COURSE GUIDE

PCR 424
GOVERNANCE, INTERNATIONAL LAW & FUNDAMENTAL HUMAN RIGHTS

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Published by
National Open University of Nigeria

Printed by NOUN Press
np@noun.edu.ng

Printed 2018

ISBN: 978-978-970-016-5

MAIN COURSE

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MODULE 1 GOVERNANCE

UNIT 1 MEANING OF GOVERNANCE AND ISSUE OF GODFATHERISM

CONTENTS

1.0 INTRODUCTION

This unit will introduce you to the concept of governance generally and the interconnectedness of godfatherism in both its positive and adversarial form. Governance, whether at local, state or global level, is all about superintending certain institutions and it is the outcome of the style adopted by the Governor that takes us into the realm of good or repulsive governance. The complex nature inherent in governance involves those non-state actors including those called godfathers-in the contemporary political discourse.

The objective below will specify what you are expected to learn and internalise after going through the unit.

2.0 OBJECTIVES

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

- examine a scholarly presentation of the concept of governance distinctly
- explain the role of a godfather in a community
- analyse the implication of godfatherism on citizenship and democracy.

3.0 MAIN CONTENT

3.1 Definition of Terms

Governance is a more encompassing phenomenon than government. It embraces governmental Institutions, but it also subsumes informal, non-governmental mechanisms whereby those persons and organisations within that purview move ahead, satisfy that needs, and fulfill their wants. (Rosenace, J. in Mingist, K. 1998:253).

You must be inquisitive as regards why the term is usually mixed with or qualified with an adjective – 'good'.

This may not be unconnected with series of dictionary meanings which link it up with governmental activities and an example which will aid our further understanding of the concept is the meaning given by the Oxford Advanced Learner's Dictionary, 6th Edition thus: Governance is the activity of governing a country or controlling a company or an organisation; the way in which a country is governed or a company or an institution is controlled. Borrowing from Olurode and Akinboye (2005) "governance as a term is broader than the concept of Government, even though, it has the same etymological roots as the latter term. Actually, the term, governance and Government are derived from the word "to govern". In order not to be lost in the mist of definitions, the above definitions were corroborated by Yaqub, (2005) when he opines thus. "..Governance is the totality of the process of constituting a government as well as of administering political community. It is the umbilical cord that links the governor and the governed. The others are involved especially in the way a particular regime is to be constituted".

Godfatherism

Arguably, a major problem of Democratic Governance in Africa and the developing countries of the world in this contemporary era is the headache of godfatherism. A godfather in the developing or undeveloped nations of the world is seen as "a segment of the political process as well as the figure, standing against the intellectual

extrapolations originating in, and also sustained by, the media". (Nnamani, C. 2004) Laguda (2004:44) describes a god-father in Christian parlance as a person who gives a name to a child at baptism or during confirmation. He cites the Oxford Talking Dictionary of words as defining god-fatherism in both positive and negative terms. He opines that it could refer to a person who sponsors or provide care or support for a person or project, or a person directing an illegal and criminal organisation. What the interpretation connotes is that a god-father is not a ghost but an identifiable person who plays god to his people. He makes available the wherewithal necessary for his protégés to live a fulfilled life, and if in crime or mafia; it could be an investment requiring some returns from the god-father. In summary, Laguda is cautioning that the meaning could not be a straight yes or no as it could impact positively or negatively, depending on the personality of the godfather. (taken from Salawu (2009). Further, in the view of Ukhun (2004), strictly, the godfather is simply a self-seeking individual out there to use the government for his purposes. The cost of this incidence is enormous to the state as what usually obtains is that when the incumbent godson is at pains to satisfy the whims and caprices of the godfather among other competing demands on the scarce resources of the government, the interest of the larger number is savagely undermined.

3.2 Governance (Phases 1)

As discussed in the introduction to this unit, Governance manifests at two major formal phases. What this translates to, is that governance manifests at both national and international phases and from these, issues of delegation or devolution of authority, pre or post colonial experience, could be contemplated.

The concept of governance gained prominence when African nations were largely independent but were found unable to recognise the need for responsible and responsive governance. Political independence was what mattered at the expense of economic independence. Ironically, the independent African States, felt more comfortable to interract with their colonial overlords while the economic spring boards left by the colonial masters were jettisoned by the new African leaders. Indices of states' failure were staring African leaders in the face, immediately after independence. The dreams of the founding fathers of African nationalism, like Dr. Nnamdi Azikwe of Nigeria, Dr. Kwame Nkrumah of Ghana, Julius Nyerere of Tanzania, Jomo Kenyatta of Kenya, Kenneth Kaunda of Zambia, Emperor Haile Sellaise of Ethiopia, many of whom went to jail, for the African continent were ready to take their stand amongst the community of nations. They kept raising their voices against the colonial masters until 1963 when many of the African

countries gained independence. However, as opined by an Islamic Historiographer the birth of a nation has in it the seed of its destruction. 1963 was called Africa's year of unity because the leaders of the thirty one independent African States then established the Organisation of African unity, which served as the instrument used to lay the foundation for a continental union or at least lead to a degree of economic and political unity to salvage the most balkanised continent in the global community.

You will recall the Berlin conference of 1884/1885, presided over by Otton Von Bismark, where African nations were just distributed like a group of people without any voice of protest, among the European nations? Ponder, and imagine the seed of discord that emanated after the departure of the colonisers to the permial parochial governance in the first phase and its effect thereafter. The year 1963 signaled the metamorphosis of major divisions within African states – three main political groups emerged: - The Casablanca group, the Monrovia group, and the Brazzaville twelve. Besides the eradication of colonialism, racial discrimination, and apartheid policy, African national governments were never united on issues of internal cohesion to advance the course of their indigenes. Democratic rule in their various countries witnessed horrible governance style, mismanagement of resources and propagation of self-aggrandisement. Principles of fundamental human rights were not honoured while individual's ideology, partisan or even labour dissent was strongly stamped out.

The result was regimes' collapse either internally or externally between 1963 and 1966 and this attracted international outcry against the governance style of post independent Africa-Leaders.

SELF-ASSESSMENT EXERCISE I

i. How do you assess the governance style of the post-independence African States-between 1957 and 1966?
ii. In spite of the short comings of African Leaders, they reversed the Europeans' decision on Africa in the Berlin conference of 1884/1885. Do you agree?

3.3 Governance (Phase II)

After the collapse of many independent African governments and the emergence of various military regimes in almost everyAfrican region, there was an urgent need to re-appraise the governance style of any incumbent regime. The world community too could not keep along as wars, famine, and strife of terrible dimension were spreading. Odion-Akhaine (2004; 3), echoing the 1997 World Development Report, with

emphasis on *"The State in a Changing World", argues that the role of the state is simply to provide the favourable environment for the interplay of market forces in which private enterprises would flourish. The underlying causation of the crippling economic crisis in sub-Saharan Africa (SSA) is hinged on the authoritarian path to development, underlined by dirigiste or etatist policies of nationalization of commanding heights of the economy, financial repression, subsidies and sundry autocratic policies which distort macro-economic balance"*

Many third world-countries and those dubbed fourth world or collapsed states could not be abandoned as they still form part of the global community.

In this vein, rescue economic missions are usually undertaken particularly by the first or second world nations. Usually and inevitably, such rescue economic missions are usually tied to economic reforms of the needy states which in the first place are accused of ineptitude form of governance. Before any form of aid, loan or grants are granted to a failing, failed or collapsing state, the lender will advise the receiver to reform its governance style in those areas found to have aided the bankruptcy of the receiver, whether through poor leadership, corruption, or other vices. It is usually not out of place for the lender to admonish the bankrupt state on the need for collaboration with other non-state actors, the civil society organisation the mass media and those agencies that could advance the cause of responsible and responsive governance.

SELF-ASSESSMENT EXERCISE 2

Do you agree that the role of a state is to provide a conducive atmosphere for the interplay of market forces with private enterprises?

3.4 Godfatherism and Impact on Governance

As a result of your eagerness to learn, please check to the definition of the concept in the introduction. You were taught that the concept could either serve the purpose of positivity or negativity on governance, depending on the personality involved. Now, as defined by Paul (2004; 98), the word godfatherism is from godfather, which in turn is derived from the concept – god and father. God (note the big G) means a Being worshipped in the Jewish, Christian, Islamic and some other religions while god (note the small g) refers to a title held by some people as the maker or sustainer of an aspect of reality; a person to whom great importance is attached. He postulated on the analogy between godfather and god-child meaning the person for whom one takes responsibility by making to help grow in a sphere of life while a godfather means one

who makes a promise to see the godchild grow and mature in an aspect of life like religion, politics, and other endeavours. He is further of the opinion that the idea of godfather connotes importance, notability, eminence, prominence, significance, weightiness, reliability, greatness of somebody as well as driving home to the godchild the idea of capability, experience, pragmatism, and resourcefulness. Its adversarial or positive impact depends on the personality of the godchild.

The above explanations only tells you further that under normal circumstances, the role of a godfather in governance could advance alleviating problems while on the other hand, it could aggravate an existing problem. For example, "Abraham Lincoln's political adversaries once accused him of being an infidel because he belonged to no church, and denounced him as a tool of wealth and aristocracy because he had affiliated himself, through marriage, to the 'haughty' Todd and Edward families of Springfield Lincoln realised they might hurt him politically, because they were accusing him of fraternising with negative political godfatherism. He responded that only one of his relatives had ever visited him since he came to Springfield and before he got out, he was accused of stealing a Jew's harp. His reaction was that if they can prove that he was indeed a member of a proud aristocratic family fraternising with negative godfatherism then, he could be pronounced guilty. Salawu, (2009).

Although, his target audience was satisfied, with his response, others who were skeptical hinged their conclusion on what he could do if elected into office.
After he became the U.S. President in 1860, he justified the confidence reposed on him through his actions which pointed to the view that god-fatherism may be inevitable in politics but it did not obstruct positive achievement if one meant well.

The diplomacy with which he prosecuted the civil war, the 13th amendments of the American constitution, which initially protected the slave owners and the eventual 1862 Emancipation Proclamation, setting all slaves free, the 14th and 15th Amendments which allowed all slaves to vote as well as contest for Political offices, were issues which godfathers attempted to subvert but which the occupier of the highest political office in the United States of America could not compromise. Abraham Lincoln's place in American history is a hallowed one.

Conversely, some leaders have been orchestrated into office through godfatherism, only to use the same trust to destroy their states and hopes reposed on them. The cold war affected the destiny of many third world countries and an example is the Democratic Republic of Congo which swallowed a bitter pill of godfatherism. Although, there were many

leaders who have bastardised godfatherism in the Congo, the role of Mobutu Tsetse Seko in playing the super-errand boy for his godfathers in the West was damnable. He aided his god-fathers to empty his country's treasury while equally helping himself through corrupt enrichment into his foreign accounts. When his godfathers sensed dangers in their continued fraternisation with their godson and the exposure of their unholy alliance, he was forced into exile where he died ignominiously.

You need to know that back home in Nigeria, godfatherism had its successes and woes. Chief Obafemi Awolowo led a government in the Western Region of Nigeria between 1954-1959 and while there, he was not unmindful of leaving a legacy of continuity. He was aware of the African proverb which says that "factory grows as man grows, but it is man that should grow first, after which he will use the knowledge gained to improve the factory's development in its totality". He left behind astounding legacies of institutional structures and men. Those he nurtured as a godfather are those offsprings manning the length and breadths of the Old Western Region, Spanning over six states in Nigeria's 36 State structures. No government since 1960 has equaled his legacies. They are solid and imperishable and now serve as a reference points for the Nigerian generation.

Dr. Nnamdi Azikwe in his end of year message to the nation as President and Commander-In-Chief of the Armed Forces of Nigeria in 1964 emphasized the impact of godfatherism on Nigerian politics. He admonished Nigerians to dare to ombudmanise so as to expunch from the Nigerian body politics those parochialisms whose souls are dead, and whose hands are stained with the blood of the innocent, in their mad ambition to introduce genocide and fratricide into our beloved nations". Salawu (2009).

He was quite uncomfortable with the utterances of those who were catapulted into office through extraneous methods but regularly kept swimming in troubled waters. He was of the opinion that irrespective of how an individual got into a political office, decorum and accountability should be the guiding principle. In a similar vein, the adversarial side of godfatherism manifested glaringly between former Governor Rashidi Adewolu Ladoja of Oyo State and the Late Lamidi Ariyibi Adedibu, a non-state but very powerful actor which sent very sour signals about the dangers inherent in the present-day African political godfatherism.

By and large, godfatherism will continue to trail us both nationally and globally and the activities of those who benefitted through it will always be the barometer to measure its successes or failures in governance.

SELF-ASSESSMENT EXERCISE 3

Is godfatherism evil or not? Discuss with case studies

3.5 Governance and Problems of Development

Throughout the third world countries, especially Africa, the problem of development is beyond a parochial discussion. It embodies every facet of human development particular those basic economic, political, and social conditions of human life. The infrastructure for dealing with economic improvement and the development of those much needed social and political institutions which will enable the effective tackling of poverty, disease, illiteracy, mass unemployment, infant mortality and other ills, must be built.

The prevalence of myriads of problem in developing countries not withstanding efforts at least palliatively is showing signs of improvement in certain areas. We are witnessing progress in adult literacy, urbanization, (though, many are lacking adequate planning beyond colonial legacy, increase in life expectancy, and other indicators.

Between 1970 to 1997, average life expectancy in developing countries as a group increased by almost 10 years and even the least developed ones have averaged not lower than eight years. According to the law of physics, for every action, there is an equal and opposite re-action. In the process of these improvements, new dangers are creeping in. In urbanisation, movement from the rural communities to the cities has created hazardous slums and shanties due to over-stretched facilities. Lack of good drinking water, disposal of wastes is not following the rules of hygiene, inadequate transportation and mass unemployment. The mainstay of the economy of majority of African States is agriculture which is neglected for nothing visible in the urban centres. With mass unemployment, crime rate is reaching an unprecedented level, and over-stretching governance capabilities.

Perhaps, to compound the woes of developing nations, is the debt crisis they are into due to the mismanagement of their economy and complete lack of prioritisation due to bad planning. The weight of the international debt incurred, in relation to their economic size has constituted serious bane to their economic growth. While the previous governments in the past incurred those debts, the principle of “continuum” in governments of states makes the actions and inactions of

a preceding regime bounding on whichever regime was in power irrespective of the rejection of the actions of those previous leaders. Their position became so bad that the foreign lenders are emphasising on seeking ways to soften our hardship in order to motivate us to tow the path of good governance.

In the 1970s, especially in the era of oil glut, a lot of developing countries resorted to heavy external borrowing particularly from international institutions in the West. The irony of this is that majority of the developing nations kept their foreign reserves in the West-based financial institutions where most of their borrowing was concentrated. In order to exhibit the financial prolificacy of the developing countries, money borrowed to revamp their infrastructure like high ways, airports, seaports, medical structures, electricity, and industrial developments ended in private hands. Borrowing was not by itself bad as the lender must have considered the borrower credit worthy before parting with their money but the irony of it is that most developing countries diverted this money from the original course to ridiculous matters which does not aid economic growth. Or how do you account for food importation like rice when our land is so fertile to produce the product for export? It is always when foreign loans are secured that various terminologies to invoke public sympathy towards diverting fund emanates. Outright corruption, capital flight, and outrageous actions would dominate, after which we would be back, not just to the level we were before the huge debt, but deeper in the abyss.

By the 1980s, the Western Lenders, realising the rising profile of debt incurred by the developing nations and the declining price of oil which they often project as making them credit worthy became reluctant to grant further loans.

The effect of that action, capable of making the developing nations tow the bath of moral rectitude was compounded by population growth while external factors like recession, unstable prices of commodities and high interest rates added to their woes. With these indices, economic growth could not be expected and unemployment was rife. The basic indicators of both failed and collapsed states appeared especially in Africa without masking its face.

As the developing countries of the world are also members of the global community, the World Bank and the I.M.F. introduced the concept of "Heavily indebted poor countries Initiative (HIPC) to refer to their debtors for the purpose of chatting lines of action. The debt relief, and debt cancellation campaign was spearheaded by notable Africans like President Olusegun Obasanjo of Nigeria and found support in the group known as G7, an international organ of developed Western Nations and

Japan. Many third world nations enjoyed one form of debt relief or another.

One issue paramount to the scenario is that the effects of the debt relief may not be seen if the African leaders of developing nations refuse to tow the line of financial responsibility. An African proverb asks rhetorically. “If we take our hands to aid the mating of a hen, it won’t lay more eggs than its endowment can cope with” and can a leopard change its skin?” Time will tell.

As opined by Lieber, R.J. (2001:11) debt relief and foreign aid more broadly, are not effective without the recipients implementing domestic policies that promote, rather than discourage development. Among the key issues are the rule of law, stable and effective governmental institutions, corruption, and excessive state control of economic activity.

4.0 CONCLUSION

This unit has explained the phases of governance, drawing examples from the pre and post colonial system of governance up to the phase where African States fell into military style of governance. The inevitability of godfatherism was also discussed, stressing that the actions or inactions of those who profited by it will dictate whether it is a curse or grace to any given community.

5.0 SUMMARY

The concept of governance is fluid encompassing not just the often repeated arms of government, the Executives, Legislative and the Judiciary but equally accommodating the G.Os, N.G.Os, parastatals and other nongovernmental mechanisms for the satisfaction of human needs and fulfillment of wants.

Equally, godfatherism is an age-old phenomenon which has percolated our cultural system and its success or failure is dependent on how any beneficiary of the concept conducts himself or herself while in office.

6.0 TUTOR-MARKED ASSIGNMENT

1. Define governance and cite a case study considered worthy of our attention in an African State.
2. Is godfatherism an African concept? Discuss
3. Differentiate between governance and government and cite examples.

7.0 REFERENCES/FURTHER READING

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UNIT 2 GOOD GOVERNANCE, THE CIVIL SOCIETY ORGANISATIONS AND THE MASS MEDIA

CONTENTS

1.0 INTRODUCTION

It is an incontrovertible fact that good governance is a by-product of democratic culture in the civilised communities of the world. We need to emphasis that the concept is not peculiar to a state or government but also involves any or all the organisations having contact with the generality of the people. It has to do with those activities bounding those who govern as well as the governed, while not leaving behind civil society organisations and all non governmental organisations as well. It is an all-inclusive phenomenon for the maintenance of sustainable development.

2.0 OBJECTIVES

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

- explain the concept of good governance, the civil society organisation, and the mass media
- explain how the collaboration between the civil society organisation and the mass media could advance the course of good-governance
- describe those issues that could serve as banes to good governance.

3.0 MAIN CONTENT

3.1 Good Governance

Inevitably, the concept of good governance is derived from that of governance. It is noted that in a given society are sets of rules and norms. When whoever oversees that society administers it according to the societal set rules and norms, the constituents will describe such an administration as that enjoying the tenets of good governance. Good governance, therefore, becomes a barometer for measuring the achievement that a governor meets in the standard or target set for him by the people.

It follows then that a form of political arrangement conducive to meeting the standard for attaining good governance must be put in place and it must follow the structure of a square peg in a square hole.

From the series or forms of government considered desirable to usher in good governance to meet the aspirations of the people, democracy, either liberal or social is considered compatible because of its interconnectedness. It accepts the notion of political rights, civil rights, political representation and all enabling rights, as members of a free society subject to the strict observance of the rule of law. In tune with the above for liberal democracy to rake in bounties of good governance, constitutions and constitutionalism are its essential ingredients. It is within those concepts that organisational structures will be spelt out. Issues germane to sequence and nature of interactions in a political community as well as among individuals in accordance with the rule of law, are plainly explained and spelt out to avoid ambiguity. Once rules are laid out and those that could stall progress are spelt out any other issue that could impede smooth running of the society can be identified and sorted out.

In Africa, there are some constraints on the path to constitutionalism due to some reasons like historical perspective involving our colonial past. Constitution rarely exists due to rule by colonial domination. Africans were not consulted as power was in the hands of the colonial overlords while our traditional chiefs only served as errand agents to ensure compliance of their subjects. Ironically the second identified constraint was in the area of the decolonisation of the continent where deliberate policies of preparing their subjects were rarely contemplated. As if Africans did not learn from history, instead of embracing themselves to get set for good governance on the attainment of independence, their immediate task stemmed for conflict between development and democracy. Instead of developing democratic tenets, rooted in constitutionalism, they opted for developmental issues, hoping to tackle

the problem of needs, poverty, malnutrition, disease. That was with a view to quickly taking their citizens into an Eldorado they viewed the development of democracy and constitutionalism as issues capable of delaying passage of bills and so on. What followed was autocracy and regimes collapse. The fourth reason was that Africa was caught in the mist of Cold War tussle. It was a period of ambivalence for Africans as they either moved to the West at a time, while at the other time, they were embracing the East.

The last point, for now on Africa's poor democratic and constitutional culture had to do with the in-road of coups, counter-coups, insurgencies and military rule. By tradition, military rule is aversed to any issue of constitutionalism as the immediate task of any military government is the suspension of the constitution, and centralizing authoritative powers of the state. The suspension of Nigeria's Republican constitution by General Aguiyi Ironsi in 1966, and the introduction of a fiat replacing a Federal structure with a unitary structure, is a good case study because of its chains of events.

However, African and the third nations of the world are beginning to realize the importance of economic development which only a conducive political atmosphere could usher in. By implication, it is only in those societies where democracy is situated, strict observance of the rule of law is in vogue and constitutionalism well spelt out could be on the road to imbibing the culture of good governance. The World Bank's concept of good governance which is the manner in which power is exercised in the management of a country's economic and social resources for development should be our watchword.

SELF-ASSESSMENT EXERCISE 1

Why is Democracy and Constitutionalism not well grounded in Africa?

