio-cultural and political conditions of mankind. The choice of which societies are war prone varies according to who is explaining or perceives it. There are the liberal view, the autocratic position, Leninist view and capitalist view. The popular view among Western scholars- the liberal and capitalist strands is that democracies do not fight one another. This explanation has also been faulted on the grounds of being biased and subjective in that democracies may not fight one another but they are not free from the spell of war mongering. Besides, the definition of the concept of democracy varies and as such many countries asserting democratic status fight one another.

Macrocosmic Perspectives

This focuses on the interplay of forces on the international system as the major cause of war. The argument is that states have interests and these interests clash but because there is no sovereign supra-national agency to mediate the conflict of interest, at an unbearable threshold wars occur. Therefore the incidence of war becomes the prerogative of the contending states, a mechanism or the resolution of conflict. For the successful prosecution of these wars, a trilogy of factors is necessary as the basis. This includes animosity directed at enemy which the people provide; the management of contingency which is the domain of the armed forces and setting of objectives and aims of war determined by the political leadership.

The world has witnessed series of wars, but the 20th century presented the mothers of all wars, in that there were two major large scale wars which recorded highest casualties in the history of war-fare, based on the technological advancement that are being witnessed on the international arena.

2.0 OBJECTIVES

After you have studied this study unit, you should be able to:

familiarize yourself with the dynamics of war.
understand the mechanisms used in preventing wars.
expose the differences in the nature of war in ancient and contemporary times.
have an understanding of the different types of wars.

3.0 MAIN CONTENT

3.1 Nature

There are different categorizations of war, depending on who is doing the exercise. Such include star war, nuclear war, just and unjust wars, holy wars (Jihad), colonial war of words, revolutionary war, liberation war, tribal war, civil war, imperialist global and regional wars, etc. However in a broad sense, the various kinds of war are subsumed under two categories- total and limited. This categorization considers the factors of the number of countries involved, the duration of the war, the weapons engaged and its intensity as well as the number of casualties.

Limited War

This is otherwise regarded as the small war. This is a small scale war in most cases involving two countries in dispute over issues in conflict. This issue is sometimes related to territorial claims. The Korean war of the 1950s can be cited as a typical example. Others include the Arab-Isreali War, Indo-China War, Pakistan-India conflict over Kashmir, Mau-Mau and Algerian war in Africa.

In this type of war, the countries involved stick to conventional arms and war procedures. Again most of these last for only a short while and could be intermittent. And finally because the use of conventional war weapons is prohibited, and the fact that the belligerents are trained combatants, there is a drastic limitedness of causalities of war.

Total War

On the other hand, is the total war fare which is, though not only a feature of the 20th century, dreadful and highly destructive. In terms of the countries involved, there is a chain of countries forming alliances against one another. It often starts with two countries but later spreads to other countries that align with either of the parties to the conflict depending on the relationship between them and the expected gain. In the 17th century, because of the crudeness of technological development in the area of military equipment, conventional weapons were put to use. But in modern times the non-conventional, nuclear weapons are used. The total war is always the war of all against all. In the 17the century Europe there was the thirty years' war. This point to the length of years involved. In the 20th century, total wars hardly last for more than six years- World-War I (1914 – 1918) and World-War II (1939 – 45). However, the estimate on casualties cannot be compared to that of the earlier wars in Europe, the 20^{th} century wars having been regarded as the holocaust.

The other forms of war as said earlier fall under these two categories but somehow they cannot accommodate neatly all the kinds of war listed earlier. Therefore, such extension requires special treatment.

Imperialist and Colonial Wars

This deal with the war of conquest of the so-called savages. It has an expansionist thrust of a superior power oppressing weaker ones, leading to the establishment of empires. The colonial war, on the other hand, is otherwise known as the war of liberation. This is the efforts made by colonized people agitating for self rule and emancipation from the clutches of the imperial powers. It could take various forms. These include the guerilla war fare examples of such include the Vietnam War, Algerian War, Angola crises among others.

Revolutionary Wars

These are usually internal in character, which aim at transforming the economic and socio-political status quo ante. It usually employs the

guerilla tactics in its operation. This was the method employed by communist China under the leadership of Chairman Mao Tse-tung. Quite a handful of African countries are beginning to use this kind of method in changing the conditions of their countries.

Civil War

This could come in a small scale nature, often involving particular sections of a country. It basically centers on the secession motives of tribal or ethnic groups, or minorities from their original country. This is a recent phenomenon in the history of world politics and it is common among Africans but not restricted to Africa. Cases of such include the Bosnian War, the Kosovo conflict, Hutu-Tutsi War in Rwanda and Burundi, Sudan crises, the Biafran War in Nigeria (1967 – 1970).

3.2 Types

a. Guerrilla Warfare

This is defined as fighting by groups of irregular troops (guerrillas) within areas occupied by the enemy. When guerrillas obey the laws of conventional warfare they are entitled, if captured, to be treated as ordinary prisoners of war; however, they are often executed by their captors. The tactics of guerrilla warfare stress deception and ambush, as opposed to mass confrontation, and succeed best in an irregular, rugged, terrain and with a sympathetic populace, whom guerrillas often seek to win over by propaganda, reform, and terrorism. Guerrilla warfare has played a significant role in modern history, especially when waged by Communist liberation movements in Southeast Asia and elsewhere.

b. Nuclear Warfare

This is the use of nuclear weapons against opponents. It was first used in 1945 in a strategic bombing role, to incapacitate two largest cities in Japan- Hiroshima and Nagasaki. It has encompassed the use of nuclear weapons in both strategic roles, such as attacking cities, and battlefield roles, as extremely powerful conventional weapons.

c. Naval Warfare

This takes place at sea. Usually, only large, powerful nations have competent navies. Modern navies primarily use aircraft carriers, submarines, frigates, and destroyers for combat. This provides a versatile array of attacks, capable of hitting ground targets, air targets, or other seafaring vessels. Most modern navies also have a large air support contingent, deployed from aircraft carriers.

d. Air War

This is one of the most efficient ways to destroy enemy combatants with minimal risk. Modern combat aircraft are very advanced technology, usually making use of onboard computers, including electronic targeting devices. Military aircraft are usually built to perform a specific role, such as bombing raids, air-to-air combat against other aircraft, or submarine hunting at sea. There is practically a different type of plane for every role. Some aircraft are capable of multiple roles, such as the F/A-18 hornet, which is a fighter-bomber. This means the Hornet is capable of air-to-air and air-to-ground combat. Another important aspect of aerial warfare is the helicopter. Helicopters have the important ability to take off and hover. This makes them nearly indespensible for close air support. Some helicopters also have special roles, such as submarine hunting, or rescue missions. There are some aircraft, such as the Harrier, which have the special ability to perform Vertical Take-Off and Landing, or VTOL.