3.2 The Civil Society Organisation

Ogbedi (1997) contended that there was no universally acceptable definition of the phrase "Civil Society" but has been used with various …conflicting meanings… from working towards the same end or goal with the state, to being in opposition to the state, especially, as it relates to fighting state despotism. Fashina (1998) noted that G.W.F Hegel sees the civil society as a set of unique economic relations between individuals where we are just seen as "persons, not workers, or capitalists, not Christians or Muslims, not lawyers or teachers, not of this or that nationality but just persons, as bearers of rights".

Yet, Uyo (1996) opines that the civil society evolved from the word 'UVIS' meaning citizens. In his views, a citizen is seen as a free person and by implication the civil society is composed of free citizens of a state. The inference from the above definitions is that a state practicing democracy allows freedom of association, freedom of speech, press freedom, political rights, civil and economic rights and all enabling rights, subject to the rule of law. Further, in a credible democracy, the government is accountable to the people. There have been instances in the global community as well as within a state structure where a government has remained recalcitrant and kept going on the path of tyranny. In such a situation the civil society will demand for an immediate accountability to avert the derailment of democracy and good governance. It is the nature of the civil society in a state that denotes the course of the administration there. The civil society is equipped with strategies to alter the downward recourse of a state towards anarchy, and redirect it towards the course according to the people's wish because there can only be a government where there are people to be govern.

The civil society activities in the political climate of Nigeria during the military era especially Ibrahim Badamosi Babangida's were praise worthy. In spite of enormous constraints, they braced up to those challenges successfully irrespective of the raging military dictatorship and authoritarianism. What the global community is witnessing in the Maghrebian countries of North Africa and Syria is the re-awakening of the civil societies in that part of Africa which are fed up with the governance style of the mediocres who have been found to have outlived their usefulness and have nothing move to offer their people than adversarial forms of governance. Civil Society organisations have a lot of initiatives to employ in sensitizing the citizens towards active participation in the democratic practices of their various countries with a view to promoting democratic culture and development. It must always be noted that sitting on the fence is a way to promoting dullness in governance, as the survival of democracy depends on the virility of the civil society. The political class too should accept the civil society organisations as partners in progress in our collective match towards consolidating democratic tenets, and furthering good governance.

SELF-ASSESSMENT EXERCISE 2

The civil society organisations are the watchdogs of any state government. Discuss.

The Mass Media

How can sovereignty belong to people if they have no control over the people who are elected to represent them? And the only way they can have control is to be able to say at anytime, "If you are acting on my

behalf or my interest, let me know what you are doing on my behalf". (Edetaen, O. (2004). on *Media, Culture and Democratic Process in Odion-Akhaine, S. Governance,* Lagos. *Centre for Constitutionalism and Demilitarisation.*

The above statement is drawing our attention to the role of the mass media in ensuring and engineering political consciousness and awareness in order to usher in good governance. Quite often, particularly under repressive regimes, the mass media have been kept off this noble role of adequately sensitising the populace about the roles of the government, either where the government is shirking its responsibility to the people or in areas where the people need to know certain beneficial actions of the government.

The development of "mass media" in modern times could be traced to 1859 when Henry Townsend began the publication of "*Iwe Irohin*" in Nigeria. (Obasanjo & Mabogunje 1992) followed by *Anglo-African Tempo* in 1863 by Campbell, R. However, between 1880 and 1837 the newspaper industry grew in number. Some of these papers included *Lagos observer, Nigerian Chloride, Nigerian Times, Lagos Times, The Weekly Records, Nigerian Pioneer, and Lagos Critics. Equally worthy of mention were the West African Pilot, Daily Times, The Outlook, Gaskiya Tafi Kabo, Nigerian Citizen and the Nigerian Tribune.*

As to be expected, most of these newspapers were polarised along ethnic and party lines in their news dissemination, but one major role they served and still serving is that of sensitizing the citizenry about activities of Government and what roles the civil society must play to bring about the concept of good governance.

Various anti-corruption wars were successfully waged by the press at various times, both nationally and internationally. Successive military regimes are Nigerians were never spared, much as the mass media never spared the Civilian administration of Nigeria since 1999. They have lent credence to the activities of the Anti-corruption crusaders like Nigeria's Economic and Financial Crime Commission (EFCC), and that of the Independent Corrupt Practices (and related offences) Commission. It was the British Press that waged war against the British Prime Minister. Sir Alex Douglas Home in a sex scandal called Prufomo Scandal. The mass media never spared the U.S. President Bill Clinton in a sex scandal case while the mass media was informing the public when the I.M.F. Boss was accused of a misdeamenour. What the mass media in the global community should equally be commended for is the instant reportage of issues bothering on health, technology and market opportunities. These laudable activities informed the view of Edetaen Ojo (2004) once more to say that:

"The press everywhere in Africa seeks to play a genuine development role, development here defined broadly as the needs and aspirations of the people, and not normally as designs of regimes who want to prolong their rules by all means possible". Since one of the primary aims and expectations of the mass media in modern times is the galvanisation of the civil society to play their role in seeking accountability from the government to usher in good **G**overnance, and to ask the people as well to perform their civic duties, many methods could still be tapped to complement the activities of the mass media. We must increase the involvement of Theatre Artists as they are quite effective in raising public awareness in all the nooks and crannies of Nigeria particularly. An era where electricity is a luxury and the reading culture is dwindling recourse to our Theatre Artists will sensitize our people on sensitive attempts or innovations the government intends to introduce, as well as invoking an immediate response in order to assure an enduring democratic learning process and equally attract indices of good governance.

SELF-ASSESSMENT EXERCISE 3

The mass media has been accused of insensitivity to the plight of the ongoing conflicts in the global community. Do you agree?

4.0 CONCLUSION

There is an urgent need to enhance the capacity of the mass media not only in Africa but in the global community if war against ignorance, deceit and other unwholesome activities of illicit regimes are to be exposed and curbed.

5.0 SUMMARY

This unit has briefly touched the embryonic stages of Mass Media establishment in Nigeria and proffered areas of improvement in order to reap the dividends of democracy and put us on the path of good Governance.

6.0 TUTOR-MARKED ASSIGNMENT

1. Define the roles of the mass media in a liberal democracy
2. What do you consider could enhance the performance of the mass media towards their roles?
3. What do you understand by the mass media being kept under check by repressive regimes? Support your answer with a case or case studies.

7.0 REFERENCES/FURTHER READING

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UNIT 3 WOMEN AND NATIONAL/INTERNATIONAL GOVERNANCE

CONTENTS

1.0 INTRODUCTION

As a human being one is either born a man or a woman. Governance either on the national plain or global terrain has been largely dominated by men. Although, definitions of governance has been attempted in the first unit of this module another working definition will be given in this unit. Further, while governance manifests at various levels of human state the type or concept under reference is 'Political Governance.' Hence, Easton (1959) and Laswell (1958) definitions became pertinent, as they intuitively linked the concept of politics to that of governance thus; politics is the authoritative allocation of values; and (b) as who gets what, when, and how. In clarifying these definitions, Kingsley, S. Agomor (2004;272) in Odion-Akhaine, S. *Governance.* Lagos*:* ENCOD), elucidatively narrated the almost gender specific implication of the concept as it involves authority, governance, allocation, values, access, time and means. You have to break this concept down further to be convinced that, in the African continent, there are functions that are male-dominated, and the number of male Heads of State to women, attests to this. With this in view, this unit will look into the political behaviour and governance style of women in Africa.

2.0 OBJECTIVES

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

- describe politics of modern development
- analyse the negative effect of discriminating against women
- explain the need for greater investment in the education of the girl-child.

3.0 MAIN CONTENT

3.1 Women and National/International Governance

The unabated call for good governance in the length and breadth of Africa has compelled scholars and researchers to go back into both the achieves as well as to have a second look at the perennial rebuke accompanying governance style of African leaders in a largely male-dominated partisan politics of Africa. While several factors have led to the wide gap between male and female partisan political actors, series of building-gap activities are in progress. It is however gratifying that women are moving fast in almost hitherto male dominated professions with a view to equipping themselves adequately so as to be forces to be reckoned with in the political arena, should they opt for it.

African women in the pre-colonial and colonial era, though in infinitesimal number, distinguished themselves in many spheres, and registered their names in the ever green books of record for ever. In West Africa were women like Mrs. Funmilayo Ransome Kuti of Egba Kingdom, Efunsetan Aniwura, the Iyalode of Ibadan, Madam Tinubu, a relation of Eko Dynasty, and Moremi, the legendary Ife Princess. We could devote volumes of pages, writing theses on them without exhausting the effects of their exploits. Others in that sphere included but not limited to Queen Amina of the Legendary Zazzau in Sokoto Caliphate, an illimitable reverence point in the history of Empires, as well as Mable Dove Danquah, the wife of the political giant of the Gold Coast, Later Ghana.

The list of those within the modern-day setting whose roles remain green and fertile included flora Azikiwe, Margret Ekpo, Wuraola Esan Gambo Sawaba, Serah Jubril, and Mrs Kujoe, H., Mrs. F. Nkruma, Leticia Quaye, while very close family members of those within the bracket of political scions of the Gold Coast were equally involved.

The above list is inexhaustible if we are to concentrate on it but we may lose focus because it is seen that women are now galvanizing efforts to seek, through constitutionality, power, not only on the premise of what a man could do, a woman could also do the same, but that they are out to correct the lopsidedness in governance, and put zero tolerance on corruption which is regarded by scholars and the international community as the bane of progress in the political scene of Africa, largely dominated by males. This stance is equally helped by the United Nations' series of conventions to galvanize support for women like the 1979 convention of the elimination of all forms of Discrimination Against Women and the 1993 World Conference on Human Rights which laid emphasis on the indivisibility of women's rights as part of

the universal human rights. We equally need to remember the exploits of African nationalists who were quick to recognize the role of women in governance like Dr. Kwame Nkrumah and members of his party. They were perhaps motivated by the syndrome of desirable continuity started in earnest encouraging African women in all the hooks and crannies of the continent to mobilize and move up to the political area.

In all human endeavours, there must be challenges. As a student, be intimated that the challenges which drew back our women folk initially like education, finance, and cultural assumption which saw them as best only for the kitchen are almost put behind us while, the savagery of male folks and inducement of lay-about to obstruct them, cannot be glossed over. It is in the midst of these uncertainties that in the African continent, only a woman, Mrs. Ellen Johnson Sirleaf, marshaled courage, education, enlightened and track-record, both at home and internationally to face what appeared on herculean task and with the support of the good people of her country, won the presidential election of her country, Liberia. History was made having her as the first woman African President and her style of governance had been applauded progressive, reconciliatory, with zero tolerance for corruption, and above all, healing at a fast rate the wounds of several years of a costly internal war. For doing these, for not betraying the confidence reposed in her by both her people and the international community, she was honoured with the Nobel Price for Peace in 2011.

SELF-ASSESSMENT EXERCISE

What quality do you expect from a woman aspiring to the political leadership of your state or country?

4.0 CONCLUSION

Although, series of activities have been put in place to aid women's upliftment in partisan politics their success depend on how the woman too is prepared to face the challenges. Political terrain is mucky and requires courage and determination to succeed.

5.0 SUMMARY

This unit discussed the role of women in governance and reminded us of those women who have imparted positively into the governance of some parts of Africa much earlier. It was also emphasised that despite series of conventions and campaigns for women emancipation they too should avoid compromising with the agents suppressing their emergence.

6.0 TUTOR-MARKED ASSIGNMENT

1. What prompted the call for women participation in politics?
2. What qualities enhanced the selection of Dr. Hellen Sirleaf as a Nobel Peace Prize Receiver?
3. Do we need a deliberate legislation to fix the ratio of male and female in African Legislative Chambers?

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UNIT 4 REFLECTIONS ON GOVERNANCE STYLE OR ROLES OF SOME GLOBAL LEADERS

CONTENTS

1.0 INTRODUCTION

This unit intends to peruse the governance style or roles of some African Leaders. We also wish to look into why Africa is said to have degenerated into a continent where there is declining confidence in the practice of democratic governance.

2.0 OBJECTIVES

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

- explain the import of democracy and liberal democracy
- narrate why there is dealing confidence in the rule of law
- and point out the role of internal and external forces in the governance system of African States.

3.0 MAIN CONTENT

3.1 Governance Style or Roles of Some African Leader

We are regularly inundated with lampoons and polemis by the Western media about the effect of bad governance in almost all African countries. Africa is seen as a continent where the opposite of those good things occurring in the West are regularly happening. Our various leaders have been labeled as surveyors of violence, greed and always seeking vengeance. One now wonders whether we deserve these negative references or not. It is not a matter of yes or no. As a student, have you ever heard of a state in Africa where any presidential election is not disputed? Have seen any State in Africa where foreign debt with interest repayment is not often more than their annual budget? The international media had to cry out in the spirit of globalization of world

politics because the assumed humanitarian tragedy that could accompany an unchecked bad governance could be too grave to contemplate.

The Congo, since the inglorious assassination of Patrie Lumumba, has been in the woods. Election after elections since 1960 never produced an acceptable leader. The Cold War which wrecked havoc there has, since 1989, subsided and despite the availability of rich numeral deposits, fertile land, the DRC is running to a failed state. In the Maghreb, since the assassination of Ahmed Ben Bentla in the 60's, has been in shambles due to bad leadership. The Syrian leader has failed to heed the call to quit after over three decades in office and is now resorting to the persecution of those he swore to protect. Many are dying and yet, he remained recalcitrant, just as the Libyan leader, Mohamar Ghadafi rejoiced at seeing drops of blood. At last, he lost his life and Libya's life continues. He is today, being remembered with sighs and bitterness for sponsoring terrorism.

In the East and Central Africa, Besides Julius Nyerere who relinquished power voluntarily, and the Zambian leader who honoured the wish of his people to quit, all the others are fumbling and turning governance into a family affair. Our West African leaders are not spared either. The elections in Ivory Coast and Togo resulted into violent conflict, claiming lives and drawing external intervention before a relative resolution was put in place. However, there is a salutary effect from the Nigeria example as the election there was umpired by an electoral body, led by an acknowledge political scientist who combined the theory and practice of his calling to handle the election. Although, challenged in court, the result of the court action which exonerated the commission and the party in power brought about a calm reception by all parties. Whether this is the end of it or not depends on the petitioner. It could, however, be said that sanity is being brought to the electoral system in Nigeria.

One is now compelled to see the logic between the concepts of democracy, liberal democracy, and social or socialist democracy.

Ake (2000) sees democracy, in its traditional sense, as seeking the realization of human potentialities through active participation in rulership while liberal democracy offers only protection. In the latter, (liberal, democracy), it is a passive acceptance of immunity. The former enables and empowers. The contention here is that since the end of the cold war till date, the concept of liberal democracy is what African countries are adapting to in their governance style. In order to have a clearer view of the above, as a student, you will discover that liberal democracy actually, targets individuals at the end of electoral processes, and substitutes peoples government with peoples' consent. Invariably,

peoples' sovereignty is replaced with the sovereignty of the law. Under this situation, what follows is the submission of your grievances to a select few judges. May be 5 or 10 as the case may be but can you see the root to the inroad of corruption and jaundiced governance in Africa? Let's quote Eldius Ake for a clearer view of this message.

"Instead of the collectivity, liberal democracy focuses on the individual whose claims are ultimately placed above those of the collectivity. It replaces government by the people with the government by the consent of the people. Instead of the sovereignty of the people, it offers the sovereignty of law. In the final analysis, liberal democracy repudiates popular power." (Ake, 2004:14)

You should, know that under normal circumstances in a civilized country, rule of law works. Further, where there is a strong adherence to the philosophies of life, especially as contained in our Holy Books, the Quran and the Bible, a contestant accepts the outcome of an election. However, if the circumstances are abnormal, and poverty keeps ravaging the land, will someone not offer to play the spoiler by, after an undercurrent, switching victory over to the highest bidder? What sort of governance style do we expect will follow? Corruption has been difficult to unravel but who is deceiving who?

When the colonial leaders discovered that poverty, violence, desease and series of vices have enveloped Africa; they came to salvage us through various methods, especially, the IMF's dose of structural adjustment. At the end, we kept repaying debt beyond main debt. We are now in an era of globalization. Africa must seize the opportunity to braze up to the reality of sincerity and honesty among themselves. The era of seeking the adversarial loophole in a system to install a regime that the people never wished is over. Since it is the liberal system of democracy that has been in vogue since 1945 in the West, and has never attempted to subvert their systems, nothing prevents us from making it work yonder. Let's all resolve to stop subordinating meritocracy to mediocracy.

SELF-ASSESSMENT EXERCISE

Who is to blame for Africa's woes?

4.0 CONCLUSION

Let's all unite to salvage Africa. The future is full of ambiguities because we are deliberately exalting bad governance through our insincerity. We must look inwards to reappraise how our electoral system is tailored as it is at the bedrock of our accentuating bad governance. Responsible and knowledgeable people, who have a lot to

offer, are scared while those who have "arrived suddenly" are governing us at various levels of governance. What do we expect then? For how long do we keep blaming the international community for our woes? Let us put ourselves back on the path of nurturing good governance which is the most cogent point for a sustainable development.

5.0 SUMMARY

This unit discussed the governance style of some African Leaders and explores the need to decipher democracy from liberal democracy. The role of the international community was also mentioned while ways out were equally proffered.

6.0 TUTOR-MARKED ASSIGNMENT

1. What do you think stunted the growth of democracy in Africa?
2. Why is it that African Leaders are beings accused of insensitivity to the plight of their citizens?
3. Democracy gives freedom, why liberal democracy repudiates popular power. Discuss

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UNIT 5 REFLECTIONS ON GOVERNANCE STYLE OR ROLES OF SOME AFRICAN LEADER

CONTENTS

1.0 INTRODUCTION

Reflections often invoke hidden feelings, especially, when one is compelled to compare a given situation in a particular setting to another one in a similar setting. We will be asking if an issue is a punishable offence in a state and those who flout it are punished accordingly, why is a similar thing going on in our mist here condoned? To compound it, the perpetrators often go scot free. It is in this context that we wish to reflect on the style of governance of some Global Leaders or the roles they play to bring about good governance to a country. Those that capture this brief analysis are some Western and Eastern Leaders.

2.0 OBJECTIVES

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

- explain the spirit of patriotism in our duties and expectations to our state
- explain what made those characters in the unit unique global personalities
- explain what is meant by buck passing by our Leaders.

3.0 MAIN CONTENT

3.1 REFLECTIONS ON GOVERNANCE STYLE OR ROLES OF SOME GLOBAL LEADERS

In the recent past, a state in the global community was either pro West or East. The reasons are not far-fetched. They emerged out of a system called multipolarity and effectively, canvassed for emulation. Although, by 1989, the dividing line between the two grumbled, giving way to mono-polarity in favour of the West, a brief analysis of the actors is desirable.

That the United State of America became a world power was not by design but by dint of hard work, perseverance, dedication and patriotism.

When they declared themselves independent of Britain in 1776, they accused Britain of many misdeeds, and were determined that if they had their independence, they would protect it to be the envy of the world. The declaration of independence was authored by Legendary Thomas Jefferson in the American Congress on July 4, 1776.

In it, he made it clear that *"in the course of human events, when it becomes necessary to part ways with an old friend, a decent respect to the opinion of mankind compelled them to let them know the reasons of the separation"*. What actually came out as a lesson to mankind was that once you determine to pursue a course, hold it with all honesty. He wrote further.

"We hold these truths to be self evident that all men are created equal, that they are endowed by their creator with certain inalienable rights, that among these are life, liberty, and the pursuit of happiness"

By 1823, their President, Monroe, was pursuing a policy of flourishing economy for the colony when, in his annual message to the congress, delivered on December 2, 1823, announced an American foreign policy that came to be known as the Monroe Doctrine. This was an extension of the policy started by George Washington in his farewell address, and corroborated by Thomas Jefferson, in their statements on foreign policy respectively. He asked the Quadrupple Alliance of Great Britain, Russia, Prussia, and Austria to keep off, keep away from the New world and confine their activities to the old world or else… you see how consistency in the policy of succeeding administrations helped the United States of America? They did not give room to recrimination, neither did the allow sentiment. *U.S.A is one; and for the whole; not East, West, North or South*. (Todd & Curti, 1966: 252). African nations

are still busy condemning a policy of past administrations and when another comes up, the step is the same. Abraham Lincoln, through 13th, 14th & 15th constitutional amendments, freed the black and coloured slaves, allowed them to vote, and later to be voted for. These actions were consistent with the living American documents, in order to enable them engage in the pursuit of happiness. Although many freed blacks abused the privilege in their electoral fraud, they soon towed the line of decency. Succeeding American leaders have always struggled to make a mark either when in the saddle of power or when no more and the exploits of President John F. Kennedy and the Soviet premier, Kruschev, is worthy of a revisit, especially, how they saved the world from the scourge of the third World War. The manner in which they had rapport to end the cold war could not escape mention. With the end of the Cold War, liberal democracy has taken a firm root and globalization of world politics is on cause. African leaders need to re-appraise holistically those issues that could aid good governance and overall happiness of their people, instead of being lackeys to their imperial leaders. Happily, Africa too is not entirely lacking in men of dignity.

What we lack is continuity for which a solution must be found. In the colonial days, Africa had people like Dr. Nnamdi Azikiwe who left his American base, despite overtures to found Newspapers for the political education of his people, Obafemi Awolowo, Sir Ahmadu Bello, whose legacies are a delight to watch. Also are Jomo Kenyatta, who became a thorn in the Colonial Master's flesh, and a happy memory was when Dr. Azikiwe's N.C.N.C sent a defence team to Kenya for the defence of Jomo Kenyatta accused of managing Mau Mau dubbed an illegal organisation, Julius Nyerere of Tanzania, Kenneth Kaunda of Zambia, Dr. Kwame Nkrumah of Ghana and Ahmed Sekou Toure Guinea; while Emperor Haile Salaise was not left out. Equally worthy of mention are Sylvanus Olympio of Togo who was assassinated in 1963, and William Tobbert of Liberia.