In modern terms, cavalry refers to armoured ground vehicles such as tanks and Armoured Personnel Carriers, and can also be used in the term Airborne Calvary to describe helicopters working closely with ground units. Infantry remain an important part of modern warfare, as they are the only way to take and hold territory. Tanks are extremely vulnerable vehicles, and can easily be destroyed by well placed infantry, which facilitates the use of attached infantry units. In addition, infantry fighting vehicles are used to transport these units across terrain with heavier armor, following reconnaisance groups. In the United States Army, M2 and M3 Bradleys are commonly attached to M1 platoons, and make use

of their long range TOW capability to engage and identify targets at long distances.

e. Electronic Warfare

This refers to mainly non-violent practices used chiefly to support other areas of warfare. The term was originally coined to encompass the interception and decoding of enemy radio communications, and the communications technologies and cryptograohy methods used to counter such interception, as well as jamming, radio stealth and other related areas. Over the later years of the twentieth-century and early years of the twenty-first century this has expanded to cover a wide range of areas: the use of, detection of and avoidance of detection by Radar and Sonar systems, computer hacking, Space warfare etc.

f. Cold War

This was a post second world war phenomenon. This was a war that needed required the use of physical weapons nor encouraged the act of physical act or opposing views or objects. It was strictly a psychological warfare that involved the twisting of the hearts and souls of men. It was led and ably supported by the cronies of the two victorious sides in the second war war. Each side, advancing its political ideology. It eventually came to an end in 1989, with the disintegration of the former Soviet Union and the subsequent colapse of communism.

3.3 Weaponry and Equipment

Guerilla weapons are quite simple. Forest guerillas are usually armed with a simple rifle and basic survival equipment. Guerillas in countries such as Iraq are armed with the traditional AK-47 and RPGs. Guerillas do not usually use vehicles for transportation. It is more common that it is used for bombing targets. The guerilla doctrines' main disadvantage is the inability to access more advanced equipment due to economic issues. Therefore the guerillas must rely more on tactics than firepower. Most large militaries are equipped with weapons from their own countries. However, there are also a lot of imports, especially from Germany's Heckler & Koch Corporation. The United States primarily makes use of Colt's M-16 assault rifle, most commonly in its A2 configuration. The

sidearm is the Italian-made Beretta M9. The United States squad assault weapon, or SAW, is the Belgian-made M249. France's infantry troops mostly use the FAMAS, which has rifleman and support configurations. It is manufactured by the St-Etienne Arms Factory, which is a member of the government organization GIAT. The German armed forces use the G36, produced by Heckler & Koch. The British army uses the SA80 weapons system in its engagements. Russian troops use the AK-74 and many later models. The Chinese use the Type 81 and later, the Type 95.

Another common weapon for an infantry unit to possess is an anti-tank weapon. This is a sort of man-portable rocket launcher, useful for stopping tanks. The US mainly uses the M72 LAW for this purpose. The Russians use the RPG-27.

3.4 Mechanisms for Prevention

Since the invention of the weapons of mass destruction, various individuals have shown interest and protested against war. At different levels different mechanisms have been put in place to forestall the occurrence of war. These mechanisms remain the focus of the conflict management, prevention and resolution schools of thought. Some of the mechanisms include:

International Organizations

These organizations are set-up to wade in before the eruption of crisis, so that such can be averted. This is done through peace meeting, and signing of treaties and protocols. More practically, the UN involves itself in the setting up of peace-keeping forces and allows for the Security Council interventions in the period of crises.

Third Party Interventions

Aside from the possibility of the UN being involved in reaching compromise and solutions on war issues, other third parties, most often neutral states attempts to facilitate understanding, thereby cooling off war tension that might have built up.

4.0 CONCLUSION

The act of war is not a spontaneous or irrational venture. It is usually a premeditated attempt to use violence to settle scores and achieve what other means may have failed to achieve in the conduct of relations between parties within a state, and sometimes between states. The root of war is located in the conflict or clash of interest. Whether this will degenerate into war depends on the outcome of negotiation between parties involved, the degree of trust between them, the relative importance of the issues at dispute and the manner of managing the tension that must have brewed.

The incidence of international wars has reduced quite drastically in modern international relations, because the world continually advances means through which peaceful and harmonious relationship can be maintained between and among mankind. Moreover, the tendency for 'overkill' with the invention of sophisticated weapons of mass destruction has greatly limited the tendencies for war as option in international relations.

5.0 SUMMARY

In the previous unit, you learnt about war and warfare in pre-colonial Africa. By way of contrast, the present unit focused on war in modern times, types of war, aims, and mechanism for prevention used.

SELF ASSESSMENT EXERCISES

1. Outline the different perspectives on warfare.

6.0 TUTOR-MARKED ASSIGNMENT

1. Explain the different types of warfare that can be identified in contemporary times.
2. 'States engage in wars to protect their national interests'. Discuss.

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UNIT 3 POWER AND CAPABILITIES IN PRE-COLONIAL AFRICAN SOCIETIES

CONTENTS

1.0 INTRODUCTION

It is imperative to refresh our memory about some distinguishing characteristics of pre-colonial African that had been discussed in the previous units. Africa is the largest of the three great southward projections from the main mass of the Earth's surface. It includes within its remarkably regular outline an area, of c. 30,244,050 km^2 (11,677,240 mi2), including the islands.

The name Africa came into Western use through the Romans, who used the name *Africa terra* — "land of the Afri" (plural, or "Afer" singular) — for the northern part of the continent, as the province of Africa with its capital Carthage, corresponding to modern-day Tunisia.

The historian Leo-Africanus (1495-1554) attributed the origin to the Greek word *phrike* (φρικε, meaning "cold and horror"), combined with the negating prefix a-, so meaning a land free of cold and horror. But the change of sound from *ph* to *f* in Greek is datable to about the first-century, so this cannot really be the origin of the name.

Egypt was considered part of Asia by the ancients, and first assigned to Africa by the geographer Ptolemy (85- 165AD), who accepted Alexiandra as Prime Meridian and made the isthmus of Suez and the Red Sea the boundary between Asia and Africa. As Europeans came to understand the real extent of the continent, the idea of *Africa* expanded with their knowledge.

Separated from Europe by the Medittaranean Sea, it is joined to Asia at its northeast extremity by the Isthmus of Suez, 130 km (80 miles) wide. From the most northerly point, Ras Ben Sakka in Morocco, a little west of Cape Blanc, in 37°21′ N, to the most southerly point, Cape Agulhas in South Africa, 34°51′15″ S, is a distance approximately of 8,000 km (5,000 miles); from Cape Verde, 17°33′22″ W, the westernmost point, to Ras Hafun in Somalia, 51°27′52″ E, the most easterly projection, is a distance (also approximately) of 7,400 km (4,600 miles). The length of coast-line is 26,000 km (16,100 miles) and the absence of deep indentations of the shore is shown by the fact that Europe, which covers only 9,700,000m^2 (3,760,000 square miles), has a coast-line of 32,000 km (19,800 miles).

The main structural lines of the continent show both the east-to-west direction characteristic, at least in the eastern hemisphere, of the more northern parts of the world, and the north-to-south direction seen in the southern peninsulas. Africa is thus composed of two segments at right angles, the northern running from east to west, the southern from north to south, the subordinate lines corresponding in the main to these two directions.

Africa is home to the oldest inhabited territory on earth, with the human race originating from this continent. The Ishango, carbon-dated to c. 25,000 years ago, shows tallies in mathematical notations.