Despite an array of these fine nationalists who clamponed the cause of Africa, people like Hastings Kamuzu Banda of Malawi and the emergent leaders did a lot of damage through their lack of direction in their style of governance.

It is now a great irony that African states lack a culture of continuity. The former Africa leaders in the dark days of African nationalism fought and won independence for the present generation while many went to jail. They fought against lack of education and now, several institutions are in the continent. They fought against banking monopoly. We are inundated with them at the moment. They fought against lack of physical, human, and aggrararian development. They laid a sound foundation which the present African leaders are mismanaging. As a

student, if since 1776, American succeeding administrations kept improving, without wasting time on what the past did as their activities were transparent, cant our African leaders borrow a leaf from them?.

Elections are conducted every four years in America and five years in the defunct Union of Soviet Socialist Republics' thirteen independent republics. They are based on the same Liberal Democratic tenets. No hitch, no cry. Why, beloved Africa?

SELF-ASSESSMENT EXERCISE

What advice do you have for African states to have hitch-free elections?

4.0 CONCLUSION

The road to changes attained by the developed nations was by no means easy but efforts to eliminate corruption and bureaucratic paralysis must be found. We know African leaders may be facing accumulated deficiencies of several years.

They must not be weighted down by them. With determination, patriotism and resolve to make a name like those in the global community, the sky is the limit.

5.0 SUMMARY

This unit has examined the style and role of governance of some global leaders in comparison to the African leaders. Having discovered the continuum syndrome of the civilized regions of the world, and the extra-ordinary disconnection in the style of governance of African states, suggestions for ways-out were proffered.

6.0 TUTOR-MARKED ASSIGNMENT

1. If you were an African Head of State, what would you like to be remembered for when you quit office or when you are no more?
2. The American Living Records-the Bill of rights have been directing American policies over the years. Discuss.
3. Both President Kennedy of America and Premier Gorbachev of the USSR employed strong peace building tenets to avert the 3rd world war. Do you agree?

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MODULE 2 INTERNATIONAL LAW

UNIT 1 UNDERSTANDING INTERNATIONAL LAW-SOURCES

CONTENTS

1.0 INTRODUCTION

The evolution of International Law is principally predicated on the axiom that "If you want peace, prepare for peace". Democracy guarantees freedom from restrictions and if we are so free to do as we like, the likelihood of creating an obstruction to other peoples' freedom could emerge. In order to forestal this, the concept of Liberal Democracy comes in, which invokes sovereignty of the people through the rule of law.

Since conflict, according to Albert (2001) is a product of interaction between two or more groups; a struggle over values or claims to status, power and scarce resources, in which the aims of the groups or individuals involved are not only to obtain the desired values but to neutralise, injure, or eliminate rivals (Coser. 1956) and a situation where two or more interdependent groups or systems of action have incompatible goals (Diller, 1997) conflict therefore, between state A and B or a state and others could not be ruled out. Equally worthy of note in this context are issues of international nature that may be occurring within any sovereign state. In order to come to a reality that though

states are divided by human structures several issues of commonality exist which deserve a collective protection for the overall harmonious existence of mankind. International Law serves that purpose in spite of its constraint.

2.0 OBJECTIVES

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

- explain the sources of International Law
- explain the analogy between the sources and assumptions
- differentiate between the definition of International Law as given by a scholar from the West to that of a scholar from the East.

3.0 MAIN CONTENT

3.1 Definition of Terms

Several Scholars of various schools of thought have attempted to define the concept of International Law in tune with their orientation.

Oppenheim (1905) defines it as "the name for the body of customary and conventional rules which are considered legally binding by civilized states in their intercourse with each other." He expatiates that it is a law, not for individuals, but for the intercourse of states with one another. Further, he sees it as a law operating within, not above single states. Following this is another Scholar, Ellery (1931) who offers to be different and says that "International Law embodies certain rules relating to human relations throughout the world, which are generally observed by mankind and enforced primarily through the agency of the governments of the independent communities into which humanity is divided.

Phillip (1948) also opines that "International Law is generally defined as law applicable to relations between states" and equally offers a proviso that "there has welled up through the years a growing opposition to this traditional concept. His view is not unconnected with the transformation the concept has attained which recognizes individuals as becoming increasingly subject to International Law and from this, he offers another definition that a modern law of nations rests on the hypothesis that the law of nations is applicable to individuals in their relations with states as well as to certain interrelationship of individuals. We are also reminded of the growing importance of transnational law due to what he refers to as the proliferation of agencies of an official and non-official nature and of practices cutting across national lines.

However, as a student, you need to have it in mind that irrespective of the difficulties or wordings they might be shaped in, what the law seeks to achieve is to serve primarily as a safeguard and a "body of rules accepted by the general community of nations, as defining their rights and the means of procedure by which those rights may be protected or violations of them redressed. (Fenwick, C.G. 1924).

In the mist of definitional explanations comes that of McDougal (1960) who says that law is a process of decision into which all relevant factors, and not merely technical norms, enter. From this definition, law is seen to be synonymous with policy and goes ahead to situate the study of law with the study of a policy science."

The aforementioned definitions would have sufficed but for the polarity into which the global community has been split. One is either pro West or East. The above definitions, as an inquisitive student, are regarded as traditional International Law, and a by-product of the West, viewed with great suspicion in communist countries and with significant reservations in the developing countries of Asia and Africa.

A soviet writer, Vyshinsky (1948) defines it as "the sum total of the norms regulating relations between states in the process of their struggle and co-operation, expressing the will of the ruling classes of these states and secured by cohesion exercised by States individually or collectively.

Mezholunarodnoie (1948) corroborating this communist definition was through a publication by the Institute of state and law of the Soviet Academy of Sciences in 1957, which added the phrase "peaceful co-existence", equally re-quoted for the sake of emphasis by Korovin (1961) as thus: "Contemporary International Law may be defined as the international code of peaceful co-existence. Not done with the disparity between the West and East over the definition of International Law, Tunkin (1962) head of the Treaty and Legal Department of the Society Ministry of Foreign Affairs reaffirms the typical soviet view that it reflects "The struggle and co-operation of states, and first of all, of states of the two systems. (KPSS; Zadachi Nauki 1962).

Anthony R. Dicks (1964), commenting on the series of interpretations of International Law, says that attitude towards it appears to reflect differences in the ideologies and policies with various ideologies. For example, the Chinese follows the Marxist/Hemnist approach, laying emphasis on class struggles and when convenient, adapt the use of the West traditionally accepted international rules. One basic fact about the purpose and intention of International Law is its clarity which gives equal attention and treatment to all nations and international personalities. However, the communist states often place emphasis on

intentions, rather than obligation, construing rules on political issues, all of which are considered a deliberate assault on the intention, and principles of International Law. Also, sourced from en.wikipedia.org/wiki/International law 12-12-11 is the definition that "International Law is a set of rules, generally regarded and accepted as binding in relations between states and nations. It differs from national legal systems in that it only concerns nations, rather than private citizens. National law may become International Law when treaties delegate national jurisdiction to supranational tribunals such as the European court of Human rights or the International Criminal Court. Treaties, such as the Geneva conventions may require national law to conform.

3.2 Sources of International Law (1)

It is pertinent to first mention that the contemporary International Law is put in place by the United Nations to provide the framework of international order that would significantly alleviate conflict. However, emphasis needs be made that the phenomenon itself has been in existence among various types of civilizations and predated the actual formation of the United Nations.

Arguably, the contemporary International Law rests on a long Western tradition, having its root in the ancient Roman civilization. As a student, as earlier mentioned, in the ancient era, regarded as antiquity, two concepts are desirable. The first is natural law (jus naturale), an assumption that by virtue of the peoples' common humanity, there are certain, pre-determined natural order of things they share together. Form the above assumption comes the believe of the Romans that natural law was in vogue among the various peoples they ruled and the same should be applicable across various cultures. The other concept, called the law of the people (jus gentium), was developed by Rome to regulate trading and commercial activities throughout the Roman Empire.

The Roman natural law, patterned along Western International Law model, became codified in the 17th C and a Dutch jurist, Hugo Grotius, invoked that tradition during the 30years war, basing much of his conclusions on a common human nature and a self-evident law stemming from it. His arguments were corroborated by the 1648 West phalia Peace Treaty with the emergence and spread of the contemporary nation-state system, which added impetus to Grotius' concepts of International Law, Sovereignty, and Law of War.

Series of scholarly writing of Western jurists and philosophers in subsequent centuries who further elaborated on the concept of International Law led to the growth of process of distinction between those who emphasized what states should do and what states were in practice, doing. The influence of those in the school of thought of "natural law" went down considerably in the 19thC, but due to the 20thC horrors, regained prominence. These could be attested to by the Nuremberg trials of Nazi war criminals and the U.N. Genocide convention of 1948 and the International Court of Justice.

Summarily, International Law, tailored along Western system of higher law, was given a top emphasis from the 17thC and received a great impetus during the 19thC due to the Western countries' growing global influence. From the aforesaid, the foundations of International Law are diverse and this characteristic actually differentiates International Law from municipal law. International Law does not come into existence from actions of a legislative or any other authority but from tradition and agreements signed by states. In a nutshell, the sources of International Law include the following:

- Treaties and conventions
- Custom and expectations
- General principles
- Judicial decisions
- Opinions of text writers

Treaties and other conventions A principle in International Law states that treaties, once signed and ratified, must be observed. Treaties and all over international obligations like debts are binding on successive governments, irrespective of how such government assumes power.

Custom and Expectations Mutual and long standing behaviour between and among states may be generally accepted as having the status of law.

General Principles Actions regarded as criminal or civil wrong in most legal systems tend to have equal effect in an international context.

Judicial Decisions Written arguments of judges and lawyers around the world on vital global issues. These involve writings from highly qualified and reputable legal luminaries who could be classified to fall within the context of sources of criteria for identifying social problems However; recourse to this source only becomes applicable if the aforesaid three sources of International Law could not resolve the conflict.

Opinions of text Writers
This involves well articulated writings and opinions of philosophers. Among these were Hammurabi of Babylon, Alfred of England and Lycugus of Sparta.

3.3 Sources And Development Of International Law II

As it is with many other institutions of this modern era, the beginning of International Law could very well be linked to that period, regarded as prehistoric era. From the views submitted by historians, tribal communities must have been prompted to some assumptions about the thought and spots of abode, water holes, substances for sustenance, hunting areas, possible conflict of co-habitation, leading to warfare, without leaving out issues of intermarriage. These intergroup relations were carried out with a view to assuming that war and conflicts of interest are part and parcel of a community life and that through an express agreement, peace would evolve. Paradoxically, tribal groups often exhibit hostile relationships in the past, and as states emerged in the ancient world, certain people brought out the idea of the concept of justice and order. That spurred the Hebrews and the Hindus to bring out increased personal interest in law and order which contributed to peaceful relations among those people engaged in trading. Efforts will be attempted to briefly trace those prehistoric sources.

Pre-Grotian International Law
According to Fenwick (1965),…, "the distinctive feature of the political organisation of ancient Greece in the time of its greatness was the supremacy of local loyalties and law". We are then reminded that it was in the interactions among the city-states that the Greeks manifestly exalted their belief that the interactions should not be devoid of specific rules. Subsumed within the interactions were matters about warfare, diplomatic immunity, maritime law, and issues of arbitration. The Romans, basking on their ingenuity in the process of governance and administration, extended their authority in the middle ages which they held on tenaciously, until the evolution of the concept of world-state.

Invariably, like the Greek, Rome's addition to the beginning of International Law developed from their attempts to moderate interactions within peoples of different cultures, particularly in areas not qualified as states. Indeed, the concept of a common citizenship and impartial justice which has universality these days, the idea of a universal law, and the breaking down of the old isolationism as well as the old contempt for foreigners, were Romans contributive legacy to International Law. In order to assist them in the governance of their conquered territories, Roman jurists developed law of peoples or jus gentium, which is predicated on the body of rules and usages believed to

be applicable to all peoples and resting upon natural justice. The fall of Rome regardless, the principles of law of peoples survived the centuries that followed it and were accepted as part of the emerging International Law. Without doubt, the strong belief that only well set out legal principles should direct the relations of states, evolved from the constitution of the Romans.

As opined by Bishop (1953), international relations in the modern sense began to develop with the rise of Britain, France, Portugal, and Spain. It then became expedient to regulate the conduct of war, neutrality preservation, the use of the seas in both peace and war time, and the identification of boundaries in colonial claims. Treaty and conference became the force and yardstick for concluding agreements while in sequence, a law of neutrality, principles of Roman law respecting private property, applicable to boundary lines and colonial claims, together with a law of war systematically evolved. Evidence was also adduced that "there was a growing body of rules of conduct that states were approving by obedience and commitment, usually called natural law, which manifested in practice, and custom. In conclusion, it was declared that while International Law was made by the actions and agreements of rulers, it was collected and systematized by scholars through researches in the past and current relations of states.

3.4 Some Writers who have Contributed their Quota to the Origin of International Law

Legnano, an Italian, whose study of the rules of war was written in 1360, and published in 1477 was perhaps the first of the important writers on International Law. It was in the 16 BC that at least, six legal scholars produced notable works on International Law and the most important of these were Victoria, a Spaniard who, according to Fenwick (1965), laid down the principle that the nations formed a community, based upon natural reason and social intercourse. Eagleton (1948), identifies Suarez, also a Spaniard, as the first writer to distinguish between reason and custom as sources of International Law which has been the distinction followed ever since. Following Suarez was Gentilis, a British subject, of Italian extraction, reputed to have added historical and legal precedents to natural reason and natural law as sources of International Law. Gentilis is in reckoning today for his De jure belli as well as being the direct forerunner of Hugo Grotius, the character destined to be referred to as the "father of International Law, who deserves a piece in this unit

Grotius and Natural Law

Oppenhein (1952), who writes fluidly on Grotius, says he was born in Holland in 1583, and at the age of 15, he bagged the degree of doctor of laws at the University of Leyden. His published book, titled "Mare Liberum", in 1609, dealt with his pleas for freedom of the seas, which was a novelty then. His book, titled D*e jure belli ac pacis* or on the *Law of War and Peace*, published in 625 and which appeared during the bloody thirty years war, gave him an enduring fame. An enlarged and revised edition of it was published in 1631 and by 1928; a total of sixty four editions had been issued.

Oppenheim eulogizes his intellectual fecundity on the premise that with *De jure belli ac pacis*, particularly part II "the science of the modern law of Nations commences….. because in it, a fairly complete system of International Law was for the first time built up as an independent branch of the science of law". As equally qualified by other authority, it contains four main characteristics. First, the Author holds states to the same rules regulating the laws of individuals and making the violation of them a crime, subject to punishment. The second characteristic is that he based his Judgement upon researches in the scriptures, ancient history, as well as the classics while he formulated the "Law of peace" which became the foundation of his whole system. The third characteristic is unchored on the argument that states may properly punish other states which violate the law while the fourth is based on the acceptance of natural law, or right reason, as the primary basis for determining rules for the rightful conduct of states.

The admiration for Grotius these days stems from his efforts to sensitize nations to accept the principles of humanity. Indeed, human race will be moving closer to the dreams envisioned by Grotius than were those of 19th century, with their glorification of sovereignty. Essentially, we are advised to keep to the international conduct, based on moral principles and in our growing conviction that law abiding states must be courageous enough to deal decisively with lawless states. Grotius relied heavily on the risks which evolved from efforts to deeply cogitate, putting human beings and states in a homogenous and happy environment which according to Vollenhoven (1937) is "the dictate of right reason. That then points out that a given act, because of its opposition to or conformity with man's rational nature, is either morally wrong or morally necessary and accordingly forbidden or commanded by God, the author of nature". His theory sought to assert what the law ought to be, rather than emphasize those rules which human beings and states had committed themselves to by custom or agreement. He also kept a distinction between what was called positive law from natural law. He never originated the concept of law but his formulation of the rules of state conduct, which he felt rested on natural law, was accepted

by legal writers to an extent that it generated regular debates on International Law for two centuries.

SELF-ASSESSMENT EXERCISE

Discuss the significance of International Law to the economic structure of the third world countries.

4.0 CONCLUSION

International Law has been used to settle many cases in the past and its very existence has served as deterrence to crime and aggression among state-actors and many highly mobile non-state actors. It also reinforced respect for the principles of fundamental human right, among many areas of its usefulness.

5.0 SUMMARY

This unit has discussed the sources of International Law with a brief note on each of the identified sources.

6.0 TUTOR-MARKED ASSIGNMENT

1. International Law is a body of rules derived from some sources. Itemize and discuss them.
2. The various definitions of International Law, by Western and Eastern scholars are conflictual. Examine this within the context of the Cold War.
3. What is your opinion about the attitude of the Chinese to the concept of International Law?

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UNIT 2 ENFORCEMENT OF INTERNATIONAL LAW

CONTENTS

1.0 INTRODUCTION

The absence of a central government with its paraphernalia makes the enforcement of International Law a bit difficult. Further, it is within the organs set up to moderate international conflict that asymmetry of states occurs and which shows that egalitarianism is an elusive word in international politics. The existence of the Security Council, composed of five permanent and ten rotational members, is a good reference point. Issues of a power block vetoing a decision of a general assembly composed of states in the global community are case studies. However, the salutary effect is that despite the conspicuous identification of inherent hegemonic disparity within the first, second, third, and arguably fourth worlds, the sing-song is the enthronement of international peace which is manifest in the globalisation of world's political, economic, social and cultural spheres.

2.0 OBJECTIVES

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

- identify those cogs in the wheel of enforcement of International Law among states
- itemise issues that could mitigate those obstructions
- explain the necessity for a peaceful co-existence.

3.0 MAIN CONTENT

3.1 Enforcement of International Law I & II

From the sources of International Law, earlier discussed, the distinction between it and national law is mentioned. Further, the absence of a world police or standing force makes the enforcement of International Law pretty difficult. The absence of a standing force makes it mandatory for the United Nations to rely on member states for enforcement. This enforcement depends so much on the principle of reciprocity of states.

According to Gardiner (2008), states follow International Law most of the time because they want other states to do so. He elucidated the above by referring to the events of the World War 11 in which the contending powers could have resorted to the use of chemical or atomic weapons but resisted from doing so, because they wished to send signals to other powers to exercise restraint, even, at the most expensive provocation.

Although, International Law recognizes the legitimacy of reprisals under certain circumstances, yet the effect on the user themselves and the larger international community must not be scarified on the altar of egotism. The fear of a collective action against a defying state was a strong deterrence to turning deaf ears to the yearning of restraint by the international community. A good reference point is the case of the United States of America in 2002 where it constrained its behaviour in order to adhere to International Law. The issue was when a Northern Korean seafaring vessel was caught voyaging to Yemen, with a hidden load of 15 scud missiles and it was a trying period for U.S which is ferociously fighting terrorism anywhere it manifests, particularly with the reverberating memory of September 11, 2001 attack on the World Trade Centre, New York. The U.S wished to hide under the canopy of National interest to prevent its further voyage, but when government lawyers discovered the shipment did not violate International Law, the U.S government piped down and allowed the freighter to continue its journey, while its deployment was being monitored.

A state that breaks International Law may be collectively sanctioned by a group of states. States may impose penalties aiming at making such state to conform and deterrence actions normally applied include imposition of sanctions through concerted agreements among other states to stop trading with such country or do away with a particular product known to serve the economic needs of the recalcitrant state. If such state refuses to reverse its steps, it could become isolated in the community of nations, leading to a break in diplomatic relations. Libya is a state in Africa that suffered that condition under Muhamar Ghadafi, and it was not until 2003 when Ghadafi decided to respect the

International Law before his country regained normal status. Libya went further to admit responsibility for past terrorism, started compensating victims of his country's dastardly acts, and followed these up with agreeing to disclose and dismantle its nuclear, chemical, and biological weapons programmes There is one major and inherent weakness in this enforcement of International Law. The invocation of enforcement through reprocity and collective response depends entirely on national power, as the idea works only where the aggrieved state has the power to inflict costs on the aggressor while collective response becomes effective if the states working in concert against the aggressor have a clear knowledge of the contending issue, to enable them give it an adequate and a pertinent response. There are also ambivalent attitudes on the part of collective states against an aggressor too, particularly, if the aggressor has so many friends within the international community.

As a student you need to recollect how Mussolini, the Italian Emperor made non-sense of the League Charter, and bounced, with impunity on hapless Ethiopia, moving the world closer to the 2nd W.W. Further, the awesome power at the disposal of the U.S gave one some worries if they will not introduce assertive and aggressive thrust into their foreign policy and act in an imperial fashion. The gulf war episode when the U.S defiled the U.N is still fresh in peoples' mind.

By these acts, it is usually easy for big states to cheat on small nations, on any issue.

Enforcement of International Law II

Taking a Cue from O'Brien (1981) and corroborated by McDouglas and Feliciano (1961), International Law is less a matter of what jurists' term formal or "Black letter" law than it is a matter of custom and expectation – a rudimentary international common law. The consequence of this assertion is that the impact and effective capability of International Law on a subject such as diplomatic immunity is relatively high, although, occasional hick-ups, such as the hostage taken of Iranians, when the American Embassy was beseeched, could be a dark dot on the landscape. It is equally found that it will be in the interest of all parties to invoke, as a matter of mutual interest, a great deal of regularity and adherence to International Law as a routine, in such areas as communications, laws involving innocent, passage of air and sea routes, and issues of legal jurisdiction. Morgenthau (1954) observes that "it is generally in the interests of countries to comply voluntarily with International Law. For example, the rights of foreign diplomats in a country's capital and its obligations under commercial treaties carry reciprocal privileges, and states may lose more than they gain by failing to comply. Voluntary compliance is frequent and commonplace as confirmed by Morgenthau that the great majority of the rules are not

affected by the weaknesses of the enforcement system. Nonetheless, in a limited, but important and generally spectacular number of cases, criteria of national power and interest prevail over those laws" – Morgenthau (1954).