Throughout humanity's prehistory, Africa (like all other continents) had no nation states, and was instead inhabited by groups of hunter-gatherers. Later, agriculture was used in Egypt along the Nile river. Egypt was one of the earliest nation states ever formed. Other civilization include Ethiopia, the Nubian kingdom, and the kingdoms of the Sahel (Ghana, Mali, and Songhai).

In the millennia before the nineteenth century, indentured servants and slaves could be had for capture by bargaining with local warlords or tribal leaders. This practice was spread across continents. Arabians and Europeans were able to capture millions of Africans and export them for labour around the world in what became known as the global slave trade, which had ceased by law by the nineteenth century, in most European countries.

But at the same time that serfdom was ending in Europe, in the early 19th century the European imperial powers staged a massive "scamble for Africa" and occupied most of the continent, creating many colonial nation states, and leaving only two independent nations: Liberia, the Black American colony, and Ethiopia. This occupation continued until after the conclusion of the Second World War, when all colonial nation states gradually obtained formal independence.

Today, Africa is home to over 50 independent countries, all but two of which still have the borders drawn up during the era of European colonialism.

Although power plays a central role in international politics, it is fundamentally an instrument for the achievement of national values. It is an indispensable means to national ends and particularly, a vital ingredient of foreign and cross boundary relations. The necessity for the acquisition of power is thus not lost on any state, even in pre-colonial Africa.

2.0 OBJECTIVES

After you have studied this study unit, you should be able to:

understand the dynamics of power
differentiate between personal power and political power.
isolate the differing characteristics of power
compare the use of power in both periods.

3.0 MAIN CONTENT

3.1 Nature of Power

Political power is a type of power held by a person or group in a society. There are many ways to hold such power. Officially, political power is held by the political leader of a state, such as a president, prime minister, or monarch. Political powers are not limited to heads of states, however, and the extent to which a person or group holds such power is related to the amount of societal influence they can wield, formally or informally. In many cases this influence is not contained within a single state and in such cases, we talk of international power.

Political scientists have frequently defined power as "the ability to influence the behaviour of others" with or without resistance. Traditionally, political power has been built up and maintained through the exercise of military power, the accumulation of wealth, and the acquisition of knowledge. A simple measure of power can refer to the ability to perform speech acts and one mark of powerlessness is an inability to perform speech acts that one might otherwise like to perform.

Throughout history there have been many examples of the destructive or senseless use of political power. This has happened most frequently when too much power has been concentrated in too few hands, without enough room for political debate, public criticism, and other types of correctives. Examples of such regimes are despotism, tyranny, and dictatorship. To counter these potential problems, people have devised and practised different solutions, most of them related to the sharing of power, the placing of limitations on the extent of power one individual or group can have, and the creation of protective rights for individuals through legislation or charters.

The conflict helix is a process of conflict which originates in the sociocultural space of meanings, values, norms, status, and class. It is at one time a structure, the opposition of attitudes, at another a situation, the opposition and awareness of different interests. It may be latent until the

will initiates action, or resolved through abnegation or resignation of interests. Or it may be manifest as opposing interests strive to overcome and balance each other. In any case, conflict eventuates a balance of interests, capabilities, and wills in a structure of expectations enabling solidary and contractual interactions, producing order, and ensuring correct social predictions. But eventually such structures and changes in the underlying balance become incongruent, leading to disruption by some trigger event. A new process of conflict then ensues, resolving in a new balance that is built on the previous ones.

Thus is the conflict helix. All societies are the outcome of such a conflict process, all consists of structures of expectations, all are built on multiple and overlapping balances of powers among individuals.

Conflict is of power, and the over-all structure of expectations constituting a state shapes the nature and direction of manifest conflict. While independent of the separate structures of expectations across societies, conflict is closely related to the type of society. For whether a society is authoritative, coercive, or exchange will fundamentally determine the causes and conditions affecting interests, capabilities, and will. That which shapes interests and power will pattern conflict. It is that behind every quarrel, hidden deep within the issues of every dispute lays a fundamental authorityissue, either between states or between individuals and groups within states.

Especially important in this regard is the coercive power that the elites in traditional societies were willing to employ. In those states where the political system kept and enforced the general structure of expectations, conflict was often between the political elite and those attacking their policies or the status quo. The more dominant the political system in social affairs, the more social conflict swirls around the extensions of government control. All societies were antifields to some extent, and the front between antifield and social field is the region of potential social storms.

The manifestation of power and subsequent use of conflict depended on the force and terror the elite and in case of inter-state power struggle (the more powerful state) were wiling to employ. Repression raised the costs

of opposing the elite. However across societies there is a curvilinear relationship between elite force and manifest conflict.

Where force is little used, the elite have high legitimacy and conflicts can be adjusted through traditional institutions. The increase in the use of force signals a decrease in legitimacy or a blockage of the demands of those seeking a change in policies or status quo. As legitimacy decreases, the political system increasingly is seen as the source of social ills and a change in elite or system as the solution. Thus, manifest conflict and repression will at first be positively related. However, if repression becomes extensive, elite terror widespread, and force systematically applied, then overt opposition becomes suppressed.

3.2 Elements of Power

The elements of states power are those indices that give a state the assurances to demand loyalties from its citizens or protect its national interest in its relationship with the other members of the system. In pre-colonial societies, as it is being replicated in modern times, such elements include: Geography, Population, Technology, Leadership, Psychological Factor and Military Capabilities.

Geography

In pre-colonial African societies, geography was an important element of power of any state. A favorable geographic location makes a state less vulnerable to invasions, attacks as well as the incidence of migration. For example, in the pre-colonial context, the Kanem-Borno Empire had a favorable geographic location that repelled attacks as against state like the Old Oyo empire that collapsed as a result of incessant attacks especially from Fulani Jihadists.

Technology

In a similar circumstances like the present-day system, those states that have access to more sophisticated technology in pre-colonial Africa were regarded as more powerful than those that did not. Though the technologies may not be comparable to what obtains today, but such weapons as spears, bows, arrows, guns and swords were highly rated. The

Hausa-Fulani states were regarded more powerful because of their access to superior technology than those of most of their neighbors.

Leadership

Most pre-colonial African States attained their power status through good leadership. The ability of the leaders to organize their communities and peoples in coherent and logical-manner helped most of the western and central Sudanese as well as Atlantic states to become great powers. The centralized states were most significant and most renowned in this respect. The Ashante were regarded as powerful because of good leadership provided by the Ashantehene. The same also applied to Kanem-Borno under Mai, as well as Dahomey under their martial kings.

Population

In pre-colonial Africa, the correlates of power reinforce each other. A large population is an element of power. For example, a large population will facilitate a large army as well as boost agricultural production which was the mainstay of most of the pre-colonial economy.

Psychological Factor

The psychological aspect of African powers was probably of greater importance than it appears, although the evidence is scattered and disparate. Priestly diviners were almost always consulted before a decision was taken to make war.

Charms and amulets, especially Koranic verses, were in demand among both pagan and Muslim Soldiers, usually being stitched to the garment worn in battle and affixed by Calvary men to their horses' necks. Muslims were favorite providers of these for use by Pagan armies such as those of Gonja and Ashante.

Military

The military strength of many African states was a major element of power in pre-colonial Africa. It was through military capabilities that some societies were able to participate in the slave trade. For example, the Dahomeans used their Amazons (female soldiers) to raid Yoruba towns of

Egba, Ilaro etc. in search of captives. It was also through military strength that the ancient Benin Kingdom became powerful, so also was the Old Oyo empire as well as the Kanem-Borno empire.

3.3 Utility of Power

In this part, we are going to expatiate on the uses of power, the quantification of power and the limitations of power in pre-colonial African societies. In other words, even when a state had the requisite capabilities, there existed some restrictions on the utility of such capabilities to validate the expression of power potentialities.

For the use of power, evidences can be found in the knack for territorial expansion. In most of these cases, the conquerors end up in exercising large measures of control over the vanquished. For example, the old Oyo Empire was able to exert its power and influence as far as Dahomey and Benin. Oyo, by the 18th Century had become the most powerful state in the forest region controlling Allada, Whydah, Dahomey, Egba, Nupe, and even parts of the Akan States.

Power in pre-colonial African states is also used for the acquisition of wealth. For instance, Dahomey being a vassal state of Oyo always had to paid tribute to the kingdom. In 1731 alone, Oyo realized substantial revenue of about $32,000 from Dahomey being monies paid as tribute to a superior power.

Power was also used in the taking of captives such as slaves. Powerful states in pre-colonial states gained meaningful advantage over their neighbors in the scramble for captives to be sold or used as slaves. They went as far as waging wars on their neighbors in order to achieve their aims. Power was equally used to negotiate or conclude diplomatic relations between the powerful and their less powerful neighbors.

In terms of quantification, there were clear differences in the acquisition of national power, even in pre-colonial times. Each state would ignore the potential powers of other to its own peril, but it was also a mistake to ignore the complexities and fluidities of power and to underestimate or overestimate the power of others based on one or more simple

calculations.

Power in pre-colonial African states, like in contemporary world is not easy to quantify. However, we can conclude that the state that had the highest advantage over another, in terms of the highest number of elements combination may be regarded as powerful. Power was mostly quantified or measured through the outcomes of warfare, though at a price paid by the states involved.

However, irrespective of how powerful a state might be, the utility of such powers were sometimes limited. Some of these limitations to the uses of power were some times controlled by the exigencies of the times and at times some nature inflicted challenges. In pre-colonial African states geographic factors used to be a limitation in the utilization of power capabilities. For instance, the Fante's closeness and proximity to the Atlantic Ocean hindered the society from repelling many of the attacks and wars the Ashante waged against them. On the contrary, the Egba used the advantage of its rocks to neutralize Dahomey attacks.

The population configuration was also a hindrance to the full utilization of power capabilities by states. Most states with majority weak old, women and children population could not win wars in most cases in spite of their technological and economic capabilities. This is because they lacked the human resources to manage their material resources. In such cases, the other qualities were just colossal wastes as far as war was concerned.

Furthermore, treaty commitments and diplomatic relations were hindrances on the utility of power. Most of the treaties were signed to assure harmonious and peaceful coexistence of all societies, as such, arbitrary use of power, even in the face of confrontations was not a welcome act. Thus, even when a state possessed all the capabilities to defend itself or advance its cause, it was still bound by treaty agreements.

4.0 CONCLUSION

As it is with humans, there is no gain reiterating the fact that there is lack of equity and fairness in power distribution among states. Interestingly, this is not even limited to the acquisitive tendencies but rather involves

natural endowments. This explains why some states are more powerful than others. Talking about power however, we should note that its usefulness extends beyond inter-state relations, but rather involves relations between individuals and groups within the same society.

Like in contemporary times, safe for the acquisition of nuclear power, pre-colonial African societies equally possessed the major requisites of power. Therefore, there were also limitations to the uses of such powers in efforts geared towards peaceful and harmonious existence, a situation where might was not always right.

5.0 SUMMARY

The power and capability in pre-colonial Africa formed the core of this unit. You learnt about the nature, elements and the use of power.

SELF ASSESSMENT EXERCISES

1. Outline and explain the basic elements of power in pre-colonial African society.

6.0 TUTOR MARKED ASSIGNMENTS

1. The acquisition of power is a necessity in international relations. Discuss
2. Explain the limitations to power in pre-colonial African societies.

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UNIT 4 PRE-COLONIAL AFRICAN CONTRIBUTION TO THE DEVELOPMENT OF INTERNATIONAL LAW

CONTENTS

1.0 INTRODUCTION

There are undeniable evidences that pre-colonial Africa was bereft of qualitative writings which would have recorded theseries of achievements made by the heroes and heroines of the period. Unfortunately, European scholars have had to present a jaundiced view of events that took place in the period, by refusing to celebrate the landmark achievements that were made by Africans over time. In a bitter reaction to such unacceptable attitude, Ekpebu (1999) contends that: “Most writers (especially European and American) on world history and on international relations, through either ignorance or perfidy, generally date the beginning of international relations to the period of the Greek City-States from around 800 to 322 B.C. The aim, it would appear, is to colonize scholarship and to deny Africa and other parts of the world credit for developments and contributions which only these non-Euro-American societies could have made to world civilization since Europe itself is a relatively young and new concept”.

In other not to fall in the category of Euro-American scholars as presented by the author, this unit would therefore focus on some great African leaders, who by their wit and intelligence were able to make landmark contributions to the development of international law. Perhaps, the actions and reactions to issues and circumstances were not consciously designed to lead to the formulation of policies on international law; however, they were actions that provoked the institutionalizations of a body of law to manage the conduct of sates in their relationship upon which a codified rule of law became institutionalized. The focus would be on monarchs, who by accident or design were bestowed with the mantle of leadership. We shall see by the end of the unit that their special attributes were evidenced in the sagacity with which they led politically, sometime, applying shrewd economic sense and in a number of cases, leading the development of religious beliefs. This category of people cuts across the different areas of Africa, but we shall concentrate on four of them as a result of space constraints. These include, Mansa Musa, Askia – The Great.

2.0 OBJECTIVES

After you have studied this study unit, you should be able to:

reflect on the contributions of Africans to International Law
compare the contributions of Africans towards International Law
familiarize yourself with the lives and times of renowned African monarchs
understand the basis of African leadership acumen.

3.0 MAIN CONTENT

3.1 Mansa Musa

Mansa Musa was one of the most remarkable Malian kings of all times. He reigned between 1312 and 1337, expanding the Mali influence over the Niger city-states of Timbuktu, Gao and Djenne. Mansa Musa (*Mansa* meaning emperor or sultan and *Musa* meaning Moses), the grandson of one of Sundiata's sisters, is often referred to as "The Black

Moses". Timbuktu became one of the major cultural centers not just of Africa but of the world. Vast libraries, *madrasas* (Islamic universities) and magnificent mosques were built. Timbuktu became a meeting place of poets, scholars and artists of Africa and the Middle East. All these happened during the reign of Mansa Musa.