Invariably, what is to be drawn from above is the likelihood of low adherence to International Law on issues dealing with the sovereignty of states especially on matters relating to war and peace, but doctrines of morality about war still exist as they are rooted in the just – war doctrine illustrated by scholastic writers, such as St. Augustine and St. Thomas Aquinas. The primary concern, as explained by these Scholars emphasizes recourse to war, jus ad bellum, based on laconic authority, just cause, right intent, and peaceful end. Closely following these is the doctrine concerning prescriptions for the intent, and peaceful end. As opined by Johnson (1975) and corroborated by Walzer (1977) and O'Brien (1981) a closely related doctrine concerns prescriptions for the actual conduct of war, jus ad bellum. The criteria here include proportionality, discrimination in means and prohibited means, among others.

It could then be adduced that the absence of an international authority represents a lacuna in the effectiveness of International Law on high profile political and security issues. On the other hand, it could be concluded that states have no difficulty to adhere to certain types of rules and regimes on those technical and routine aspects of their relations considered to be in their mutual interest. When under normal circumstances, states adopt patterns of order and restraint; it is because they consider it beneficial for states not to co-exist in a condition of perpetual hostility with their neighbours. As observed by Brierly (1963), "It is a principle of nature that this world should be a system of order and not chaos, and that therefore, states, despite their independence, can be no exception to this universal rule."

Prior to the end of the Cold War, the percolating effect of the aforementioned established practice and the multiplier effects of International Law as known in its Western interpretation, are quite unhidden from the standpoint of view of communist countries as well as that by the developing countries of the global community. The above postulations stemmed from the previously known stand of the communist regime which has been projecting an orthodox Marxist-Lenimist approach which would have adamantly ruled out any generalized International Law, at least from their stand point that law, was postulated as reflecting the economic substructure of society. Further, it had been the contentions of the communist block that if countries had different sub-structures (capitalist, state-socialist etc), it would be unreasonable to adopt a uniform set of International Law

because there was no analogy in their superstructure. However, as an African proverb says that "last year's wisdom, may be this year's acrimony the Soviet approach became more pragmatic. It could also be recalled when Stalin, before his demise in 1953, perceived International Law as just a means to deal with outside pressures at a time of Soviet weakness.

Empirical instances of Soviet's intransigence on the enforcement of International Law abound as they made use of it for a variety of purposes. Where convenient for them, they applied the nineteeth-century conservative state-oriented approaches which emphasized custom, legality, state sovereignty and diplomatic immunity, and when they wish to enlist any political lacuna, the soviets will be harping on general principles, such as non-interference in the internal affairs of member states and recalling UN Charter's Article 2(4) on denunciation of threats to peace. Another aspect of these problems of enforcement could be seen in the soviet's penchant for legalisms. The dictates of International Law, advising states to submit their complaints to the relevant body regardless the rudiments of International Law, did not stand in their way when they regarded their greater interests are at stake. In 1956, the Soviets invaded Hungary, Czechoglovakia in 1968, and Afghanistan followed in 1979. These Soviet's actions were all acts of transgressions against International Law.

"These invasions were justified, either by a contrived fraternal request for assistance, (as asserted in 1979) or through invoking the Brezhnev Doctrine, which, until Gorbachev abandoned it in the late 1980s, was essentially a unilateral Soviet assertion that countries with pro-Moscow Communist regimes would not be allowed to change their form of government. However, the reorientation of foreign policy under Gorbachev led to an increasing soviet emphasis on the importance of International Law in the relations among states." – Brien, O. (1981).

Equally worthy of a recollection was the ambivalence displayed by the developing countries of the world to International Law. Some hide under the assumption that International Law is for an imperialist or neo-imperialist system or better still, International Law is so created to serve the interest of the rich at the expense of the poor. It was equally held that International Law emphasizes order endlessly while being lukewarm about justice. These denigrating assumptions of International Law by the developing countries notwithstanding, they have frequently succumbed to the use of the dictates of International Law. Nevertheless, there remain instances where less powerful states often invoke the principle of non-aggression or non-interference in their internal affairs when faced with criticism for activities within their states that are inimical to the principles of human rights. They are also known to resort to launching

campaigns against interference in their internal affairs through the United Nations General Assembly or Commonwealth of Nations or other international bodies to keep off prying eyes from their nefarious activities.

However, since International Law provides a degree of regularity in relations among states, it must be seen that the arrangement is not due to any written stipulations, neither is it as ordered by the World court. Rather, it is from custom and tradition, as well as to the everyday activities of interchange, globally. Above all, the practices of states besides being beyond codifying treaties and agreements constitute the most basic body of International Law.

SELF-ASSESSMENT EXERCISE

What is the analogy between sources and enforcement of International Law?

4.0 CONCLUSION

Diplomatic and economic pressures serve greater purposes than reprisals or war in bringing recalcitrant nations to their knees. It leads to a win-win situation and minimises pains of the innocent members of such states who have no say in the government of their states.

5.0 SUMMARY

This unit has discussed issues pertaining to the enforcement of International Law. It also cited some case studies and proffered some solutions that could enhance a win-win situation.

6.0 TUTOR-MARKED ASSIGNMENT

1. The composition of International Law simplifies its enforcement. Do you agree?
2. Lack of respect for International Law led to the collapse of the League of Nations. Discuss
3. Could an outright war resolve the stand of an aggressor state?

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UNIT 3 THE WORLD COURT

CONTENTS

1.0 INTRODUCTION

The World Court formerly known as the International Court of Justice, developed from the structure of the League of Nations. Initially called the Permanent Court of International Justice it is principally structured and developed to establish an international order of justice and lasting peace. As to be expected there are many limitations in the application of International Law and by inference there are bound to be limitations in the applicability of the same in the international society.

What should be emphasised is that the global community has put on ground a solid structure for sustaining global peace and with perseverance by states, universal peace could be sustained and enhanced.

2.0 OBJECTIVES

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

- review the structure of the world back
- describe a good idea for its activities
- analyse the need for strengthening its acceptability.

3.0 MAIN CONTENT

3.1 The World Court

The development of International Law makes it mandatory for the development of a legal structure for its interpretation. That is the purpose for which the World Court serves. The world court is a branch of the United Nations and only states, and not individuals or business could be sued in it.

The World court serves as the nerve centre of cases between states for an impartial hearing. Similarly, advisory opinions of the court on matters of International Law could also be sought by either the Security Council or the General Assembly.

The composition of the court is a 15 member panel, made up of five judges every three years. The seat of the court is in Netherland capital city of Hague. By custom, the Security Council's permanent members of five are each represented by one of their nationals as a judge in the world court.

As a proviso to the above, provisions are usually made for adhoc judges to the original 15 if a party to a case has none of his nationals as a sitting judge.

Every organisation has its strength and weakness. If the structure put in place attests to a determined strength, there also are some inherent weaknesses in the set-up. The inability to enforce its judgement on states is a bit disturbing. States have no outlined method of subjecting themselves to its jurisdiction or obey its decisions. The issue of sovereignty is still holding many states back in that regard, as just a third of members of the UN agreed to abide with its decisions. "Almost all states have signed the treaty creating the court, but only about a third have signed the optional clause in the treaty agreeing to give the court jurisdiction obedience in certain cases - and even many of those signatories have added their own stipulations reserving their rights and limiting the degree to which the court can infringe on national sovereignty – Meyer, H.N. (2007).

A case study of the action of the U.S. was put forth in which she refused to honour the World Court's decision in 1986 when Nicaragua sued her over C.I.A's minusing of Nicaragua's harvour while equally, Iran, in 1979, refused to abide by the World Court's judgement over the seizure of the U.S. embassy in Iran. (Forsythe, D.P. 1990).

We can, however not lose sight of some heartwarming successes achieved by the so called court over some cases. In 1992, a complex border dispute between EL-Salvador and Honduras, having its root in 1861 conflict was resolved. Further, in 2002, the long-standing violent border clashes between Nigeria and the Cameroon over an oil-rich Bakassi Peninsula was resolved in favour of Cameroon.

Despite Nigeria's military strength against Cameroon, she honoured the principle of International Law and started a pull-out of her military which was completed by 2006.

It is regrettable that states have used the world court only intermittently over the years due to the difficulty inherent in enforcing its judgements. A change of heart is desirable because a state of no government at all is an invitation to anarchy and as long as states live together, far or distant, issue of conflict is unavoidable. What is required is that we disagree to agree in order to usher in the desired transformation.

SELF-ASSESSMENT EXERCISE

What suggestion can you give to those states who, though have inter-state conflicts but still refuse to take it to the world court?

4.0 CONCLUSION

Life of man outside society is solitary, brutish, poor, nasty and short (Stewart (1945). So, human beings must find a way to live together because no state could be in a vacuum and exist only by itself. The World Court is there to enhance settlement of conflicts between states globally and should be so exploited.

5.0 SUMMARY

This unit has discussed the origin of the world court, its composition, strength and weaknesses. Suggestions as regards what states could do to maximize its use are also proffered.

6.0 TUTOR-MARKED ASSIGNMENT

1. The World Court is only to protect the powerful states of the globe. Discuss.
2. Why is it that the number of cases taken to the world court since inception is small?
3. What are the strengths and weakness of the world court?

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UNIT 4 CONFLICT BETWEEN INTERNATIONAL AND MUNICIPAL LAW

CONTENTS

1.0 INTRODUCTION

In the introduction to this module in Unit one, it could be adduced from the definitions of International Law quoted as that of a body of customary and conventional rules which are considered legally binding by civilized states in their intercourse with each other while municipal law controls relations between individuals within a state and between individuals and the state (Dickinson, E.D. 1951). In Brownlie's (2008) view, conflict of laws often called "Private International Law" in Civil Law jurisdictions is less international than Public International Law.

It is distinguished from Public International Law because it governs conflicts between private persons rather than states (or other international bodies with standing). It concerns the question of which jurisdiction should be permitted to hear a legal dispute between private parties, and which jurisdiction's law should be applied, therefore raising issues of International Law. Today, corporations are increasingly capable of shifting capital and labour supply claims across borders as well as trading with overseas corporations. This increases the number of disputes of an interstate nature outside a unified legal framework and raises issues of the enforceability of standard practices. Increasing numbers of business use commercial arbitration under the New York convention of 1958.

You must see the invocation of both concepts as gearing the global community towards a harmonious co-harbitation therefore sustainable peace must be built on an enduring structure.

2.0 OBJECTIVES

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

- differenciate between international and municipal law
- describe their judicial functions
- draw from some case studies of some nations that coordinated both to achieve peace and good governance.

3.0 MAIN CONTENT

3.1 Conflict between International & Municipal Laws

As the nomenclature implies, International Law deals with issues between states while Municipal law is about issues concerning relations between individuals within a state as well as between individuals and the state. While both have identical source, their legislative machineries and judicial processes are quite different. Again, both concepts are usually applied through national courts. Traditional International Law depends on the initiative of the injured party for the enforcement of its judicial outcomes while municipal law, on the other hand, is enforced by a responsible executive unknown to International Law. The extent of the parity mentioned could lead to an ambiguity, if not properly elucidated.

Oppenheim, L. (1955) held that in the event of a conflict between international and municipal law, the national courts neither may nor could apply the law of nations, for “the latter lacks absolutely the power of altering or creating rules of municipal law. On the other hand, Eagleton, C. (1948) insisted that “to admit that International Law is ultimately dependent upon domestic law and courts, or that municipal law, may override International Law, would be to deny International Law outright and no states makes such a denial.”

In buttressing his views, Eagleton re-affirmed the supremacy of the International Law, over municipal, just as a federal law takes supremacy over a federating state’s law in case of a conflict. He said what enhances morality and what strengthens peace building efforts could be found in some cases where certain countries, after the first World War, deliberately decided to fuse International Law into their municipal law for smooth-running legislative processes. For emphasis, Yakubu (2004) says that in America just as in England customary rules of International Law are administered as part of the law of the land, and acts of the United States congress are construed so as not to conflict therewith although, a latter clear statute will prevail over earlier customary International Law.

In a similar vein, the 1999 constitution of the Federal Republic of Nigeria, Section 12 provides that:

- No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly;
- The National Assembly may make laws for the Federation or any part thereof with respect to matters not included in the Exclusive legislative list for the purpose of implementing a treaty.

The above provisions are solid examples of the position of an International Law to a municipal law. Where a treaty has been lawfully implemented, it becomes part of the law of the land.

As cited by Yakubu (2004) in the case of **O. Shevire Vs. British Caledonian Airways Ltd. (1990) 7 Nwlr (Part 163) Page 507** it was held that an international treaty like the Warsaw convention in the instant case, is an expression of agreed, compromised principles by the contracting states and is generally autonomous of the municipal laws of contracting states as to its application and construction. It was thus held that any domestic legislation in conflict with the convention is void.

Similarly, in the case of **Aeroflot Vs. Air Cargo Egypt decided by the court of Appeal, Paris on 25/03/86, published by Unidort International**. Institute for the unification of Private Law in Rome, it was held inter alia that:

- *"the provisions of an international treaty, in this case the Warsaw convention, as amended by the Hague Protocol, which has been ratified, prevail over the rules of domestic law when they are incompatible with the latter."*

The intention of the Warsaw convention is to remove those actions governed by the convention from the uncertainty which would arise were they to be subjected to the various tolling provisions of the laws of the member states.

SELF-ASSESSMENT EXERCISE

Explain in simple terms the difference between International Law and Municipal law.

4.0 CONCLUSION

Over-emphasis on the concept of sovereignty has often led to the ambiguity and conflict between International Law and municipal law. These differences could be avoided if greater attention is paid to the happy harmonisation of both for societal good always.

5.0 SUMMARY

This unit has discussed the likelihood of conflict between International Law and Municipal Law. Case studies were also cited while it is stated that both Laws seek the best available co-existence between human beings in the global community.

6.0 TUTOR-MARKED ASSIGNMENT

1. What do you think stunted the growth of democracy in Africa?
2. Under what circumstances could International Law be beneficial among states?
3. A treaty has no recognition in a state without a concurrent consent of that State's parliament. Discuss
4. Give a simple explanation of your understanding the concept of international and municipal laws.

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UNIT 5 THE UNITED NATIONS STRUCTURE AND INTERNATIONAL LAW

CONTENTS

1.0 INTRODUCTION

The United Nations has the responsibilities for the maintenance of international peace and security. The contents of Article one of the UN Charter States clearly what is expected of it:

- *"…to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by lawful means, and in conformity with the principles of justice and International Law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace."*

In order to strengthen Article one of the charter, the elaborate details in Articles 33-51 unambiguously explained how to put into effect details of restoring peace with the chief responsibility resting on the Security Council but the General Assembly could also play a very significant role in that field. However, in view of the wide scope of maintaining peace the Security Council is bound to no specific procedure; it is authorised to use any or all of the several indicated ways (33-51) in reaching a settlement or it may device ways on its own – (Palmer and Perkins 2007:326). Evidently, the United Nations has put in place somewhat solid structures for both pre and post conflict peace building but as opined by an Islamic Historiographer Ibin Khaldun, the birth of a state has in it the seed of its destruction. The Security Council has in its composition, checks and balances particularly the veto power which could be used anytime a member's interest is involved or that of its allies or allies. It is this attitude of some structures of the United Nations, which could be ascribed to as being of "national interest", or in line with International Law and which could be distasteful to the other or others is exactly what this unit is looking into.

2.0 OBJECTIVES

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

- merge the aims of the United Nations with the activities of some states within the organisation
- explain that irrespective of efforts at establishing a happy society in conformity with the rule of law, there will ever be those seeking for lacuna to enable them foster their national "interest"
- explain the reason why the U.N. cannot wholly succeed unless all the great powers are ready and willing to support its efforts.

3.0 MAIN CONTENT

3.1 The United Nations Structure and International Law

Since the evolution of formal history writing, the most powerful states have exerted great influence on the rules and values in vogue, which, due to their long usage, have become incorporated into what eventually metamorphorsed into International Law. For instance, Ikenberry (2001) emphasized this issue with the principle of free passage on the open seas which is now formally codified in International Law. He reflected that at a particular period in history, piracy was a lucrative exercise for those belligerent states which were seeking preys and as long as those pirate states found support, they continued. However, that era weakened the resolve of some states, wishing to engage in long-distance trade which they found less profitable, more dangerous and highly unpredictable. It was then resolved that all states should come together to stamp out the practice of piracy, and embrace the concept of freedom of navigation for the good of all. That signaled the coming into being of the concept of freedom of navigation on high seas, and eventually became one of the earliest areas of International Law developed by Hugo Grotius, a Dutch legal Scholar in the 17th Century, coinciding with a period the Dutch dominated world trade. This free navigation law benefited the Dutch immensely.

As to be expected, the coming into being of those elements of International Law depended mostly on very long usage of customs, among other things. Besides, its enforcement takes time. Despite the acceptance of free passage for ocean liners, other areas still in the embryonic stages of shipping business were vulnerable to attack. Britain soon became involved in shipping activities, enforced the principle of free seas through the canoons of its worships, and as the world's main trading nation, with the world's most powerful navy, it found herself in a position to define and enforce the rules for the world's oceans.

You can recollect the war of the invincible Armada between Spain and England in the 16th C? It was elaborately discussed by South Gate in the English History (1945) under the heading – Why England Slept. It was a sad era of piracy sponsored, engineered and financed even by Kings, Queens, and Emperors but wisdom and respect for international peace by the multi-powers, then stemmed the situation. It was an era before the creation of the League of Nations.

The advent of the 20th C brought about the dependence of the world order on the shoulders of the US and the USSR. The World Community was navigating between the dictates of both and at a particular period; the U.S. was dubbed the "police man" of the world. However, what is indisputable is that the global community is just fraternizing with those rules laid down by the most powerful states without being physically policed. Even though, the International Law lays down steps to take for sustainable peace, the powerful nations influence the interpretation of those rules through the international institutions created by the UN, knowing full well that States have vested some parts of their sovereignty in international institutions and usually work within that framework.

The behavioural patterns of the World Powers since the coming into being of the UN, convinces scholars and students of international relations that they chose when to and when not to obey International Law. Even, the international norms of the pre-and post cold war era were dictated by the world powers in defiance of the International Law and being justified through the lacuna, deliberately inserted in the International Law. The principle of non-interference, the invocation of sovereignty, to justify or defend the action of a state, as well as national interest clause, whichever way, have helped to compel the global community to fall in line.

Further, the emergence of economic downturn, particularly in the underdeveloped nations of the world, has added impetus to the persistent calls for a review of bad governance inherent in Africa. The saving grace for the global community is anchored on the irresistible invocation of the principles of Fundamental Human Rights, which are equally ambivalent, especially, the ouster clauses, in times of an emergency, and which only a government in a state determines.

SELF-ASSESSMENT EXERCISE

The developing states of the global community may remain as perpetual stooges of the developed Nations. Discuss.

4.0 CONCLUSION

It would be unfair to blame the United Nations for the shortcomings at the International arena. It is envisaged that the leaders of the developing countries of the world should sit up to morality, fairplay and justice to absorb those interventions beneficial to the enthronement of progress and good governance in their domains rather than employ the tacts of sovereignty and failed dictates of nationalism which have not advanced the cause of humanity. We should do away with the old assumptions of Dag Hammarskjold (The UN: (1965;27) whose aircraft was bombed in the Congo in 1960s that "the UN only mirrors the world as it really is – its idealism and its baseness its mobility and its savagery" to remain the perpetual barometer to measure the organisation. The African proverb that "as you lay your bed, so you will lie on it", must be upheld.

5.0 SUMMARY

This unit has discussed the United Nations structure and the possibility of conflict of some of its structures with international Law. Case studies were cited and conclusions drawn.

6.0 TUTOR-MARKED ASSIGNMENT

1. How do you assess the pre and post evolution of the UN in respect with honouring the dictates of international Law?
2. The UN should not be blamed for the woes of developing nations. Do you agree?
3. The post cold-war era had a lot of adversarial tendencies on the 3rd world nations of the world. Discuss.

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MODULE 3 FUNDAMENTAL HUMAN RIGHTS

UNIT 1 INTRODUCTION AND ORIGIN OF RIGHTS

CONTENTS

1.0 INTRODUCTION

The idea about the intrinsic worth and dignity of human beings have been developed by many cultures and civilisations in the distant past but ironically the insistence that human beings have rights at all originated from Europeans of the medieval era. Further, the very idea of human rights flies in the face of sovereignty and territorial integrity of states because in their interpretation of its concept sovereignty is said to endow them with the wherewithal to organise or manipulate their state and that none could direct them on how to treat their citizens.

These assumptions have created a big gap between rhetoric and practice when discussing human rights issues.

Jacob (1951) was so incensed about abuses of human rights and fundamental freedoms and submitted that "*in only a few parts of the world are human rights and fundamental freedoms really secure and in large areas they still have little meaning*." He also gave a picture of the scenario of human rights abuses in China, Egypt, South African native, the Latin American Peon and the Russians' Political Prisoners describing them as "demonstrating the contradiction between principle and practice which is the present overwhelming challenge to the United Nations action in the struggle for human rights. (Jacob, P.E. 1951 on *the*

United Nations and the struggle for Human Rights. Pennsylvania; Schl Jouni.)

As we can no longer take the idea of human rights for granted, the global community is now engulfed in sorting out those impediments likely to serve as its bane to humanity, while promoting rights – social, economic, political and all enabling rights, towards enthronement of good governance.

2.0 OBJECTIVES

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

- explain the origin of rights
- narrate the difference between natural and legal rights
- explain the desirability of rights as a citizen of state.

3.0 MAIN CONTENT

3.1 Origin of Rights

Human Rights concept emanates from three sources, and these are religion, political and legal philosophy; as well as political revolutions. (Lauren, 2003).