Even after Mali declined, Timbuktu remained the major Islamic center of sub-Saharan Africa. Mansa Musa maintained a huge army that kept peace and policed the trade routes. His armies pushed the borders of Mali from the Atlantic coast in the west beyond the cities of Timbuktu and Gao in the east and from the salt mines of Taghaza in the north to the gold mines of Wangar in the south.

He ensured the spread of Mali's fame at the intercontinental level-Europe and the Middle East, largely through his pilgrimage to Mecca. His conspicuous display of wealth, especially in Cairo was as strong as lowering the local market value of gold. Before his return to Mali, words got to him that one of his lieutenants had captured Gao, capital of Songhai. This was a remarkable feat because of the strategic location of the area, being an important riverine extending along the middle Niger for a thousand miles downstream from the frontier of Mali, Mansa Musa took a detour on his way home by visiting Gao and accepting the personal surrender of the king of Songhai. Not unlike in those days, he had to ensure the loyalty of the vassal kingdom by taking the King's two sons as hostages. In addition to its military prowess, Mali was also greatly involved in trade. Infact, it is asserted that trade between Mali and Egypt must have been considerable. Takodda, a thriving centre of the caravan trade, owed its prosperity to its copper mines from which the Maghreb, Egypt, Mali, Hausa and Bornu drew their supplies of the previous metal. Mansa Musa once claimed these mines as his most important sources of revenue.

By the fourteenth century, Muslim traders were established in the town of Djenne, located in the inland delta of the Niger. The most impressive monument of intercultural borrowing is the Friday Mosque at Djenne. There, salt from the Sahara, goods from northern Africa and fine silks were exchanged for gold, slaves and ivory. The monumental mosque was constructed around 1320 (the present building was reconstructed on

the foundation of the original mosque in 1907). The rectangular, flat roofed building had walls supported by Islamic model while the building materials echo an older Mande architectural style. The *toron* (horns) projections from the walls are a feature of local architecture serving as scaffolding when the façade is periodically replastered with clay. The African societies shaped and molded the religion with traditional beliefs, values and sensibilities, as well.

The Islamization of the Malian Court, in the late thirteenth century, is recorded both in oral traditions of the Mande people and written accounts by Arab historians and travellers. Ibn Khaldun described the *Hajj* (pilgrimage to Mecca) of Mansa Musa in 1324. On his return from the holy city, Mansa was accompanied by an Andalusian poet and architect, al-Tuwayjin who constructed a royal palace.

The popularity of Mansa Musa's Mali has been linked with the importance he attached to foreign relations. The outstanding ones among his numerous relationships was the friendship with Egypt and Arabia through his pilgrimage and with Merinid, Sultan of Fez. Akinjide (Ibid.) quotes Bovill as saying: "He was, in fact, the first to penetrate the iron curtain of colour prejudice which shut off the Negro from the civilized world, and to win for the true African a small measure of the respect for which, even today, is often grudgingly granted him". The kingdom was powerful enough to attract the payment of tributes and supply of armies by vassal states. Although, the prominence of the empire began to decline shortly after Mansa Musa's death, the importance of the era to the development of international law cannot be questioned.

In 1352, the geography Ibn Battuta spent a month at the court of the Mansa. He described a society where Islamic practice was integrated with local religious rituals and gave accounts of fine figurative sculpture. Many of these terra-cotta figures marked with Islamic symbols have been found recently near Djenne and for the most part, have been excavated illegally.

3.2 Usman Dan Fodio

Shaihu Usman dan Fodio (also referred to as Shaikh Usman Ibn Fodio or Shehu Usman dan Fodio) lived from 1754 to 1817. He started out as a writer and Islamic reformer. Dan Fodio was one of a class of urbanized ethnic Fulani living in the Hausa city-states in what is today northern Nigeria. He lived in the city-state of Gobir.

Dan Fodio was well-educated in classical Islamic science, philosophy and theology and became a revered religious thinker. His teacher, Jibril ibn Umar argued that it was the duty and within the power of religious movements to establish the ideal society, free from oppression and vice. Dan Fodio used his influence to secure approval to create a religious community in his hometown of Degel that would, dan Fodio hoped, be a model town.

However, in 1802, the ruler of Gobir and one of dan Fodio's students, Yunfa turned against him, revoking Degel's autonomy and attempting to assassinate dan Fodio. Dan Fodio and his followers fled into the western grasslands where they turned to help from the local Fulani nomads. Yunfa turned for aid to the other leaders of the Hausa states, warning them that dan Fodio could trigger a widespread Jihad.

Yunfa proved right and dan Fodio was proclaimed Amir ul Mumineen or Leader of the Faithful. This, in effect made him a political as well as a religious leader, giving him the authority to declare and pursue a Jihad, raising an army and becoming its commander. A widespread uprising began in Hausa land. This uprising was largely composed of the Fulani, who held a powerful military advantage with their cavalry. It was also widely supported by the Hausa peasantry who felt over-taxed and oppressed by their rulers.

After only a few short years of the Fulani War, dan Fodio found himself in command of the largest state in Africa, the Fulani Empire. Dan Fodio worked to establish an efficient government, one grounded in Islamic law. Already aged at the beginning of the war, dan Fodio retired in 1815 passing the title of Sultan of Sokoto to his son Muhammed Bello.

Sheikh Uthman dan Fodio was a follower of the Maliki School in law and the Qadiri order in Sufism. His uprising inspired a number of later

West African jihads, including those of Massina Empire founder Seku Amadu, Toucouleur Empire founder El Hadj Umar Tall (who married one of dan Fodio's granddaughters), Wassoulou Empire founder Samori Ture, and Adamawa Emirate founder Modibo Adama.

3.3 Askia Mohammed I

Muhammad Ture lived between 1442 - 1538. He was a king of the Songhai Empire in the late 15th century. He strengthened his country and made it the largest in West Africa's history. At its peak under Muhammad, the Songhai Empire encompassed the Hausa States as far as Kano (in present-day Nigeria) and much of the territory that had belonged to the Mali Empire in the west. His policies resulted in a rapid expansion of trade with Europe and Asia, the creation of many schools, and made Islam an integral part of the empire.

Mohammed Ture, the favoured general of Sunni Ali, believed that he was entitled to the throne after Sunni Ali's death, rather than Ali's son, Abu Bakr. Claiming that the power was his by right of achievement, Mohammed attacked the new ruler a year later and defeated him in one of the bloodiest battles in history. When one of Sunni Ali's daughters heard the news, she cried out "Askia", which means "forceful one". This title was taken by Mohammed as his new name.

Askia began by consolidating his vast empire and establishing harmony among the conflicting religions and political elements. Under the leadership of Askia, the Songhay Empire flourished until it became one of the richest empires of that period. Timbuktu became known as "The Center of Learning", "The Mecca of the Sudan", and "The Queen of the Sudan".

With his empire firmly established, Askia resumed his attack on the unbelievers, carrying the rule of Islam into new lands. Askia the Great made Timbuktu one of the world's greatest centres of commerce and learning. The brilliance of the city was such that it still shines in the imagination after three centuries like a stat, though dead, continues to send its light. Such was the splendor, that in spite of its many misfortunes after the death of Askia The Great, the vitality of Timbuktu lives!