Religion
A critical examination of the foundation of every religion in the global realm reveals that mortals were created in the image of a higher, Being, and by implication, those mortal beings deserve the respect and dignity due to their creator. I wish to illustrate this with the immortal words of Thomas Jefferson, the writer of America's Bill of Rights, pronouncing American Declaration of independence on July 4, 1776, thus: *that all men are created equal, that they are endowed by their Creator with certain unalienable rights that among these are life, liberty, and the pursuit of happiness*. – (Todd and Curti (166;118). As envisaged, unalienable rights are those rights which cannot be taken away from the people, not by any government, nor even by the people themselves. Fundamental rights are strong enough and indicative of natural rights.

Political and Legal Philosophy
The idea of natural law and natural rights have for centuries been a combined topical discourse of political and legal philosophy. Many notable philosophers, ranging from Aristotle, John Locke, and Immanuel Kant, including J.J. Rousseau, as well as many political philosophers have all propounded the theory that a natural law exists which all human beings are endowed with, such as right to life, property, liberty,

happiness which are unquestionable by any authority external to you, but subject to the rule of law.

Political Revolutions

The American and French political Revolutions in the 18th Century transformed the theory of natural law and natural rights into empirical practice. In America, the opportunity for the transformation of human rights theory into practice came on July 4, 1776 when, due to a felt human rights abuses counted against the British imperial power. Thomas Jefferson, leading the American patriots announced the American Declaration of independent, while in France, the overzealousness of the crown and indepth prolonged and unmitigated human rights abuses of those in power compelled the peasants to attack the Bastilles Prison, freed those unjustifiably imprisoned and from there, announced the Declaration of the rights of man and of the citizen, "created the laws that solidified the idea that humans have certain rights, that no state or other individuals can take away." (Haden 2001). Politics and thought in the revolutionary era of the 1790s began gradually to widen the definition of man by equally emphasizing and recognizing the rights of women, and through campaigns against the slave trade, those of non-Europeans, served as the launching pad for the 19th C, leading to the globalization process of the post 1945 era.

The three sources have generated reactions from two distinct schools of thought. The first school of thought called relativists are insinuating that two of the sources are Western oriented because, in their analysis, the non-Western Societies equally have different philosophical traditions and could choose to dwell on group or family rights, over individual ones. However, it is gratifying that among those critiques of Western sources are some non-Western individuals who are pointing out that even after the 18th C revolutions in Europe and America, rights were still not universal. Women, children and usually non-whites were not assumed to enjoy the same rights as landholding whites, making the very idea of universal rights misleading.

The controversy generated by the above scenario made it difficult to have a universal definition of the concept itself.

The issue of rights is multi-dimensional. However, for an avoidance of tautology, we can subsume them within two broad perspectives; civil-political; and economic-social. The Civil-Political rights which incorporate free speech, press freedom, religious freedom and rule of law are usually seen by its antagonists as negative rights while economic - social rights are seen as positive rights. These involve rights to education, food, social security, Health Care and good living condition. They are also seen as rights best to promote the expansion of

governments through elevating the living standard of the people. No state in the global community has any perfect record on any specific type of human right.

SELF-ASSESSMENT EXERCISE

Could any government be absolutely said to respect human rights of the citizens they govern? Illustrate with a case study.

4.0 CONCLUSION

The origin of thoughts about rights could be traced to the medieval political and intellectual life, the doctrine of natural law and the political practice of extracting charters of liberties.

5.0 SUMMARY

This unit has discussed the origin of human rights, and the views of those for and against the sources.

6.0 TUTOR-MARKED ASSIGNMENT

1. Compare and contrast the three sources of human rights taking into account the views of Pro West and Pro East.
2. The political revolution of the 18th C. aided the practical expression of fundamental human rights. Discuss.
3. Why will Thomas Jefferson's name remain evergreen in American history?"

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UNIT 2 RIGHTS AND DUTIES OF INDIVIDUALS

CONTENTS

1.0 INTRODUCTION

The dimension of human rights perspectives is predicated on various experiences of both immigrants and emigrants in their respective countries of abode. These inevitably leads to the credibility or otherwise of any particular state necessitating claims and counter claims by the parties involved in human rights disputes. This unit is going to touch briefly on some conflicting human rights issues.

2.0 OBJECTIVES

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

- explain those rights claimed by individuals against a government
- describe women rights movement
- describe the issues regarding the people's rights.

3.0 MAIN CONTENT

3.1 Rights and Duties of Individuals

The embryonic stage of claims and counter claims of human rights - conflicts are often situated in allegations that a particular government or some governments are depriving some or a group of individuals their legitimate rights. As expected, the accusers will rely on certain provisions of the law, either in their own country, or bend to the international statute in buttressing their claim.

Empirically, allegations and counter-allegations are more often than not, accompanied with sentiments, emotions, half truths, or plain exaggeration. Some governments are sentenced in the people's court for what they call "Lack of statutory duty of care".

However, two predominant issues are usually involved when a government is accused of violating an individual's rights. The first is that the claims by the accused maybe factual while the other is that the government's action or inaction is deemed legally or morally wrong. The above assertions are products of an enlightened society because it is when people know what their rights are that they re-act when any action violates it.

From the foregoing, if an individual has rights and priviledge he or she should not forget their accompanying duties to the society as well.

For example, Human Rights Advocates are normally at their best when arguing cases relating to human rights abuses and in so doing, they normally separate the grains from the chaffs. They will ensure that an individual who claims to have his rights abused is not himself abusing the right of others. This is because an individual's access to certain rights should not, in the process, infringe on the rights of others, much as it must not derail established societal values. On many occasions, as a way out of any dirty mess, a government may find itself; their defence is often in the pretext of protecting and maximizing the overall well-being of the majority in the face of a recalcitrant few.

For the purpose of this unit, Article 4 of the international Covenant of Civil and Political Rights, ratified by more than a hundred countries emphasized rights of individuals against arbitrary government power, equal protection of the laws, and citizens rights of the laws, and citizen rights of participation in the polity. Brown (2000; 76). (ICCPR) adopted in Resolution 2200 (xxi) of the UN General Assembly (1966).

What must be underlined always and which all citizens of the global community must adhere to is the strict observance of the rule of law, in consonance with liberal democratic tenets in order to usher in the prospects of good governance.

Private Rights

Many repressive regimes have repelled the involvement of third parties on the pretext of non-interference with the affairs of their states as contained in orthodox treates enshrined in International Law. However, the globalization of world politics is moving toward a conflicting level with that clause. As long as there is a growing international mobility of people, and information, the norms of interpersonal behaviour may witness a transformation by way of doing away with primitive norms in a civilized society and community of nations. Most of these norms are being retained in defence of modern civilization which, with time, and with interaction with other societies, will transform and not undermine our rights. What cannot be ruled out is that the principle of non-

interference is faced with challenges at both national and international levels.

Women Rights

The campaign of gender equality has reached a unversal level which can no longer be ignored. The Women's Rights groups have been uncomfortable with what they perceive to be inequality of privileges, amenities and power of women in comparison to men. For this mission, the groups have been organizing seminars and fora on a transnational basis to drum up support for that cause. The groups are not just appealing to governments and other organisations identified or perceived to be discriminating against women, but have carried their campaign to embrace social or cultural patterns, peculiars to certain communities. The Women Right Groups activities were corroborated by the actions of some feminists as well as many human rights advocates on the ground that while it is obligatory for the government, never to embark on any exercise that could undermine the rights of women, the government should also move ahead to prevent private groups and any individual to embark on any action derogatory or injuries to women.

Some of these vices condemned include wife battering, ritual genital cutting, prostitution, sexual harassment, rape, veiling exclusion of women from certain professions, and kinds of education, among others.
A great protagonist of The Women's Rights is Hillary Rodham Clinton who delivered a powerful speech when attending the 1995 Beijin Conference titled:

- *"Women's rights are human rights"*. (Brown 2000; 27).

However, much as there are indications that Women's Rights Movement must be, and have been supported, sustained and transformed, the cultural implications in various communities remain an explosive matter.

SELF-ASSESSMENT EXERCISE

Is the right of an individual absolute?

4.0 CONCLUSION

Whatever state or non-state actors could say or whatever scholars may espouse on the Rights issues relies on the strength of the popular support for Universal Human rights.

5.0 SUMMARY

This unit discussed individual's rights and his/her duties to the government. Further, issues regarding private rights usually hidden under the pretext of domestic purview of a state within the global society as well as Women's Rights Movement were discussed.

6.0 TUTOR-MARKED ASSIGNMENT

1. Are advocates of human rights necessarily cultural imperialists?
2. Is there a distinctive feminist approach to human rights?
3. Does a right always involve a correlative duty?

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UNIT 3 INSTITUTIONS FOR HUMAN RIGHTS

CONTENTS

1.0 INTRODUCTION

After a rancorous verbal exchange between the Western and Eastern Leaders at series of meetings within the UN Commission on Human Rights, headed by Mrs. Roosevelt the merging of the West and Soviet concepts of fundamental human freedoms emerged under a new name called "Universal Declaration of Human Rights. This declaration, which serves as a common standard for all peoples and all nations is the first in history. The declaration is merely a statement of principles not a legally binding instrument but has become one of the best known international documents. Irrespective of its shortcoming or ambiguity, it radiates hope for all mankind despite its being honoured more in ambivalence than in being upheld.

2.0 OBJECTIVES

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

- determine those human rights indices for making life worthwhile for individuals
- recognise the efforts of the IGOS and NGOS in putting recalcitrant regimes in check
- relate any of the listed Human Right prerequisites to some case studies in your country.

3.0 MAIN CONTENT

3.1 Institutions for Human Rights

As contained in the introduction to Unit 1 of this module, it was rarely conceivable that human beings have any right at all but the demand for rights emanated from the unbearable and inhuman treatment often meted out by despotic kings and Emperors before the advent of the medieval era. Denial of rights and inflicting of undeserved punishment was considered a desirable issue without which the might of the king, might be unknown. The invocation of the Divine Right of Kings, tempered with the ascendancy of Kings from the House of Tudor, were classical examples, coupled with the now famous Magna Carta principle.

The end of the World War II brought several improvements to mankind as the invocation of modern day recognition of Fundamental Human Rights has its root in the United Nations Structure put on ground in 1945. The core international document concerning human rights, according to Morsink (1999) was adopted in 1948, called, the Universal Declaration of Human Rights. This adoption opened the gate for global norms regarding how governments should behave, not only to their citizens, but to the foreigners as well. This created a strong awareness that violation of norm is against international order and frowned at, by the international community. That declaration specifically chronicled the view that all human beings are born free and equal, without regard to race, sex, language, religion, political affirmation or the status of the territory in which they were born. Issues like political and religious freedom, freedom of economic activities and many more, subject to the rule of law, were emphasized. As a further step towards guarantying and emphasizing the sanctity of human rights, several other accompanying treaties binding states, and which states did sign, followed. Basically, two key treaties encompassed all the other treaties and these two major ones, under which umbrella others spring are: the international covenant on civil and political rights, and the international covenant on economic, social, and cultural rights which came into force in 1976. the universal Declaration of Human Rights, (often abbreviated to UDHR), together with the aforesaid two covenants are often called the International Bill of Human Rights. According to Nowak (2008), and buttressed by Simmons (2009), there are other treaties dealing with issues considered vulnerable by the international community. Some of these include the international convention on the elimination of all forms of racial discrimination enacted in 1969, banning discrimination against individuals based on race, ethnicity, religion, or national origin, the convention on the elimination of all forms of discrimination against women, (CEDAN) which came into force in 1981 as well as the convention against torture (CAT), effective since 1987 banning

dehumanizing, degrading, and inhuman treatment of individuals, even in war. Equally put in place for the citizens human rights are the Convention on the Rights of the Child (CRC) in 1990 which promoted children's health, education, & physical wellbeing and the recent UN treaty called the International Convention on the protection of the rights of all migrant Workers and members of their families (CMW) which came into force in 2003, serving to protect the political, labour and social rights of millions of migrant workers across the globe. Although, the UN is the precursor of the promotion of human rights, many international organisations are also emulating the UN example and among these are the European Union, the Council of Europe and the European Court of Human Rights. Equally on ground for the protection of human rights is the Inter-America Court of \Human Rights in Latin-America, while the African Union is not left out through the establishment of the African Human Rights Commission. The non-government organisations also play significant roles, particularly in areas where authoritarian regimes are denying their citizens political rights, engaging in wanton execution, torture, and imprisonment of perceived political opponents. The most outstanding of the NGOs is Amnesty International, a global outfit monitoring and rectifying glaring human rights abuses. Others in this category include Human Rights watch, more regional in outlook and in conjunction, with other NGOs serve as a forum of information to the UN for the promotion of human rights.

Naturally, any state unwilling to recount from human rights abuses could be sanctioned but doing so will also affect adversely those being protected. It is considered that a combination of pressure and publicity, which entail crying aloud about the misdemeanor of a regime to the outside world, could compel obedience.

s opined by Evans, (2008),…. International norms have increasingly shifted against sovereignty and towards protecting endangered civilians. A major summit of world leaders in 2005 established the concept of the responsibility to protect, which holds that governments worldwide must act to save civilians form genocide or crimes against humanity perpetrated or allowed by their own governments. Correspondingly, individuals must always obey the laws of the lands and do nothing to obstruct the wheel of progress of their states, with a flashback to the global community, in order to justify the efforts of the UN and its agencies as well as other NGOs spearheading the fight against human rights abuse.

SELF-ASSESSMENT EXERCISE

How do you assess the human rights activities of your own government?

3.2 Challenges Posed by the Universalisation of Human right Concept

The idea of human rights, implicitly translate to the limits of the level of manipulation governments can go that is internationally acceptable. The degree of the civilization of the last century categorized such limits but the post Second World War laws on human rights have been creating a situation, tending to lump states together to conform to a rigid phenomenon, in spite of the differences in their political, social, and economic structures and policies.

Although, conventional human rights activists, feel it is a good omen as it will be in the general interest of all, others vehemently disagree. Peters and Wolper (1995), contend that the feminist critique of it is that the universal documents, all in varying degrees, present a patriarchal view of the family as the basic unit of society, and implicitly or explicitly, of the subordination of women within the family. Even, such documents as the UN's Declaration on Elimination of Discrimination against Women of 1967, and the various International Labour Organisation conventions concerning women at work do no more than extend to women the standard liberal package of rights…

What Peters and Wolper are emphasizing, and which requires a deep reflection involve the disparity inherent in the emergence of every society, their norms, beliefs and set values. As an example, the Saudi Administration abstained in 1984 when the debate on fundamental rights was being discussed, not because the regime did not respect human rights, but because we are diverse and divergent in orientation.

It was argued that "*its universalism is destructive, not just of undesirable differences between societies, but of desirable and desired differences.*" Expatiating on the above, although, it is acknowledged that the protagonists of human rights are stressing the common humanity of the global community, but it must be clearly understood that those issues that differentiate us from one another are as sacrosanct as those that link us together. A salutary reference to the above assertion is the intention of the movement to establish an organisation called Rights of Peoples' which recognised those issues binding or separating peoples. Code named "Banjul Charter", it was programmed specifically to solidify "African Cultural Values", meaning that in a plural society, rights and duties don't follow the same axis, as Africans have rights and duties different from non-Africans. A further analogy is the 1984 adoption of

Panama Declaration of Principles of Indigenous Rights by non-governmental group, the World Council of Indigenous Peoples, designed to preserve the tradition, customs, institutions, and practices of indigenous peoples.

The protagonists of "Asian Values" (usually referred to as coming from the East) have challenged the idea of the possibility of a general concept on the ground that those "rights" being amplified are no more than a set of particular social choices considered binding by those whose values or social choices are differently formed. For instance, a Christian preaching secularity cannot assume to be joined in a similar campaign by a Moslem or any practitioner of any other religion. Corroborating the above is the 1993 Vienna Declaration on Human Rights which reminds members of the Global Community to understand the significance of national and regional particularities, as well as various historical, cultural and religious backgrounds when considering human rights.

You are here reminded that there is a very crucial difference between rights, grounded in natural law, and rights, grounded in a contract.

4.0 CONCLUSION

The international human rights regime has become an established feature of the present day world society, setting a very good example of the ways leading to globalisation. However, one of the major problems confronting it has to do with compliance and enforcement.

5.0 SUMMARY

The unit has discussed the issues surrounding the Institution for Human Rights in the polity for the overall peace of the global community. It also discussed in brief those agencies corroborating with the International Government Organisations, as well as those constraints inherent in its enforcement.

6.0 TUTOR-MARKED ASSIGNMENT

1. How do you think a recalcitrant nation could be checked from continuous human rights abuse?
2. The human rights records of African states have been a concern to the civilized communities. Do you agree?
3. What is your assessment of the Amnesty International, in confronting global hegemony on human rights abuse?

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UNIT 4 POLITICS SURROUNDING PROMOTION OF RIGHTS

CONTENTS

1.0 INTRODUCTION

The politics of rights varies according to the perception of a given state. Whether constitutional or non-constitutional regimes are involved the international community hardly acts on human rights issues if public opinion is not involved. For instance, economic and social rights are diametrically different from political rights, which calls to the fore a challenge to the existing norms of sovereignty and non-intervention.

2.0 OBJECTIVES

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

- identify the constraints involved in the promotion of human rights
- differenciate between economic and social rights in companion to political rights
- describe the role of major powers in the promotion or otherwise of human rights.

3.0 MAIN CONTENT

3.1 Politics Surrounding The Promotion Of Human Rights

By virtue of Article 5; 7; 3; and 5(2) of the UN declaration; Covenant on Civil and Political Rights, as well as American Convention respectively, it is agreed that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishments. These articles of faith which are now universally established have become part of the customary International Law. What it means is that if an individual’s right is tampered with as expressed by the articles aforementioned, such an individual can seek redress, if living in a state where the rule of law is

in vogue. By extension, where a foreigner has his right abused in a given country, and finds it difficult to secure justice in his first court of attendance, he could seek further redress in any country outside the geographical zone of the first court, if he/she wishes. What this translates to is that the universally or internationally effective angle of human rights reinforces rights which are established elsewhere in the domestic political order.

Another case worth mentioning is a situation where a victim of human rights abuse lives in an area where respect for the rule of law is almost zero. A good case study is what transpired during the Cold War. It was usual for the West to only issue verbal condemnation of human rights violation by the Soviet Union and its Allies without any forceful condemnation. The Soviet Union does same on the surface as both have counter balancing powers. On the other have, the US rarely said anything or merely overlooked any Rights violation by any of its Allies. The end of the Cold War seems to be inviting optimism for a level-playing ground for a concerted effort against any country indulging in violating human rights of her citizens. However a concern raised, by Smith and Light (2001), is the probability of ambivalence by some governments as occurred in 1997 when the in-coming Labour Government in Britain declared its determination to place human rights at the heart of its foreign policy but eventually, the policy of the government has frequently been seen to be as determined by politician and commercial considerations as in the past, while the ethical dimension promised has not delivered much in the way of a new emphasis on human rights.

Another area where something synonymous with an art of politics, which conceals truths, is involved is in the implementation of treaties having to do with the right of every one to an adequate standard of living for himself, and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. (Covenant on Economic, Social and Cultural Rights-Article 11:11 or the right of every one to be free from hunger (Article 11:2). The imperative feebleness of these provisions make the realization of these as non-mandatory to the signatories. Natural disasters or unforeseen circumstances could make the intension void, unlike those obligations involving refrain from, issues like cruel or degrading punishment or issues having to do with political rights could be promptly attended to or ameliorated by a government in power. Obviously, there are many problems associated with the covenant on Economic, Social and Cultural Rights. What this type of situation impels is that it is generally expressing a desirable state of things; it is expressed in very weak phenomenon, non-commitance and only left to chance. Its ambiguity is a big discredit to that provision. It is a political gimmick to send carrot to

the beleaguered to assuage their strained nerves. In fact, dictatorial regimes in underdeveloped countries employ the tactic of economic growth, social improvement and the likes to further curtail the political freedom of their citizens and since we are now in an era of globalization of world politics, all national social and economic policies must be made an issue of international regulation.

If the rich nations make it a point of duty to collaborate with the poor states, then, the rich states could correspondingly tax the poor states to tow the line distinct from committing harakiri. Uncontrolled population growth, poor economic policies, unabated corruption, leading to bad governance, could be checked. There is an urgent need for a synergy between the developed and developing nations of the world if positive dividends in the promotion of Human Rights are to be globally beneficial.

SELF ASSESSMENT EXERCISE

What do you consider the major effect of human rights promotion on Africa during the Cold War?

4.0 CONCLUSION

The ambiguity surrounding some covenants geared towards the promotion of human rights is a source of impediments to its expectation. They are inserted at various international fora as product of rigma-role in an attempt to give the less privileged nations of the world the impression that they are being recognised. The priviledged nations must show greater sincerity if they truly wish to promote globalisation of world politics embracing all the economic and social implications.

5.0 SUMMARY

This unit discussed briefly the politics involved in the promotion of Human Rights. It also explored the concealing of facts by the privileged nation to draw the unwary developing and underdeveloped nations along. We have now come to a stage where openness and actual collaboration are needed as the global village must be assisted to survive for the good of all.

6.0 TUTOR-MARKED ASSIGNMENT

1. How do you justify the intention of the Covenant on Economic, Social and Cultural Rights (Article 11.1) and the right of every one to be free from hunger (Article 11.2)?
2. Justify the claim that promotion of Human Rights could only be discussed in a state where rule of law prevails.
3. Recall three incidents of gross Human Rights abuse in two or three African Countries and discuss in detail.