Askia Muhammad was much more astute and farsighted than his predecessor had ever been. He orchestrated a program of expansion and consolidation which extended the empire form Taghaza in the North to the borders of Yatenga in the South; and from Air in the Northeast to Futa Tooro in Senegambia. Instead of organizing the empire along Islamic lines, he tempered and improved on the traditional model by instituting a system of bureaucratic government unparalleled in the Western Sudan. In addition, Askia established standardized trade measures and regulations, and initiated the policing of trade routes. He also encouraged learning and literacy, ensuring that Mali's universities produced the most distinguished scholars, many of whom published significant books. The eminent scholar Ahmed Baba, for example, produced books on Islamic law which are still in use today. Mahmoud Kati published Tarik al-Fattah and Abdul-Rahman as-Sadi published Tarik as-Sudan (Chronicle of the Sudan), two history books which are indispensable to present-day scholars reconstructing African history in the Middle Ages. For all his efforts, Mali experienced a cultural revival it had never witnessed before, and the whole land flourished as a center of all things valuable in learning and trade.

Askia Muhammad went blind in his old age, and was deposed in 1528 by his son Askia Musa at the age of more than eighty years. He died several years later.

3.4Afonso I

This great king **Mvemba a Nzinga** of Kongo lived between 1456 and 1543, but reigned between 1509 until his death. He was the son of king Nzinga a Nkuwu, who was ruling in 1483 when the Portuguese arrived, and was baptized at about the same time. Afonso was assigned to rule Kongo's northern province of Nsundi, and was accompanied there by a number of Portuguese priests. He was successful in his rule there, extending Nsundi's borders probably north of the Congo River. According to Afonso's account of events his father lost his interest in Christianity toward the end of his reign, but Afonso became a devout Christian. Intrigues at court, caused João to doubt his son, and he was deprived of his province, but eventually Afonso exonerated himself and

was returned to the province.

Around 1509 João died, and potential rivals lined up to take over the kingdom, as it was an elective rather than a hereditary monarchy. Afonso was assisted in his attempt by his mother, who kept news of João's death and gave Afonso time to return to the capital city of Mbanza Kongo and gather followers. Thus when the death of the king was announced Afonso was already in the city. The strongest opposition came from his half brother Mpanzu a Kitima (or Mpanzu a Nzinga). Mpanzu raised an army in the provinces and, according to Afonso's testimony, renounced Christianity and opposed the conversion of the country. However, in the battle that followed as Mpanzu's followers tried to storm the city, he was defeated, according to Afonso, when his men saw an apparition of Saint James the Great and the Holy Ghost in the sky and fled in panic. This miracle, which Afonso described in a letter of 1509 (now lost) became the basis for a coat of arms that Kongo used for the next three centuries (until 1860).

Virtually all that is known about Kongo in the time of Afonso's reign is known from his long series of letters, written in Portuguese primarily to the kings Manuel I and João III of Portugal. Among them are the oldest surviving documents written in a European language by an African. The letters are often very long and give many details about the administration of the country. Many letters complain about the behaviour of several Portuguese officials, and these letters have given rise to an interpretation of Afonso's reign as one in which Portuguese interests submerged Afonso's ambitions.

Afonso is best known for his vigorous attempt to convert Kongo to a Christian country, by establishing the church, providing for its financing from tax revenues and creating schools. By 1516 there were over 1000 students in the royal school, and other schools were located in the provinces, eventually resulting in the development of a fully literate noble class (schools were not built for ordinary people). Afonso also sought to develop an appropriate theology to merge the religious traditions of his own country with that of Christianity. He studied theological textbooks, falling asleep over them, according to Rui d'Aguiar (the Portuguese royal chaplain who was sent to assist him). To

aid in this task, Afonso sent various of his children and nobles to Europe to study, including his son Henrique Kinu a Mvemba, who was elevated to the status of bishop in 1518. he was given bishopric of Utica (in North Africa) by the Vatican, but actually served in Kongo from his return there in the early 1520s until his death in 1531.

In 1526 Afonso wrote a series of letters complaining about the behaviour of Portuguese in his country and their role in the developing slave trade. At one point he accused them of assisting brigands in his own country and illegally purchasing as slaves free people. He also threatened to close the trade altogether. However, in the end, Afonso established an examination committee to determine the legality of all enslaved persons presented for sale.

Afonso was a determined soldier and extended Kongo's effective control to the south, especially his letter of 5 October 1514 reveals the connections between Afonso's men, Portuguese mercenaries in Kongo's service (who he denounced as lazy and cowardly) and the capture and sale of slaves by his forces.

Toward the end of his life, Afonso's children and grandchildren began maneuvering for the succession, and in 1540 plotters that included Portuguese residents in the country made an unsuccessful attempt on his life. He died toward the end of 1542 or perhaps at the very beginning of 1543, leaving his son Pedro to succeed him. Although his son was soon overthrown by his grandson Diogo (in 1545) and had to take refuge in a church, the grandchildren and later descendants of three of his daughter provided many later kings.

3.5Katakyie Opoku Ware I

He was an Okoyo king of Asantehene – the ruler of the Ashanti in the now disbanded Asante Confederacy which occupied parts of what is now Ghana. He lived between 1700 and 1750. he is credited with being the "empire builder" of the Ashanti Confederacy. He married and had two children named Adusei Atwenewa and Adusei Kra.

During his rule as king which lasted from 1720 (some even evidence

that it could be as early as 1718 while leading the army against the Akyem) to his death in 1750, he fought some battles against Bono and successfully defeating them by 1723. By 1726, they also conquered the Wassa tribe. Then after, between 1741 and 1744, King Opoku won fights against Akyem, Akwamu or Ga-Adangbe. This initiated Ashanti's take over of the Gold Coast and the Ivory Coast. After his death, he was succeeded by Kusi Obodum.

4.0 CONCLUSION

This has been a discussion on important personalities that influenced the development of international law. In this unit, it has become clear that in spite of the absence of an array of global institutions for conducting diplomacy and maintaining a civilized process of legal norms, pre-colonial African leaders conducted themselves in a manner that encouraged the development of international legal statutes. The point to note is that we must not be carried away with the presumed intellectual prowess of the Europeans and Americans over Africans. In essence, what Grotius and Co published, had been practiced by Osei Tutu I and Co.

5.0 SUMMARY

In this unit, you learnt about the contribution of the development of international law by so many distinguished African leaders.

SELF ASSESSMENT EXERCISE

1. To what extent did the actions of pre-colonial African leaders influence the development of international law?
2. How was it possible for Usman Dan Fodio to use the instrumentality of religious beliefs to gain political power?

6.0 TUTOR MARKED ASSIGNMENT

1. Compare and contrast the contributions of pre-colonial African leaders and classical writers of international relations to the development of the course.