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UNIT 5 INVOCATION OF THE FUNDAMENTAL HUMAN RIGHTS PRINCIPLES AS A PANACEA FOR CONFLICT RESOLUTION

CONTENTS

1.0 INTRODUCTION

Several reasons, stemming from various dimensions, have aggravated conflicts arising from either the coming together of communities, nations or political associations. It could be out of fear of an ethnic domination or of religion, of economic grouping, or of social or of cultural domination among several reasons. Allowing any conflict of this nature to nurture and mature is to sow the seed of an imminent collapse of any human groupes harbouring them. Mirroring, B. S. (2000; 164):

- *First and most important virtually all people rescent (and many will try to subvert) norms and structures they feel are imposed on them by people who are not members of their own community. Empires are inherently unstable, and community self-determination is ultimately the most powerful force.*
- *Second, a basic long-term global trend is the growing moral legitimacy and practical force of claims of minorities against oppressive national governments.*

Brown (2000) was just corroborating the age-long altruism that homogeneity of any given human society must be one priority through concrete and constructive peace building initiates.

2.0 OBJECTIVES

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

- explain those issues generating conflicts within a political group
- explain the role of a genuine third party intervener in mid-wifing the emergence of a political structure on the ground of transformation
- derive the historical background of the inculcation of the principle of fundamental Human Rights in the Independence constitution of the Federal Republic of Nigeria

3.0 MAIN CONTENT

3.1 Invocation of Fundamental Human Rights principle for Conflict Resolution

Nigeria, the focus of this unit, started as a union of two protectorates, the Northern and Southern protectorates. The various elements which constitute Nigeria came together for the first time under one government in 1914. Since then, the issue of how to reconcile in one whole, the diverse elements within the Nigerian polity took the front burner. Although, several constitutional and administrative changes took place between 1914 and 1953 , which this unit acknowledges but in order to remain focused on the topic, we shall aptly address the invocation of the adoption of the. Fundamental human Rights principle as it affects Nigeria. Its embryonic stages in Nigeria's political history came to light from the 1953 constitutional conference and up to the 1960 independence constitution. A consensus was reached that Nigeria should be a federation of three regions and a small Federal Territory of Lagos, with residual powers resting with the regions. The decision was a compromise of the three major parties in Nigeria then, the Northern peoples' Congress (NPC). The Action Group (A.G) and the and the National Council of Nigeria and the Cameroons (N.C.N.C) whose leader had earlier canvassed for a very strong centre, with a large number of constituent states, smaller and with less powers than what the regions then exercised. The former two, NPC & the A.G, disagreed vehemently with the N.C.N.C and to avoid a stalemate, especially when the Secretary of State for the Colonies angrily advised that they should all go back home and co-operate, they resolved to accept the existing structure with a view to having independence in 1956.

Having agreed to the composition of the country in a federation, with one of the regions, the Northern Region larger in population and land mass than the other two put together, the dissemble area peculiar to them all was the flouring and glaring conflict between majority and minority groups in each. At the 1954 resumed constitutional conference, some members of the minority groups in the region expressed their fears about their future in the composition of their respective regions. They then demanded that they should be accommodated in separate states. Responding, the Colonial Secretary of State told the minority groups that since states creation was not part of the agenda for the 1954 constitutional conference, it could be raised at the next constitutional conference.

The next constitutional conference was in 1957 when a considerable number of claims by minority groups for separate states were presented to the conference. It was at this 1957 conference that it was decided to write the Secretary of State, for the Colonies to appoint a commission of enquiry to look unto the fears of these minorities, and to settle its terms of reference.

In obedience to this directive, and unhindered by any beaurecracy the Secretary of State, on the 26th day of September, 1957, appointed the commission of Enquiry under the chairmanship of Sir Henry Willink with the following terms: (National Archives Lagos: 1960)

- To ascertain the facts about the fears of minorities in any part of Nigeria and to propose means of allaying those fears, whether well or ill founded
- To advise on what safeguards should be included for this purpose in the Constitution of Nigeria
- If, but only if, no other solution seems to the commission to meet the case, then as a last resort, to make detailed recommendations for the creation of one or more new states, and in that case:
    a. To specify the precise area to be included in such state or states
    b. To recommend the Governmental and administrative structure most appropriate for it,
    c. To assess whether any new states recommended would be viable from an economic and administrative point of view and what the effect of its creation would be on the region or regions from which it would be created and on the federation.

It is therefore considered very necessary to state the minorities fear in each of the three regions to enable us appreciate the reasons behind the recourse to the invocation of the principles of Fundamental Human Rights.

The Fears And Grievances Of Minorities

a. The Western Region

Various minorities presented evidence before he commission, headed by Sir Henry Willink, and their presentations were found complex as not only existing grievances were indicated. However amongst the various minorities, the presentation of the movement for the creation of a Mid-Western State was considered highly organized than any other opinion in the West. They expressed fears of domination by the Yoruba majority and it was the contention the contention of the petitioners that the Action Group Party in power in the regions rested on a secure Yoruba majority and they doubted if there was any possibility of a change of attitude. The Mid Westerners also alleged that they were convinced that the Western Region, chiefly inhabited by Yoruba, had embarked on actions of a deliberate intention to obliterate the separate language, culture, and institutions of the Mid-West or of fostering tendencies towards this objective while working frantically to rubbish the legacies of the Benin Empire. They also complained of the derogatory languages the Westerners were employing to refer to anything Mid-Western. Words like Kobokobo, Yanmirin, and many others were being employed to refer to them with utmost contempt. They equally alleged discrimination in the civil service which favoured the Yoruba while the Leader of Opposition Mr. Den's Osadeboy of the N.C.N.C was allegedly requested to surrender his leadership in the West House of Assembly to Alhaji Adegoke Adelabu based on the wide-spread allegation of the Yoruba that no one would support the N.C.N.C, however good their programme, because if they assumed power, a kobokobo would be ruling over the Western Region predominantly inhabited by the Yoruba. These and several others formed the fears and grievances of the minorities, although, as earlier said, only that of the Mid-West was found coherent, concise and well articulated.

b. **The Eastern Region**

The Eastern minorities who appeared before the commission based the complaint on ethnicity, for which they expressed fears of domination by the **Ibo** majority in the region, which identified with the N.C.N.C party. They re-asserted that there was never any hope of any redemption but a solid **Ibo** behind the N.C.N.C. They went further to castigate the **Ibo** tribe that despite the findings of the Foster Sutton Commission of Enquiry on the A.C.B., the **Ibo** went ahead to give Dr. Nnamdi Azikiwe a block vote of confidence. According to them, it was a taboo in the

minority areas to support anyone found wanting or guilty of financial impropriety as such a person would be outrightly disclaimed but, to the Ibo, once such is of their tribe, would be embraced. The minorities also alleged that their areas were denied any development, and because they were thinking of being in opposition perpetually, rejected the hope of national independence, and asserted that colonial dependence was preferable to what they were experiencing. There were other allegations that the NCNC sidetracking the minorities in appointments, both in the civil service, the judiciary as well as the police

c. Northern Nigeria

The minorities in the Northern Nigeria have expressed fears on a number of issues, ranging from that of traditional rulers, social and fears of political influence, and other issues agitating that mind.

For instance, there were some areas that were predominantly pagan or Christian which were parts of the emirates, particularly the Southern parts of Zaria and Ilorin. In these areas were domiciled large groups of non-Muslims who were being ruled by District Head, who were officials appointed by the Emir, which appeared contrary to the traditions of the people being ruled as they were accustomed to the rule of their own traditional chiefs. It was also alleged that the displaced traditional chiefs, despite their previous status, were often disregarded by the Northern system in vogue. Further, the Overbearing influence of Muslims was intimidating. There were also complaints that the stricter Muslims despised eating with non-Muslims, who were often referred to by contemptuous names, and that the Muslim practices such as the observance of Pudah and the prohibition of alcohol would be extended and made compulsory. There, also were allegations casting aspersion on the impartiality of the Native Authority police and the Alkali, who were allegedly using their positions to influence the political scene. The intimidation of the bodyguards of the Emirs to advance the cause of the Northern peoples' Congress was also mentioned. Also not left out were serious allegations from a number of witnesses that the Government of the Northern people's congress had exhibited a sympathy with nations of the Middle East, particularly with nations of the of the United Arab Republic, which resulted from a common allegiance to Islam.

This relationship was assumed to be in a position to generate a grave divergence on foreign policy between different elements in Nigeria. These and mainly more fears and grievances were advanced which almost marred the collective march towards granting independence to Nigeria.

The commission, at the end of the Enquiry, observed that in each of the three regions of Nigeria, there were either a minority or a group of

minorities who described fears and grievances which they felt would become aggravated when the reigning restraints were removed, unless separate states were created. The commission equally appreciated the problem within the regions and felt impressed by the fact that it was rather difficult to draw a clean boundary which would not again create a fresh minority problem. There were other fears and grievances expressed in all the three regions considered weighty enough to obstruct law and order in the federation.

At the end of it all, the Commission toured the whole Federation, starting from November 23rd 1957, and ending on April 13th, 1958. The commission then came to the conclusion that creation of states could not solve the agitation and grievances of the minorities as evidences in that regard were rather weak. As for the fears regarding religion and political intimidation, the commission felt that as at then, if the Federation was to be preserved, the principles of the International convention on Human Rights, to which Her Majesty's Government has adhered to, on behalf of the Nigerian Government, must be invoked. Consequently, the Commission recommended that provision should be made in the constitution of Nigerian federation for the protection of the following Fundamental Rights; thus:

- The right to life
- Protection against inhuman treatment
- Protection against slavery or forced labour
- The rights to liberty
- The right to respect for private and family life
- The right to a public hearing and fair procedure in criminal charges
- Protection against retrospective legislation
- Freedom of Expression
- Freedom of peaceful assembly
- Freedom of movement
- The right to marry
- Freedom of religion
- Freedom of religious education
- The enjoyment of fundamental rights without discrimination
- Protection against discrimination;
- The enforcement of fundamental rights.

These submissions are as contained in Chapter 14, Paragraph 39, Report of the Commission appointed to empire into the fears of minorities and the means of allaying them. (July 1958)

The report of the Commission was presented to the Secretary of State for the colonies, who equally presented it to the British Parliament by Command of Her Imperial Majesty in July, 1958. After an exhaustive debate in the British Parliament, another Constitutional conference was called to avail Nigeria's political leaders of the development. There were various contending issues but as the parties were desirous of independence for Nigeria, after which other issues could be sorted out, they all contended to give the report a full trial as the inculcation of the Principles of Fundamental Rights have clearly taken care of those matters, capable of undermining the relevance of the minorities.

When the Independence constitution was eventually presented before the House of Representatives in Lagos, prior to independence in 1960, it was highly applauded by all the parties in the Parliament for the inclusion of the peace building clauses contained in it, with the specific insertion of the principles of fundamental Human Rights which rekindled the hopes of the minorities against fear and perceived grievances.

SELF – ASSESSMENT EXERCISE

What difficulties do you perceive in the enforcement of the fundamental Right principles?

4.0 CONCLUSION

The insertion of the principles of fundamental Rights is not a guarantee to good governance because different regimes have different interpretations for the clauses contained therein. In Nigeria, as well as in other third world nations, the most fundamental features in the fundamental rights structure are still evolving particularly when they find themselves enveloped in the thought of which rights of persons could be guaranteed under a precarious economic situation and which rights are compatible with the norms and traditions of particular societies.

5.0 SUMMARY

This unit has discussed how the invocation of the principles of fundamental Human Rights has salvaged Nigerian Federation from disintegration at a critical state of her journey to independence.

6.0 TUTOR-MARKED ASSIGNMENT

1. The maturity of Nigerian politicians aided the continuity of Nigeria as a nation. Do you agree?
2. What is your assessment of the fears and grievances of the Nigerian minorities before independence?
3. Are the fears and grievances before Nigerian independence, as expressed by the minorities, adequately addressed?

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MODULE 4 CONTRASTING GOVERNANCE, GLOBAL LAW, AND FUNDAMENTAL HUMAN RIGHTS

UNIT 1 GOVERNANCE AND HUMAN RIGHTS

CONTENTS

1.0 INTRODUCTION

Governance is the act of governing. It relates to decisions that define expectations, grant power or verify performance. It consists of either a separate process or part of management or leadership processes. These processes and systems are typically administered by a government. Governance in this unit is about how a government is able to tap the gains of global governance with a view to having enhanced peace, order, and good government.

Global governance incorporates various participants and actors. The manners in which they interact are quite regular and pragmatic than what the situation was some decades ago. These interactions are multidimensional as they gravitate from issues having links with conventional ad hoc collaboration and moving towards formalised inter-organisational co-operation. Involved in this global governance are also social networks which conspicuously incorporate computer – based communities found on the World Wide Web.

What is glaring about global governance is that the processes of achieving it can be direct or circuitous, spontaneous or mobilised, brief

or prolonged, intended or unintended, sub systemic or global. For global governance to come together for the international relations puzzle to be whole and complete there must be a global civil society" monist (Mingst, 1999: 261)

2.0 OBJECTIVES

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

- give the definition of global queensides
- relate activities of global civil societies to good governance
- explain how regimes are established on the basis of co-operation in the international system.

3.0 MAIN CONTENT

3.1 Governance and Human Rights

Regimes are identified by Krasner (1983) as "sets of implicit principles or explicit principles, norms, rules, and decision making procedures around which actors' expectations converge in a given area of international relations".

As expressed in the introduction to this unit, a regime can be associated with a highly formalized agreement or through the establishment of an international organisation. However, besides these fora, a regime can also emerge informally. This has a recource to historical settings where precedence galvanized together to transform to the emergence of regimes. At this juncture, as a student, it is pertinent for you to recall that international regimes are recognized as one of those barometers for measuring international governance. Hence, global governance is taken as occurring through international regimes. As students, be it known that regimes involve high level of co-operation, which obviates any form of ambivalence in international negotiation or co-ordination of any policy outcome periodically. Rather, the concept emphasizes how states sit down to set in motion principles of mutuality concerning how certain or anticipated problems could be solved for the good of all. From the above analysis, it is incontrovertible that regimes, on several issues, serve as guide for state actions.

Types of Regimes

The advancement of technology in the 19th and 29th centuries brought about an increasing mobility and closeness of people globally. Communication between continents is within seconds, making the world a small village in terms of all sphere of human endeavours. Business men and women could easily pick their phones or touch their electronic

garget to order goods from any part of the globe, and within hours, are delivered into their warehouses. Equally, through this technology regime, it is quite possible to order weapons of mass destruction while it is also possible to purchase, materials to pollute the atmosphere with dangerous chemicals, capable of having an irreversible and adversarial global consequences. It is with these in view that we should explore the wonders of the technology regime to better our lot and solve our problems, rather than suffer from its efficacy. To achieve this, the processes of consolidating these regimes must be scrupulously examined, and regulated.

Security Regimes

The modern day global insecurity has accentuated references to security regimes. The international community has been engulfed in persistent insecurity since easily twentieth century, but it is pertinent to mention that various examples of security regimes were in vogue much earlier. The conservative states of post Napoleonic Europe constituted a regime called The Concert of Europe" in order to avert a reoccurrence of a similar conflict. Also, as an example is the British and American agreement of 1817, to demilitarize the Great Lakes through the establishment of a security regime called "Rush Bagot agreement.

There has been an increase of security regimes since the end of the World War II specifically after the onset of the Cold War. Examples are SALT 1 and SALT 2 of the 1972 and 1979 respectively. They are designed to stem acquisition of weapons between the United States and Soviet Union. The irony of it is that inspite of the intention of the regimes, it was not achieved as inwardly, neither of them desisted from developing or practically stopping allies from developing new weapons technology. What is recognized to be on ground and globally acknowledged is that there are agreements on arms control. There again was the partial Test Ban agreement of 1963 which had an impact on the prohibition of atmospheric testing. The French Atomic Bomb tested in Sahara Desert in 1960 devastated several African countries, with a new disease called "Influenza but the 1963 partial test Ban agreement was a welcome development, knowing very well that fear of insecurity forced some states to arm themselves against a neighbour perceived to be strong, and in the process attack an unsuspecting state under the guise of provocation, the 1968 Non proliferation Agreement is a restraint on any state wishing to add to its assemblage of nuclear weapons. In the process of testing their strength, flagrant abuse of weapons and unprovoked fundamental right abuse must effortlessly follow. One glearing development about security regimes is that they enjoy a wide measure of support and should any state exhibit a defiant behaviour, it should expect strong opposition of a global nature.

Environmental Regimes

The importance attached to the establishment of economical regimes stemmed from the increasing awareness of the damage being done to the global environment as identified by scientists. Interestingly, series of conflicts arising from environmental damages are very frequent in many industrial communities. Oil pollution, global warming, damage to the ozone layer and other identical pollutants; have attracted constant attention for which regimes have been set up in a spirited effort to protect the global environment. For instance, as far back as 1970s, attempts to protect endangered plant and animal species were initiated through international conventions, while by 1993, a specially programmed convention on Biological Diversity came into force. Further, for the sake of protecting the environment, attempts to moderate and police the global movement of hazardous waste material have been in the pipeline source 1980s and by 1993, there was a complete ban on the shipping of hazardous waste from developed countries of the world to the countries in the under-developed world through the establishment of the Basle Convection. As a student, in 1986, an Ocean Linear, fully loaded with toxic waste of an unimaginable dimension sailed into Koko port in Warri Nigeria. It succeeded in the first trip and ironically, unknown to the shippers, the keepers of the warehouse where the consignment was deposited had been affected with a serious ailment. While attempts were on to find a solution to the massive waste dump, the shippers moved in again with their ship, loaded with yet another consignment. It was on that premise that the ship was arrested, prosecuted and forced to take its hazardions waste back to the sender. That was the effect of global collaboration to eradicate indiscriminate dumping of hazardous waste from industrialized to the developing nations of the world. Actions, such as these, are inimical to the International Convention on Human Rights.

Communication Regimes

The sphere of activities of international communications regulated by regimes before the 19th century was in the areas of shipping and postal services. The advancement evolved in technology led to the regimes involvement in international regulation of aircraft and Telecommunications. By a further extension, the present-day international economy benefitted immensely from the regimes as they served as the provider for its solidified infrastructural base. There is no gainsaying the fact that the infrastructural base provided by the communication regimes aided the sustenance of international trade, foreign investment, as well as the world-wide monetary system. The historical evolution of communication regimes in shipping activities started with technological developments is the 16th c., as ship-building aided the expansion of international trade. What that means is that without a concise regime to ensure freedom of movement for shipping

on the high seas, and rite of passage in territorial waters of another juridiction of a different sovereign, it would have been impossible to operate under unfriendly or an unaccustomed maritime states. We also need to know that the bulk of international trade is done by sea. Also international communications have been made secure by a range of organisations which have emerged to manage and strengthen the regimes during the 19th and 20th Century. Going down the memory lane, in the mid 19th century, the major industrialized nations put forth an idea to form a standardized system of postal communication which, in 1974, resulted into the establishment of the Universal Postal Union. A little earlier, the International Telegraphic Union was formed to moderate the activities of communication, which in early 20th century, metamorphosed into International Telecommunications Union in 1932 to adequately address and co-ordinate the fluid advanced technological developments in communication. As the list of those regimes especially on areas of shipping and aircraft are many, a parting reference to some of them will be necessary. These include, but not limited to the International Civil Aviation Inter Organisation which, as the United Nations, are responsible for the emergencies of most of the convention reinforcing the regimes.

Economic Regimes

It is glaring that in the absence of those in-fractural facilities provided by the communication regimes, the international economy could not effectively function. From the above, the two regimes, i.e., communications and economy, are woven. By further extension, as the regimes compelling the international economy continue to be consolidated the link between the two become manifest the more. It is this collaboration between the regimes that have opened up the economic activities of postal services, telecommunications, and various national, as well as private airlines to greater competitions. Besides, the same impacts send signal to the need for public and private sector collaboration on policies guiding the activities of the regimes. Although, there have been economic regimes at various states before 1945, those established after the Second World War, despite the economic vicissitudes, have remained resilient. These are the international Bank of Reconstruction and development, International Monetary Fund, and the General Agency for Trade and tariffs'. (GATT).

Regimes formation is a very important feature of the international system. It gives room to sharing of knowledge, making use of identical tools of analysis, and finding ways to better their lots which is the utmost for their general good. The Liberal school of thought is of the opinion that the need for regimes arises because there is always a danger in the anarchic international system because competitive strategies will throw up co-operative strategies. Invariably their analysis is taken up to

refer to deterrence which is likely to come up if any state rocks the organized system. Where lies then the democratic tenets? However, those of the realists school of thought are of the view that a number of people or states desirous of co-operation sensed danger of an absence of free-will to determine whether to move in or not. The realists are emphasizing the need to embrace democracy and allow each state to determine whether or not to work with a group or the other, with equal say in the principals setting it up. As a further elaboration on the realist point of view, once co-ordination or consummation of a resource has taken place, there is no room for reneging. It's water tight. Then what an inducement on the international connection on human relics? The realists are reminding us of the role of power in the establishment of regimes. "it is the rich and powerful states in the North that have principally determined the shape of these economic requires. Third world states have had no attractive but to accept the regimes because of the need to engage in trade. By contrast, there have been massive violations of human rights regimes that have emerged since the Second World War. (Little, 2001:314). The stage is a violation of what democracy is all about as well as an indictment on those said to be the originator and protectors of the often respected Universal Declaration of Fundamental Human Rights.

SELF-ASSESSMENT EXERCISE

How will you assess the impact of the establishment of regimes on Africa?

4.0 CONCLUSION

The establishment of regimes governance though beneficial did not clarify the distinction between collaborative and co-ordination activities on one hand, the right to decide to belong out of one's free will on the other hand. To many actors in the developing nations of the global community, regime governance is categorised as good intentions compromised. Under a democratic setting, a state reserves the right to belong to any organisation or withdraw if it so wishes. With the present global set up of regimes in various areas of human endeavour, to do so is to incur the wrath of the global community. Invariably, this is a complete negation of fundamental human right principles.

5.0 SUMMARY

This unit discussed regime governance and its impact on the principle of fundamental human rights. Besides the definition, various regimes were also analysed.

6.0 TUTOR-MARKED ASSIGNMENT

1. What do you consider as the defining elements of a regime?
2. How do you identify the subjugating characteristics of regimes on fundamental human rights?
3. Discuss security regimes and their impact on the third world.

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UNIT 2 DEMOCRACY, PARTY FORMATTING AND CONSTITUTIONAL EVOLUTION

CONTENTS

1.0 INTRODUCTION

This unit is a continuation of those antecedents that must collaborate effectively to usher in good governance. It is only in a democratic setting, where freedom of opinion is respected and upheld that political party formation is encouraged.

This gives room to belong to any political party of one's choice. By extension, when the parties contest an election, one of them with the highest number of seats will control the machineries of government and one attribute of a good government is found in its standing the tends of that country's constitution, which is their ground norm. Invariably, constitutionalism will evolve with a legally constituted government, duly set up.

2.0 OBJECTIVES

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

- describe the concepts of democracy, party formation and constitutionalism
- explain the concepts to good or bad governance
- describe their workings in both Nigeria and Africa.

3.0 MAIN CONTENT

3.1 Definition of Terms

Defining democracy as a concept involves the recognition of those principles constituting it. It has no universally accepted meaning as there are many schools of thought defining it. The true meaning of democracy becomes problematic when viewed from the two major ideological divides, socialism and capitalism concept of democracy. The socialist model of democracy is being practised by Communist States while the Capitalist States of the Western world practise liberal democracy. For this reading material, we are adapting the concept of liberal democracy. The word democracy was made popular by Abraham Lincoln who designed it as the government of the people, by the people, and for the people. Ogbu and Ladan (2005:2) elucidating Dahl's definition of democracy that sees it as accountability which equates the rulers and the ruled politically described. democracy as one that thrives on a meaningful and extensive competition among individuals and organized groups, either directly or indirectly, for the major positions of government power; a highly inclusive level of political participation in the selection of leaders and policies, at least through regular and fair elections, such that no major (adult) social group is excluded; and a level of civil and political liberties – freedom of expression freedom of press, freedom to form and join organisations-sufficient to ensure the integrity of political competition and participation. Before taking our berth in the myriads of definitions available, Olurode and Akinboye (2005:16); while admonishing us on the workability of the concept, see it as "that political system that enables people to freely choose an effective honest, transparent and accountable government. Further, they added that as it could be linked to an actual way of life or an attitude of mind, the views of Heater about the elements of democracy would be necessary. The Scholars gave those elements as "equality, sovereignty of the people, respect for human life, the rule of law, and liberty of the individual Olurode and Akinboye, (cited in Enemuo, 1999:141-142).

3.2 Political Party Formation And Constitutional Evolution

The concept of political party dates back to the 14th century and has remained so to date. "Price" (1974) defines a political party as "a group of individuals of similar political views, organized to seek and exercise political power".

"Burke" (1974) also defines political party as a body of men and, women, united for promoting, by that endeavour, the national interest, upon some particular principle in which that all agreed. Yet, Fashuba (1978) viewed a political party as the major instrument by which

modern government is converted from any chaotic maze of offices, agencies, departments, and organs into an integrated machine, whose purpose are defined. He explains further that the modern contribution to the art of government was an innovation which condemned parlance rule and aristocracy to ancient and medieval history. From this point of view, we will move to how the concepts could work in tandem with the people's aspirations for the enthronement of good governance.

3.3 Democracy, Party Formation and Constitutional Evolution

Before the advent of colonialism, each of the communities within Nigeria and African continent had specific but different ways of administering their people, which could be referred to as traditional democracy. "The nature of traditional political system in many…communities was such that decision-making and authority were primarily the exclusive prerogative of a group…who inherited their positions – (Bamgbose J. Adele, Cited in Oyediran O. 1972).

In order to make the system work then, each traditional system employed different styles of recruiting square pegs into the square holes of their government structure for the purpose of having those issues which will advance the community's happiness. With the coming of the imperial masters and empire builders, democracy took a new turn as both became structured after the Western models. However, we need to remind ourselves that besides other subterranean methods adopted by the colonialists, the Berlin conference of 1884 and 1885 was the forum through which the Europeans actualized their intention to formally make a direct inroad into Africa, through partitioning the continent according to their spheres of influence. Besides the minor different cultural and traditional norms existing in the nativity concept of Africa, what happened and is still happening to any African country since 1885 is not isolated but peculiar to all. In this vein, I shall situate this treatise within Nigeria, since the successful bombardment of Lagos in 1862, followed by attempts at party formation, from the stand point of Western democracy, and coloured by constitutional evolution.

After the conquest of Lagos in 1862, Lagos became a British Colony and subsequent events through proxies by various foreign companies, holding the Crown's commission, paved the way for the actualization of British interest to physically move into their own sphere of influence, Nigeria.

As a student, you need to focus your mind on the main issues, which are about democracy and party formulation, through constitutional evolution.

Bamgbose (1998) emphasizes the desperate attempts by the British in 1880, 1896 and 1898 which failed. However, a system evoked in 1900 was all that needed be done to formally inherit the vast area, called Nigeria.

One conspicuous element of omission, or innovation since 1900 was that Nigeria, and several parts of Africa were largely traditional without any formalised political party nor any written constitution. In order to put Nigeria on this pedestal, a way to pave way for eventual grouping of Nigeria was put under three units – The Protectorate of Southern Nigeria, The Protectorate of Northern Nigeria and the Lagos Colony.

Mention should be made that the Lagos Colony in 1862 had an all white executive council. The eventual emergence of political parties in Nigeria was brought about by the tendencies of nationalism and the accompanying nationalist movements. Associations were formed by various nationalist agitators in the struggle for an end to colonial rule and obnoxious ordinances. Activities of the National Congress of British West Africa (NCBWA) which came into existence in 1920 as well as that of the West African Students' Union, also established in 1925, could not escape mention. The formation of the Lagos Youth Movement which transformed to Nigeria Youth Movement in 1934, served as part of the nucleus of political parties in Nigeria.

Explicitly, the first attempt at electoral democracy in Nigeria which ushered in Nigeria's first political party a year after was the introduction of Clifford's constitution of 1922. With the constitution, a new moon emerged, under the name –Nigerian National Democratic party, founded by Herbert Macaulay. It was the extension of this innovation outside Lagos that led to the founding of Nigeria Youth Movemnet in 1934. Some of the leading members of that movement were the Odemo of Ishara, Oba Akinsanya, Dr, Nnamdi Azikiwe, Obafemi Awolowo, H.O. Davies, Adeleke Adedoyin and a host of others. In 1944, after the collapse of Nigeria National Democratic Party (NNDP) and the Nigerian Youth Movement, the emerging party from these ruins were the National Council of Nigeria and the Cameroons, (N.C.N.C) (1944) led by Herbert Macaulay as President while Dr. Nnamdi Azikwe was the pioneering Secretary General, the Action Group Party (A.G) 1951 led by Chief Obafemi Awolowo, and the Northern People's Congress N.P.C (1951) led by Sir Ahmadu Bello, the Sarduna of Sokoto. Others that were part of the fight for independence include the Northern Elements Progressive Union NEPU led by Aminu kano, the United Middle Belt Congress U.M.B.C led by Joseph Tarka,The Nigeria Socialist Workers Party (SWFP) led by Dr. Otegbeye, and a few local ones. The three major parties were ideologically inclined but ethnically based.

However, these political parties were proscribed with the collapse of the First Republic on 15th January, 1966. With the military take-over, there was a lacuna between 1966 and 1979 when another set of political parties under a new constitution, were established. The faults said to be with the pre and post independence parties were also found with the parties in 1983 and another long inter-regnum followed. However, by 1999, a new constitution to usher in the 4th Republic was promulgated.

As a student, what are those things that political parties should know and internalize that are missing?. Why are they constantly running foul of the constitutional tenets? Why are they regularly found unfit to deliver the dividends of democracy? Are they so deficient in understanding the constitution and constitutionalism? A brief detail of constitution and constitutionalism will give us a response. A constitution is described as the "power map" of a society by Okoth-Ogendo (1991), while Sachs (2009) says it is the autobiography of a nation. Constitutionalism is about the process of institutionalizing a constitution, which informs Ihonvbere's (2005) view that constitutionalism has two parts. The first is the process of making a constitution, and the extent to which it is popular and democratic, while the second has to do with the available openings, institutions and processes of making the constitution a living document by taking it to the people for easy access, claim its ownership and deploy is to defend their individual and collective rights.

What is stunning about African governments and not peculiar to a state is their poor culture of operating constitutions. Several reasons are responsible for these among which are colonial experience and processes of de-colorization.

In the colonial era, there is hardly any people's constitution besides those made to subjugate the indigenes. Peoples' constitution in its making is rare and where it occurred, was palliatively, done. For example, Nigeria was colonized formally by 1900 but it was in 1951 that those who could hardly make any impact were said to be consulted. Power was with the colonialists while our traditional chiefs, Obas, Obis and Emirs served as agents of the imperial powers. Besides, Africans were exposed to two types of laws-civil and customary. Civil laws were about rights and priviledges, while customary laws dealt with tradition and customs. Then, the basis of constitutionalism from which those who took over the reins from the colonialists was absent. Further, decolonization was not deliberate, hence, poor and reluctant preparation. The situation in the Democratic Republic of Congo, Somalia, Sudan, Eritrea and many African countries speaks volumes.

Further, when independence was wrestled, African leaders were indecisive as regards which policy to propound, whether to master constitutional development and democracy or face squarely the development of their infrastructure. Rather than consolidate the former, the latter, which helped them line their private pauses, while jettisoning the real intention, became their pre-occupation. Rather than lay a solid foundation for their emancipation and emulate at least for a few years, the structural base of their colonial overlords, they aggravated the level of infrastructural decay and poverty of their indigenes. Another point worthy of intention was the adverse effect of the Cold War on the African states. The ideological war kept African nations unstable as not many mustered enough energy to remain neutral in the face of ideological carrots from both the East and West. For instance, Somalia once adopted socialism and found favour with the East. She placed emphasis on socio-economic rights as opposed to the West's insistence on political and civil rights, followed by the rule of law. At last, finding their rapprochement with the Earth uneasy, they turned to the West and when the West cast doubt on them, felt not much committed, to their cause. The result is that today, Somali is a collapsed state by many indicators of that concept.

In order to compound Africa's woes and entrench greed, those trained to defend the cause of democracy turned their backs to launch coups, and counter coups to subvert any democratic setting. The phenomenon was all over Africa. Then, how will African leaders internalize the dictates of their various constitutions? How can constitutionalism be a concept to develop when avenues for its development are jamparked with forces of re-action?

SELF-ASSESSMENT EXERCISE

How can we entrench good governance in Africa in the face of forces of reactions?

4.0 CONCLUSION

Democracy is tottering in Africa according to Salawu (2009), Adegbonmire 1978:3, quoting Awolowo, O. opines thus;" In my view, therefore, democracy exists only when the people are free, periodically and at their will, to re-elect or remove those who have been elected by them to administer their affairs. It is when this freedom exists that man can grow into the self-reliant and fearless creature that God intends him to be. But the moment a single person or a group of persons contrive to put themselves in a position where they become a law unto themselves, and are not amenable to the arbitrament of the people under their jundiction, they become a menace to their fellow men" (Salawu, 2009).

Invoking your curiosity as a student, is there a country in Africa where election results are not violently contested? The formation of various political parties are anchored on greed, grievance and elite fragmentation and when they eventually contest and win an election either by fair or foul means issue of constitutionalism is given a second place as long as they have their ways. Self aggrandisement is always their pre-occupation.

Now, good governance is the main issue that compels the civilised communities to keep monitoring political activities in Africa. This cannot be far-fetched as African leaders are side tracking both municipal and International Laws to show their might – gross violation, damnable abuse of the principles of fundamental human rights is rife. The newly established International Criminal Court at The Hague has played host to two prominent African leaders who believe that good governance is a thing of convenience while looting, raping, and under cutting rivals with the awesome machineries of government at their disposal being sharpened.

5.0 SUMMARY

This unit has discussed issues germane to democracy, political party formation and constitutional evolution generally while paying particular attention to Nigeria. Agents of retardation were identified and they are genuinely and patriotically addressed, Africa will surely witness an upsurge in the promotion of good governance, as opined by Nwathiogo Ngugi's "*Weep Not Child*."

6.0 TUTOR-MARKED ASSIGNMENT

1. Define the concepts-Democracy; political party Formation
2. How can poor democratic culture be a bane to good governance?
3. An understanding of the constitution of a given state leads to standing by the tents of the International Convention on Human Rights. Do you agree?

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UNIT 3 GLOBAL GOVERNANCE AND TERRITORIAL SOVEREIGNTY

CONTENTS

1.0 INTRODUCTION

Global governance or world governance is all about political interaction of transnational actors, aimed at solving problems that affect more than one state or region when there is no power of enforcing compliance. In other words, it could be rightly said that global governance is synonymous with globalisation. It is recently and almost universally accepted that in response to the velocity of interdependence on a global scale, both between human societies and between citizen and the biosphere, world governance assigns regulations intended for the global scale

2.0 OBJECTIVES

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

- explain what led to global governance
- describe global governance to sovereignty; narrate its gains and short comings
- explain the emerging problems militating against global governance.

3.0 MAIN CONTENT

3.1 Global Governance

Definition
The term, in a simple and broad-based definition, is used to designate all regulations intended to organize human societies on a global scale. Although, governance, in the traditional context, is linked to the art of

governing, it also depicts conformity with political authority, institutions and ultimately, leading to control. Governance, when linked with globalization, then denotes formal political institutions that aim to co-ordinate and control interdependent social relations and which has the ability to enforce decisions. Contrasting this view is Roseau (1999), who says that governance denotes the regulation of interdependent relations in the absence of an overaching political authority, such as in the international system which some ascribe to as the modern development of global public policy.

Adil Najam (2000), also defines global governance as the management of global process in the absence of global governing. In the opinion of Weis (2000), global governance which can be good, bad, or indifferent, refers to concrete cooperative problem-solving arrangements, many of which increasingly involve, not only the United Nations of state, but also other UN bodies, namely international secretariats and other non state actors. Elucidating on this, it is said that these cooperative problem-solving arrangement may be formal, taking the shape of law or formally constituted institutions for a variety of actors (such as state authorities, Inter-Governmental Organisations (IGOs), Non-Governmental Organisations (NGOs), private sector entities, other Civil Society actors, and individuals) to manage collective affairs. They may also be informal (as in the case of practices or guidelines) or ad hoc entities (as in the case of coalitions). Thomas and Thakur (2010), equally define global governance as the complex of formal and informal institutions, mechanisms, relationships, and processes between and among states, market, citizens, and organisations, both inter and non-governmental ,through which collective interest on the global plane are articulated, rights and obligations are established and differences are mediated.

Origin And Historical Evolution Of Global Governance

The constant recourse to global governance as a concept was almost unknown until the early 1990s because up to that era, the concept of interdependence had been employed to refer to the fine-tuning or management of interaction among states. However, a number of issues emerged immediately after the post-Cold War of the 1990s, including, but not limited to the followings, as equally opined by Andreani [2001], thus:

- The growing importance of globalization as a significant theme and the subsequent weakening of nation-states ,pointing logically to the prospect of transferring to the global level the regulatory instruments which are no longer working effectively at the national or regular levels.

- An intensification of environmental concerns for the planet, which received multilateral endorsement at the Rio Earth Summit (1992). The summit issues, relating to the climate and biodiversity, symbolized a new approach that was soon to be expressed conceptually by the term Global Commons.
- The emergence of conflicts over standard; trade and the environment, trade and social rights, trade and public health. These conflicts continue the traditional debate over the social effect of macroeconomic stabilization polices, and raise the question of arbitration among equally legitimate objectives in a compartmentalized governance system where the major area of interdependence is each entrusted to a specialized international institution. Although often limited in scope, these conflicts are never the less symbolically powerful as they raise the question of the principles and institutions of arbitration.

An increased questing of international standards and institutions by developing countries, which, having entered the global economy, find it hard to accept that industrialised countries hold on to power and give preference to their own interests. The challenge also comes from Civil Society which considers that The international governance system has become the real seat of power and which rejects both its principles and procedures. Although, these two lines of criticisms often have conflicting beliefs and goal , they have been known to join in order to oppose the dominance of developed countries and major institutions as demonstrated symbolically by the failure of World Trade Organisation 1999 ministerial conference in Seattle.

Further, on the views expressed by Andreani (2001), there are other general assumptions that the seeming architectural design of the planet earth is predicated on establishing a system of world governance. One thing that reading become discernible is that beside the earlier intention to regulate and limit the individual power of states to avert overtuning the status quo, it has now graduated into the assumption that hegemons, having a collective influence on the world's destiny through the establishment of a system, regulate the myriads of interactions that are beyond the scope of the province of state action. Invariably , the political synchronization which developed into the political homogenization of the global community , followed the advent of what is known as liberal democracy in its many forms. By extension , it is expected that this development will make it easier to establish global governance system that far outstretches the policy of allowing private businesses to develop without government control, coupled with what was considered as its attachment democratic peace, earlier canvassed by Immanuel Kant.

Another view regarding the establishment of global governance according to the UNESCO (1996), is as a result of the difficulties in achieving an equitable development at the global level. In the view of UNESCO, the aim is to secure for all human beings, in all part of the world , the conditions necessary for a decent and meaningful life, which require enormous human energies and far-reaching changes in policies . Towards this intention, the agency foresees that the task is all more demanding, as the world faces multifarious problems, each related to, or even part of the development challenges, each similarly pressing , and each calling for the same urgent attention. The agency concluded with an optimistic reference to the words of Arnold Toynbee, thus; (http://unesdoc.unesco.org/images/0010/001055/105586e.pdf of 12/14/11)

- *"Our age is the first generation since the dawn of history in which mankind'' dares to believe it ''practical to make the benefits'' of civilization available to the whole human race."*

In continuation with series of views about the need for or against globalization, it is again said that irrespective of the effort of the protagonists of the concept , different people will always have different tastes , hence , collective preferences, in spite of globalization which are often seen as an implacable homogenisation process will remain heterogeneous .

It is submitted that in certain cases, globalization even serves to multiply rather than abate the differences which homogenization could have served. As some of the ways of seeking the best for the global community, it is canvassed that the organisation of what we see as needing collective action must be prioritized, ahead of managing bilateral relations. Invariably, it will burst down to a new model for representing and managing interdependence applicable to a growing number of areas. Our attention is drawn to the significance of the emergence of global civic awareness, having one of it resolves as opposition to globalization. This complements a number of movements and organisations which have taken the debate to the global level. What these moves portend is that the trend is a logical response to the increasing importance of world governance issues. Arguably, it is sidetracking the rudiments of international relations if we adhere to the traditional representation modeled economically on the principle of the Westphalia Peace Treaty or on the assumption that the global economy is an entity undergoing rapid homogenization. Our cogitation should be based on integration, structured on the solidarity, innately developed out of a shared destiny.

Contributing to the debate on the crisis of purpose in the globalization process are Pierre Jacquet, Jean Pisani-Ferry, and Lawrence Tubiana [http://www.pisani-ferry.net/base/papiers/re-03-REF-governance.pdf], 12/14/11, who opine that to ensure that decisions taken for international integration are sustainable , it is important that population see the benefits, that states agree on their goals, and that the institutions governing the process are seen as legitimate. The scholars are referring our attention to the crises of purpose the international institutions are going through which are identified as suffering from imbalance and inadequacy. They contend that within these global institutions, *"a gap has been created between the nature of "the problems that need tackling and an institutional architecture which does not reflect the hierarchy of today's problems. For example, ''the environment has become a subject of major concern and central negotiation, but it does not have the institutional support that is compatible with its importance''*

One area requiring emphasis is that once a problem is identified through any source, and is regarded as posing a threat universally, then, a solution is in sight. Improved "global-problem-solving" needs not involve the establishment of additional powerful formed global institutions. What it needs is the building of consensus around norms and practices. One such area which is currently being employed, and which is pertinently germane to Africa and the developing nations of the global community is the development and improvement of accountability mechanisms. For instance, an international organisation, the U.N Global Compact, collaborates with companies, U.N agencies, labour organisations, and civil society to support universal environmental and social principles.

It is non-cohersive as participation is entirely voluntary, and there is no enforcement of the principles by an outside regulatory body.

Global Governance: Formulation and Objectives

As a corollary of the above, one of the conditions for building a global democratic governance should be the development of platforms for citizens dialogue on the legal formulation of world governance and the harmonization of objectives. Accordingly, Calame, and Marin (2005), suggest that the legal formulation could take the form of a global constitution which would evolve though a process for the institution of a global community. It will then act as the common reference guide for establishing the order of right and duties applicable to United Nation's agencies and to other multilateral institution such as the International Monetary Fund, the World Bank , and the World Trade Organisation. Canvassing these views further, they referred to procedural difficulties earlier encountered in the implementation of some UN agencies aim, which, though expedient but haphazardly laid down. specially, they

opined that the necessary, but insufficient ambition of the UN Millennium Development Goals, aimed at safeguarding human kind and the planet, and the huge difficulties in implementing them , illustrates the inadequacy of institutional initiatives that do not have popular support for having failed to invite citizens to take part in the elaborate processes. The scholars equally canvas that the global constitution must clearly express a limited number of overall objectives that are to the basis of global governance and are to guide the common action of the UN agencies and the multilateral institutions, in area where the specific role of each of these is subordinated to the pursuit of these common objective."

In order to arrive at this juncture, Calame (2003) proposes the following objectives:

- instituting the condition for sustainable development;
- reducing inequalities; and
- establishing lasting peace while respecting diversity .