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UNIT 5 COMPARING TRENDS IN INTERNATIONAL LAW, INTERNATIONAL RELATIONS AND DIPLOMACY

CONTENTS

1.0 INTRODUCTION

The final module of the course is basically a compendium of the whole exercise. In this part, we shall have a summary of the general characteristics of both periods, in order to isolate both their differences and similarities. In taking this step, we would have laid a foundation for comparing the practice of both international law and diplomacy as evidenced in the fore-going analysis.

Nature of the Societies- in our first unit, we have been able to trace the origin of humanity to Africa, and in this wise lay claim to its existence as far back as 3-1.5m. But for the present international system, there are contentions of it relatively young age, having been in existence for between four hundred and five hundred years. The focus has always been Euro-centric in character; as such the commencement is usually traced to the 1648 Treaty of Westphalia, which ended the thirty-year war in Europe. Although, there are evidences that there were indeed some form of existence in different parts of the world, such as the Imperial Chinese System, Holy Roman Empire, Byzantine Empires, the Indian State, and of course African Kingdoms, prior to 1648, but the interrelationships

between the different entities could not have had definable character as it exists today. A major character of such arrangement was the personalization of cross-boundary relationships. For instance, international relations between empires and kingdoms were conducted in the names of the king, emperor/empress, Pope, monarchy, duke or duchess. It was therefore not known for any state to have conducted its relationship with others on the basis of being an autonomous entity. Indeed, like Louis XIV claimed, the state was the monarch and vice-versa. The concomitant effect of the treaty was therefore the freedom of states to conduct its business as it deemed fit, without undue interference from the head. This heralded the period of the European State System on the global agenda.

In other words, as against the personalization of the state by the heads in the pre-colonial Africa era, colonial and post-colonial era witnessed the embrace of the state as the basic actor in the international system, whereby the government is only charged with the responsibility of maintaining the national interest of the state and protecting its sovereignty and territoriality. In the new system in which Africa was forced to accept as a consequence of colonialism, there was the absence of an overriding authority. In essence, each of the state was deemed to be equal in every respect. Thus, the possession of power does not place undue superiority on a state against the others. Although, the use of the power is at the discretion of the state in question in spite of the fact that there are mechanisms to guide against the abuse of power. The implication of the above is that, though there is no overriding authority in the system, the system is neither chaotic nor anarchic. Having gone through series of wars that have been detrimental to the existence of humanity, states have continuously devised means of stemming the tide of warring co-existence. As such, there is order and routine in the system, with norms and rules of intercourse that are expected to be religiously adhered to. This is however not to deny the experiences of the abuse of the use of power in the conduct of relations. Often times, powerful states have tended to impose their will on their less powerful counterparts, and in some cases through the use of aggressive means.

Another important trend in the shift of the international system from its ancient posturing was in the realm of economic interactions. In the pre-

colonial state system, there were commercial activities across boundaries, but the non-existence of such would not have carried undue negative repercussions. However, the present system has a high degree of economic interdependence between and among the participants. For pre-colonial Africa, most economic activities were agrarian in nature, as such; most communities and even the kingdoms and empires were self sufficient. The principle of impermeability has long given way to coordinated and coherent interdependence. These days, discourses on global survival have centered on the character of the international economic system. There is a wide array of interchange in economic activities. While African states provide the raw materials, the developed world with their high level of technological advancement process such raw materials and present them as finished goods.

It is pertinent to equally understand the different phases that the international system, as it is known today has passed through over the centuries. As was earlier mentioned, it was strictly a European state-system, even though other systems had been in existence at the same time. But the dynamics of international events did not grant them recognition. Therefore, all these other systems were eventually absorbed by the European system, to form what is today known as the global system. The global nature being in terms of political, economic and socio-cultural relations. The first of the trend was the admission of the US following the successful war of independence against Britain, by the thirteen colonies. In like manner, the independence of the Spanish colonies of Latin America was a boost to the system, not just in the increase in the number of states, but in the extension of geography. Japan too was accepted in the early twentieth century, thus further expanding the geographical spread. The fourth phase was the enforced participation of China in the system. The fifth stage can be captured in the admission of the Arab states into the systems as a result of the breakup of the Ottoman Empire, consequent upon its defeat in the First World War. And lastly was the admission of African and Asian countries as a result of their independence from being colonial territories. The glaring outcome of this process is the decline of Europe as the center of global power. Other centers of power emerged, and inter-state relations became more open and more globalized.

There is also the necessity to understand the implications of specific occurrences in the growth process of the international system. Firstly, after the successful rebellion of the thirteen US colonies against the British Crown and its subsequent admission into the system, the country temporarily pursued a policy of isolationism, and thus, did not partake in international politics. Rather, the Americans concentrated on domestic development, and did not appear until during the First World War, when the leaders considered it powerful enough to impact on international politics. From thence onwards, the country had displayed its sheer power and energy in proclaiming its intentions to be 'first among equals' on the world stage. The US played a remarkable role in the creation of the League of Nations and its subsequent collapse. Incidentally, the country happened to have been the biggest player in the formation of the UN. Since then, the US has left no nation in doubt of its ability to determine the turn of international events.

Another remarkable outcome of the growth of the system has to do with the admission of Japan. Suffice it here to conclude that the circumstances that led to the admission of Japan into the system dictated the country's international behavior. Japan had defeated Russia (a dominant European power) in the 1905 war gave the country the confidence to aspire for a more powerful role on the global landscape. As such, events as the entry and subsequent withdrawal of Japan from the League of Nations were not unexpected. The newly acquired power gave Japan the confidence to attack the US Fleet at Pearl Harbor. The effect being the sudden change in the course of the Second World War- the first time the atomic bomb would be used in any part of the globe. It was dropped in two Japanese cities- Hiroshima and Nagasaki. After the war, the country was devastated and thus, became more inward-looking. However, the country has bounced back powerfully onto the world stage, but not as a military giant, but rather as an economic power base.

These series of developments prompted massive reordering of priorities that transformed the entire state of things in the international system. One of such remarkable consequence of the different phases has been the all-embracing nature of the system. The international system has become an aggregation of numerous states, ostensibly linked together with the desire to ensure peaceful and harmonious existence with all peoples and tribes.

2.0 OBJECTIVES

After you have studied this study unit, you should be able to:

identify the basic distinctions between both periods.
acquire an understanding of ancient times for use in analyzing contemporary times.
identify the similarities between both periods.
summarize our understanding of the course

3.0 MAIN CONTENT

3.1 International Organizations

The debate on whether there existed established institutions for the conduct of international affairs in pre-colonial Africa is far from being over. Although, literature has presented numerous cases of treaties and agreement between kingdoms and municipalities, yet there has not been any evidence of a replica of the UN. In contrast however, both colonial and the post colonial phases of the international system are replete with organized institutions that are determined to ensure continued peaceful and harmonious inter-state relationships. At the end of the First World War, the system decided to put an end to such a scourge, and thus, gathered together in Versailles for the Peace Conference, and consequently created the LON. Unfortunately, there was disagreement on the terms and quite a number of powerful nations did not accept the principles that established the league. This eventually led to the collapse of the organization. The lack of cohesion gave the forces of evil the opportunity to move for another war, and the world was once again thrown into terrible devastation with the commencement of the Second World War. After the war in 1945, it became obvious that a concrete step must be taken to stem the incessant international destruction. And for the first time, the world rose with one voice, determined to put an end to global wars. And thus, the United Nations was established in 1945 to save the world from the scourge of war.

3.2 Era of Globalization

Human societies across the globe have established progressively closer contacts over many centuries, but recently the pace has dramatically increased. Jet airplanes, cheap telephone service, email, computers, huge oceangoing vessels, instant capital flows, all these have made the world more interdependent than ever. Multinational corporations manufacture products in many countries and sell to consumers around the world. Money, technology and raw materials move ever more swiftly across national borders. Along with products and finances, ideas and cultures circulate more freely. As a result, laws, economies, and social movements are forming at the international level. Many politicians, academics, and journalists treat these trends as both inevitable and (on the whole) welcome. But for billions of the world's people, business-driven globalization means uprooting old ways of life and threatening livelihoods and cultures. The global social justice movement, itself a product of globalization, proposes an alternative path, more responsive to public needs. Intense political disputes will continue over globalization's meaning and its future direction.

3.3 Power- Military/Economic

Throughout history military power has been paramount and economic power a luxury. This has slowly changed to the point that the two roles have been reversed. Japan, China and even the United States have relied on economic prosperity to finance formidable military forces. Conversely some other countries are well recognized for relevance in the international system through the display of their military capabilities, e.g., Iraq and North Korea.

Economic power can be defined broadly as the capacity to influence other states through economic means. It is composed of a country's industrial base, natural resources, capital, technology, geographic position, health system and education system. Military power on the other hand is the capacity to use force or the threat of force to influence other states. Components of military power include number of divisions, armaments,

organisation, training, equipment, readiness, deployment and morale.

Military equipment, a key factor in military power can be purchased from a range of countries. Russia, Israel and China are willing to sell their hardware to almost any state in the world. The United States, Japan and the European countries are more selective in the countries they will sell to, but are still big arm's exporters. All a state needs to purchase arms in the international marketplace is hard currency. This allows states with economic power to easily obtain military equipment. While the other aspects of military power like training and morale are harder to obtain through conversion of economic resources, it is not impossible. A well financed force is able to send members overseas for training and pay its members well. A highly paid soldier is likely to exhibit a high standard of professionalism and have high morale. If a state has the economic resources it should be able to increase its military power.

At the close of World War Two both the United States and the Soviet Union found themselves in parallel positions of military and economic power. Both arrived at this position largely through converting their economic resources into military resources during the war. The two superpower's actions in the next fifty years make an interesting comparison.

The U.S.'s continued military dominance survived in tact until the mid 1970s. During this decade it faced a major military defeat but more importantly its economy stagnated. With a stagnating economy the U.S. could not increase the amount it spent on its military forces without serious domestic political difficulties. Only when the economy picked up during the 1980s could the U.S. resume increasing its military power.

Under the Regan administration 1981-1989 the U.S. increased its military expenditure significantly and commenced the key Strategic Defence Initiative. This project threatened to radically alter the balance of power between the U.S. and the Soviet Union by rendering Soviet intercontinental nuclear missiles ineffective by means of a nationwide anti missile system. One of the aims of the S.D.I. project described in a defence guidance document was "to open up new areas of military competition and obsolescence previous Soviet investment or employ

sophisticated strategic deception options to achieve this end". Under this strategy the U.S. not only used economic power for conversion purposes but also as a military weapon in itself. A weapon that proved extremely effective.

4.0 CONCLUSIONS

In 19th century Europe and America, Africa was commonly known as Black Africa or as Dark Africa, partly because of the race of its indigenous inhabitants and partly because much of it had not been fully mapped or explored by Westerners (Africa as a whole was sometimes labeled "the dark continent"). These terms are now obsolete, and often considered to be offensive. The neutral phrase African Uplands was preferred by Hegel and some other writers of the time, however this was primarily intended to refer to the African interior as opposed to coastal regions. The modern term sub-Saharan corresponds with the standard representation of North as above and South as below. Tropical Africa is an alternative modern label, related to the word Afrotopic, used for the distinctive ecology of the region. However, if strictly applied, this term would exclude South Africa and the Sahel, which lie outside the Tropics.

This division of Africa has arisen from primarily geographic, historical and geopolitical considerations, resulting in profound differences, particularly in the West, with regard to perceptions of North and sub-Saharan Africa. Since the end of the last Ice Age, the two regions have been separated by the extremely harsh climate of the sparsely populated Sahara, forming an effective barrier interrupted by only the Nile River. North Africa's inhabitants are generally erroneously perceived and portrayed by the West to be predominantly Caucasoid. Such mischaracterizations have arisen from the relatively recent political predominance of Arabs in certain portions of the region in the 7th century A.D. and the confusion of the "original" black Berbers of East and Sahelean Africa, whose modern-day descendants are the Tuareg (who have been heavily Arabized over the centuries), with the fairer-skinned Berbers of the Maghreb. It is further complicated by historical events and modern geopolitical considerations which essentially have taken Egypt out of Africa, conceptually speaking, and placed it in the Middle East. This has created a false dichotomy in the minds of many between sub-

Saharan, or "black," Africa and North Africa. Sudan is a case in point. It is considered a North African nation, but its inhabitants are predominantly dark-skinned, black Africans. Further, as in ancient times, blacks comprise significant portions of the populations of many North African nations, including the Tuareg Berbers, who can be found across the breadth of North Africa, and various other indigenous black Africans, such as the Imraguen, Tebu and Haratin of Algeria, Libya, Tunisia, Morocco and Mauritania. Even the so-called "Caucasoid" and Arab populations of North Africa are often swarthy and possess other Africoid physical characteristics, or have Tuareg or other black ancestry. As a result, the arbitrary grouping of African nations into geopolitical regions, and the misperceptions associated with such divisions—particularly those based on notions of race and ethnicity—are fraught with inherent contradictions.

In great part because of the centuries-old Arab domination of Egypt, the spread of Islam across the northernmost regions of the African continent, and the subsequent Arabization of certain indigenous black populations in the northeast, for several millennia North Africa has been integrated geopolitically, economically, in general public perception -- and, to a great extent, by the religion of Islam with the Middle East and with the Mediterranean. North Africa's intercourse with the rest of Africa for several millennia largely has been limited to the trans-Saharan trade. Sub-Saharan Africa, on the other hand, had sporadic contacts with the rest of the world before the modern era partially due to the effect of endemic diseases like malaria. While the Sahel often traded with the North, the Horn of Africa region traded with Arabia, and East African coastal towns often traded with the rest of the Indian Ocean, much of the interior of the continent had little contact with the outside world until the colonial era.

In the final analysis, some issues that have been re-echoed in this course have remained the basic starting point overtime for any academic adventure into the origin of humanity. The history of mankind, whether social, political, cultural and economic has its roots in Africa. International law and diplomacy are no exceptions.

SELF ASSESSMENT EXERCISES

1. What is globalization?

6.0 TUTOR MARKED ASSIGNMENT

1. Summarize the changing trend in global politics from 1945.
2. Does Africa have any input in International Law and Diplomacy? Discuss.

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