The Need to Address Emerging Global Problems Towards Advancing Global Governance

As aptly pointed out by Jacquet, Pisani-Ferry, and Tubiana (1996), there is an urgent need to bridge the gap between the current global problem and these institutional structures on ground, hence the need to ensure that the global community is pro-active. It is no gainsaying the fact that several spheres of human endeavour require collaboration for the sustenance of global and collective good and some of these areas include those germane to the environment, security, economy, peace and conflict management, educational development and as well as communication, among many contending issues. These are what informed the submission of Paleyo (2008), on the Environmental Governance and managing the planet that the crisis emanating from its was brought about by the astonishing velocity, and the seeming irreversible mode of the impact of human activities on nature which the scholar says requires collective answers from government and the citizens. He opines that in whatever way we may look at it, it is an incontrovertible fact that nature does not tolerate an existence of a vacuum. By reasoning, nature does not render irrelevant political and social barriers while the global dimension of the environmental crisis equally renders innocuous the effect of any action either initiated by any national government or sectoral institutions, however potent. The emergence of the much-talked about climate change, ocean and air pollution, nuclear, risk, and those related to unforeseen human idiosyncrasies, the reduction and extinction of resources and bio - diversity, other-wise referred to as jeopardizing the existence of a large number of different kinds of animals and plants which make a balanced

environment, as well as the development system that crystallizes and largely unquestioned globally, are all among the various manifestations of the fleeting and arguably irreversible impact. The scholar therefore concludes thus:

- *"The impact is the factor, in the framework of globalization, that most challenges a system of states competing with each other to the exclusion of all others: among the different fields of global governance, environmental management is the most wanting in urgent answer to the crisis in the form of collective actions by the whole of human community. At the same time these actions should help to model and strengthen the progressive building of the community".*

The postulate above, as caused by Pelayo (2008) leads to periscoping those issues considered pertinent to the enthronement of sustainable development globally.

Towards that end, the proposal for a reform agenda for global environmental governance as caused by the International Institute for Sustainable Development shall be briefly discussed, due to the universal consensus for it desirability.

Environmental Governance And Margining The Planet

Although, there have been clamors' for the management of the environment prior to the present period, it has, since 1992, gained ascendency under a new nomenclature of climate change. As earlier submitted that nature recognizes no boundary when it strikes, the Trans boundary nature of climate change enunciates series of calls for the establishment of a global organisation, under the suggested name of World Environmental Organisation, to face squarely on the global scale, issues arising from environmental matters. Palmer (1992), corroborating the above, confirms that although International Environmental Organisations do exist, like the United Nations Environmental Programme (UNEP) created in 1992, as well as similar international environmental organisations, they are innocuous. They are criticized for being institutionally weak, fragmented, lacking in standing and providing non-optimal environmental protection. Tongues are wagging that the current decentralized, poorly funded, and strictly intergovernmental regime for global issues, is indeed substandard. As laudable as the creation of a World Environmental Organisation is, in view of the previous reasons adduced for the ambivalent ones previously created to tackle environmental issues, Najam (2003) is of the view that it could undermine some of the more effective aspects of global environmental governance which are fragmental in nature, and which demands flexibility allowing this disparity to occur, under a working

arrangement gives rooms to responses to be more effective, and mutual links to be forged across different domains. In the opinion of Biermann (2001) although series of proposal for the creation of World Environmental Organisation have been emerging, yet, it has been argued that instead of creating a WEO to safeguard the environment, only, it could be directly incorporated into the World Trade Organisation because the WTO has recorded successes in integrating trade agreements and opening up markets due to its ability to apply legal pressure to nation-states and resolve disputes. As opined by Isaac Newton, for every action, there was an equal and opposite reaction. Examples of Greece and Germany, currently in discussion about the possibility of solar energy being used to repay some of Greece's debts after their economy crashed in 2010 were cited, which could embrace energy trade agreements. This exchange of resources is regarded as an example of increased international co-operation and an instance where the WTO could embrace energy agreement as it is considered that if the future holds similar trade agreement, then an environmental branch of the WTO would surely be necessary. Countering this seeming optimism are Lodefalk and Whalkey (2002) who view the arrangement as not giving room to the divert concentration underlying market failures, nor improving rule-making by any yardstick.

A brief discussion on global governance and the economy

The myth surrounding the all – powerful free – market forces capability of correcting the serious financial malfunctioning on their own, as well as the presumed independence of the economy came into the fore with the disastrous global financial crisis of 2008. International Financial Institutions have been proved to be incapable of handling the market critical breakdown because they are lacking in transparency, and far from being democratic. Free – market economy, on its own, could not meet the needs of the population because empirically, without reputation, and without taking into account the social and environmental disconnects, free – market capitalism turns into a manipulative machine which produces more and stupendous wealth concentrate in an infinitesimal number of people, piloting the global community into a head – on collision with disaster and chaos. It is a machine quite capable of producing but the inherent dearth of political and citizen's will to change the rules of the game leads to the problem of redistribution. Addressing this lacuna is Tubiana and Severino (2002) who opine that "refocusing the doctrine of international co-operation on the concept of public goods offers the possibility…of breaking the deadlock in international negotiations on development, with the perception of shared interest breathing new life into an International Solidarity that is running out of steam". Taking the realm of the global governance and economy to the plane of what could be partly described as homogenous treatment pedestal, Susan George (2007), remarks that "…in a rational world, it

would be possible to construct a trading system serving the needs of people in both North and South…Under such a system, crushing third world debt and the devastating structural adjustment policies applied by World Bank and IMF would have been unthinkable, although, the system would not have abolished capitalism."

The question that may follow the above could be: Could we have global economic governance without global political and institutional governance?

Building responsive world governance that could adapt the political organisation of the society to globalization would necessitate creating a dramatic political legitimacy at every level – local, national, regional and global.

However, in order to have this legitimacy a lot of cogitation and ex – cogitation must be undertaken simultaneously in order to address the following fundamentals:
the blurred assemblage of the various international organisations, instituted mostly in the wake of World War II –: What is required is a system of international organisations with greater resources and a greater intervention capacity, more transparent, fairer and more democratic.

the Westphalia system (1648), the very nature of states along with the role they play with regard to other institutions, and their relations to each other; states will have to share part of their sovereignty with institutions and bodies at other territorial levels, and all will have to begin a major process to deepen democracy and make their organisations more responsible.

the meaning of citizen sovereignty in the different government systems and role of citizens as political protagonists; there is a need to rethink the meaning of political representation and participation and sow seeds of a radical charge of consciousness that will make it possible to move in the direction of situation in which citizens, in practice, will pay the leading role at every scale. As a corollary of the above, conflict could ensue and solutions must be formed for an enduring peace, while security challenges could also emanate.

Global Governance, Peace, Conflict Resolution And Security
Since the fall of Berlin wall in 1989, signaling one of those attributes of the end of the Cold War, armed conflict have changed in form and intensity. The September 11, 2001 bombing of the World Trade Centre, the Wars of Afghanistan and in the Iraq, and the repeated terrorist attacks, are all indications that conflicts have become lethal for the

global community, and far beyond the belligerents directly involved. The history of international conflict has demonstrated the fact that leaders of handful of major powers, including the biggest of all, the United States have used war as means of resolving conflict and maybe continue to do so. Simultaneously, there are experiences of civil war across the world, particularly in those states, where civil and human rights are not respected, such as Central and East Africa, as well as in the Middle East. They are immersed in enduring conflicts, elongated by the intransigence of totalitarian regimes, there, due to external support being received by them, without taking into consideration the reduction of very large population to abject living conditions. The global community is faced with conflicts and wars, accentuated by a good number of reasons like economic inequality, social conflict, religion, sectionalism, Western imperialism, colonial legacies, and dispute over territory and over control of basic resources such as water, or land. The listed, inexhaustible though, are illustration of deep – rooted conflict of the world or global governance.

The attributes of the causes of conflict/war mentioned inundate the activities surrounding international relations with competitive nationalism, and contributes, in rich and poor countries alike, to an increasing military budgets, siphoning off huge sums of public money to the benefit of the arms industry, and military oriented scientific innovation, thereby aggravating global insecurity. Causes of war and terrorism could have been eliminated or mitigated if a fraction of the enormous sum of money had been concentrated on providing solutions for the basic needs of the planet's population, as some optimist assume. Paradoxically, Micheal (1999), argues that the arms race is not only proceeding with greater vigour, it is the surest means for Western countries to maintain their hegemony over countries of the South. Following the break – up of the Eastern bloc countries, a strategy for the manipulation of the masses was set up with a permanent invention of an enemy (currently represented by Iraq, Iran, Libya, Syria, and North Korea) and by kindling fear and hate of others to justify perpetuating the military – industrial complex and arms sales". It is equally not a mere co-incidence, he explains further, that the Big five at the UN Security Council, US, Russia, Britain, France & China, who have the veto right, are responsible for 85% of arms sales globally.

However, as regards proposals for the global governance of peace, security, and conflict resolution, it is considered that the initial step should be the focusing of attention on the elimination of all identified causes of conflicts, be it economic, social, political, religious, ethnic, territorial, education, etc. Peace education could be so developed to enable it percolate the nooks and crannies of the global community while emphasis must be on the need to understand that the persistence of

the causes of conflict could only be meaningfully tackled if an atmosphere of peace prevails. Though, we are all from diverse backgrounds, we can only maximize our potentials in an atmosphere of peace. It was once a regular debate in several fora of international discourse that reduction in military or defence budgets could be undertaken and the gains be channeled to addressing causes of conflict but unfortunately, the warlike climate gravitating, both in the developed and developing nations of the globe, has dowsed calls for global disarmament. Rather, it is not considered a permanent obstacle but it is a temporary set-back, as a long-term solution is on-going.

Further, international institutions should be more pro-active in intervening in international conflicts before it gets out of hand. Should a conflict degenerate into armed conflicts, small international rapid deployment units could intervene in these under a mandate from a reformed and democratic United Nations or by relevant regional authorities. These units could be formed specifically for each conflict, using armies from several countries, reminiscent of the case with the UNIFIL during the 2006 War in Lebanon. By extension, no national army should be authorized to intervene unilaterally outside its territory without a UN or regional mandate. Concluding this heading is an admonition on global governance from Bachelet http://www.world-governance.org/spip.php), 12/14/11 who raised an issue concerning the legitimate conditions for the use of force and conduct during war, canvassing the need to adopt the principle of humanity. The author defines the principle as follows: “All human beings, whatever their race, nationality, gender, age, opinion, or religion, belong to one same humanity, and every individual has an inalienable right to respect for his life, integrity and dignity.

As global governance covers a wide range of topics, it is pertinent to consider how it could operate without undermining the sovereignty of member states.

3.2 Issue Of Sovereignty

Sovereignty is the quality of having supreme, independent authority over a geographic area, such as a territory. It can be found in a power to rule and make law that rests on a political fact for which no purely legal explanation can be provided. The source further informed us that theoretically, the idea of sovereignty, which is historically from Socrates to Thomas Hobbes, has always necessitated a moral imperative on the entity exercising it. (http://www.britannica.com of 12/12/11.)

The interpretation of the above is that the idea that a state could be sovereign has always been connected to its ability to guarantee the best interests of its citizens, coming down to the conclusion that a state has the ability to guarantee the best interests of its own citizens, otherwise, it could not be thought of as a sovereign state.

The idea of sovereignty cuts across different cultures and governments which is not the main focus of this unit. Rather, our main concern is the need for world peace through the homogeneity of the concept of globalization and sovereignty. To leave the interpretation of sovereignty in its fluid form will obstruct the notion of gregarious globalization which this unit intends to achieve. As opined by Oppenheim (1928), "there exists perhaps no concept which is more controversial than that of sovereignty. It is an indisputable fact that this conception, from the moment when it was introduced into political science until the present day, has never had a meaning which was universally agreed upon. It is within this premise that a sovereign power is regarded as having an absolute sovereignty when it is not restricted by a constitution, by the laws of its predecessors, or by custom and no areas of law or policy are reserved as being outside its control. However, International Law, policies and actions of neighboring states, cooperation and respect of the populace, means of enforcement, and resources to enact policy are factors that might limit sovereignty. As a corollary to that assertion, parents are not guaranteed the right to decide some matters in the upbringing of their children – independent of societal regulation, and municipalities do not have unlimited jurisdiction in local matters, thereby re-emphasizing that neither parents nor municipalities have absolute sovereignty. Further, there is a compelling need to realize that the concept of globalization evolved out of the spirit of global solidarity, born out of a shared destiny. It is not a world government. In International Law, sovereignty means that a government has full control over affairs within a territorial or geographical area or limit, hence, Article two of the UN Charter States that "Membership in the United Nations requires that the admission of any such state to membership in the United Nations will be effected by a decision of the General Assembly, upon the recommendation of the security Council." This clause indicates, without any ambiguity, that internal sovereignty, as earlier understood, is not absolute. In spite of the view of the realists their sovereignty is untouchable, and guaranteed to nation-states, and the nationalists contention that the sovereignty of a nation –state may be violated, in extreme circumstances, such as in extreme human right abuses, internationalists believe that the concept of sovereignty is outdated and an unnecessary obstacle to achieving peace, in line with their belief of a global community. To further drive home the bane of an undue affection for sovereignty, Osiander [2001] is of the view that in the light of the abuse of power by sovereign states such as Hitler's

Germany or Stalin's Soviet Union, … human beings are not necessarily protected by the state whose citizens they are, and that the respect for state sovereignty on which the UN Charter is founded is an obstacle to humanitarian intervention. In short, as earlier stated that global governance is the political interaction of transnational actors, aimed at solving problems that affect more than one state or region, in the absence of any power of enforcing compliance, a means of seeking a harmonious collaboration between sovereignty and globalization must be explored .

This takes us to the contending theories of why international organisations are created, and why states chose to organize themselves collectively. The answer revolves around three major theories about the formation and development of international organisation: federalism, functionalism, and collective goods.

Rousseau[1944] is of the view that whereas , the treaty of Westphalia acknowledged the principle of state sovereignty, the prerogative of leaders to act on the basics of their self interest, he is of the view that if war is the products of this sovereign relationship among states, then war can be abolished by removing the attribute of state sovereignty. Invariably, peace can be attained if states give up their sovereignty and invest it in a higher, federal body. Towards this objective, it is suggested that "a form of federal government as shall unite nations by bonds, similar to those which already unite their individual members, shall be instituted place the one no less than the other under the authority of the law. In short, a diminution of sovereignty to a higher unit will help eliminate the root cause of war. Further, Mitrany (1994) is of the view that 'the problem of our time is not how to keep the nation peacefully apart, but how to bring them actively together ". He then put forth the idea that units bind together those interests which are common, where they are common, and to the extent to which they are common. Invariably, those of the functionalist school of thought emphasise economy as the root cause of disharmony and opine that states are not suitable units to resolve these problems. They then suggest the building on and expansion of habits of co-operation, nurtured by groups of technical expects, outside formal state channels. Harding, (1954) a biologist emphasises the need to address issues that have bearings on collectivity, such as the environment, water and similar things, which no state could ever handle and have effective results, in a concerted manner . If we consider those issues conveyed by air, the oceans, the outer space, and even, the quiet region of and the Antarctica, a no-habitation continent for human race, an over - attachment of relevance to the concept of sovereignty will vamoose into a thin air.

Although the three approaches discussed also have their shortcomings, but the contention is that because of the heterogeneity of these overall preferences, which are daily enduring, even in spite of globalization, any obstruction to seeking channel for the governance of global peace, security , and other demands must not be sacrificed on the alter of state sovereignty.

SELF-ASSESSMENT EXERCISE

Discuss the relevance of sovereignty in the face of security challenges facing the global community.

4.0 CONCLUSION

Globalisation is not a usurpation of the sovereignty of member states. Rather, it is a route through which problems outside the scope of a state which affects other states and are identified as solutions collectively proferred. Submitting a part of a state's sovereignty to a global body is in the interest of the indigenes of that particular state, and the global community. The effects of nuclear weapons possessed by some states could be devastating if a global effort to control its use is not in place. Further economic problems could lead to famine and create refugee problem. Conflicts within a sovereign state may escalate and the effect may create one form of problem or the other in the global community. Dearth of crude oil, in the early 1970s due to conflict and its politics once had adverse effect in the industrialised economies and it was resolved through the intervention of a global organisation to which state subscribe part of their sovereignty. Although, the concept requires modification in order not to make the developing nations mere suppliers of raw material and perpetual debtors in a free globalised economy globalisation could effective strengthen the sovereignty of member states.

5.0 SUMMARY

This unit has discussed global governance and issues of territorial sovereignty drawing inferences from the "Federal, functional and collective goods approaches."

6.0 TUTOR-MARKED ASSIGNMENT

1. Define global governance and discuss its implication.
2. The concept of global governance is an innovation of the 20th Century. Do you agree?
3. Is the concept of global governance out to undermine the territorial sovereignty of a state?

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UNIT 4 INTERNATIONAL LAW AND HUMAN RIGHTS

CONTENTS

1.0 INTRODUCTION

This unit is about International Law dealing with the avalanche of issues surrounding human rights, emanating from treaties, UN resolutions, judicial commissions and bodies, states actors dealing with those rights internationally recognized, and which are being claimed by individuals and groups, against states or their agents in their areas of jurisdiction. It is primarily about those international legal obligations which countries have clearly tied them to, without duress. In short we will briefly carryout an analysis of the possibilities and fears surrounding the marriage between International Law and Human Rights. In the opinion of Steiner, H.J. and Alston P. (1996); the International Laws that have gone through a deliberative drafting process and that have been voluntarily signed and ratified by members, countries remain highly controversial with respect them to the substance of what these countries have indeed bound themselves to and its enforceability, besides those obligations such new International Laws established for no-signatories.

2.0 OBJECTIVES

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

- relate the dichotomy between international law and enforceability of Human Rights
- review those core treaties shrouded in ambiguity
- explain issues surrounding Economic, social and culture rights.

3.0 MAIN CONTENT

3.1 International Law and Human Rights

About half a century ago, the growth of international human rights regime anchored on the premise that human right deserve international protection which has been shrinking. However, but the record of compliance with international human rights law is very sketchy. States have not been willing to accord needed action in aid of human rights. Equally, a lot of conceptual misconceptions have arisen on the notion of rights to incorporate economic and collective rights. The principal human rights treaties and covenants incorporate contradictory provisions which are often lead to their being misinterpreted or misconstrued to suit the purpose of each state. A question needed to be asked if contradiction could be deliberate or due to the carelessness of the drafting officers? Certainly not. One thing that must be understood is that globalization is at work in many areas but as International Law is here a collection of series of norms, culture, intellectual contribution and so on, what makes a natural right here ,may be a legal wrong elsewhere. The negotiators of the international agreement on human right are appointees of their various countries. Those various countries have widely different constitutional systems as well as political traditions. However, if we want to have a strong base to enable people of diverse states acknowledge the rudiments of International Law, such human right covenant must incorporate provisions emphasizing differing traditions together with the ways and manners to handle those areas of differences. States could then move ahead to construe it to conform with their custom and tradition. For instance, the United Sates, and Britain often champion the calls for international actions for the protection of citizens against vicious powers of state due their history and experience, anchored on the ideal of Locke. On the other hand, the countries of the Eastern and Central Europe give emphasis to the philosophy of Rouseau and Hegel on the right and privilege of the communities over individuals. Equally, we have those states under the influence of socialist philosophies who hang their human rights philosophies on the distribution of income and other economic activities. Anything outside that sphere is not much of their concern. As for the third world nations they will allow the experience of their newly won national sovereignty, which reminds them of the struggle for self determination, to become the concept of their felt needs by opposing post-colonial incursions into their internal affairs by imperial powers. We must also reflect on those nations where traditional religious culture exists, and where an issue of secularity debate is unabated. Under such states, it is not unusual that the implication of secularity in respect various human rights could be inimical to their set belief. By and large, the existence of international human rights covenants is a move from simple states – sovereignty

system to a system in which national government are becoming increasingly accountable to one another, as well as communities moving beyond their territorial jurisdictions. The implication of this is that unlike in the past when government could claim to have absolute control over its citizens and sit back that no one could query the administration on its activities, both counterfeit and genuine, the reverse is now the case. The aggregation of the parameter for measuring the global accountability is the International Bill of Right which forms the next writes up.

The International Bill of Rights

A reference to the charter of the United Nations, signed at San Francisco in June 1945, and which came into force in October 1945, is desirable to drive home the points under this heading. According to the Charter, the United Nations was established not only "to save succeeding generations from the scourge of war" but also "to reaffirm faith in the fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women, and of the nations, "LARGE AND SMALL." Invariably, one of the basic reasons of the organisation contained in Article One is "to achieve international co-operation in … promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion" Ideally, it must be emphasized that those states, persons and international legal luminaries behind the coding of the United Nations Charters and did not intend to erode nation's sovereignty under the guise of human rights. This could be explained with the content of Article 2, section 7 which says that "Nothing contained in the present charter shall authorized the United Nations to intervene in the matters which are essential within domestic jurisdiction of any state or shall require Members to submit such matters to settlement under the present charter". As a further assurance of not subjugating states' sovereignty under the motion of Human Rights, Article 55 under which a clause – to promote … universal respect for, and observation of human rights and fundamental freedom for all" is alluding to means of guaranteeing an enabling environment for the stability and well – being required for peace and security, not as an end equal in value to peace and security. The provisions of the UN charter regarding human rights appear passive and do not portend an appreciable advancement for the principles of rights based democracy as witnessed after the Second World War. The 1948 Universal Declaration of Human Rights emphasizes liberal democratic principles, and went ahead to accord solid legal status in the accompany few decades as a result of the full-fledge independence of many countries who are signatories to the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights. Largely referred to as the international Bill of Rights the covenants give an insight into the core legal structure for

complaints by both individuals and groups with a view to channeling their grievances if their internationally guaranteed human rights are being violated. The process of becoming a party to an international covenant, convention or treaty is through two stages. The first step is when the covenant is signed by the highest official of the country's government and the second stage is its ratification through the official process in vogue in the laws of the country which is the beneficiary, to confirm that the sovereign authority has approved its provisions. While ratifying, allowance for comments, indicating reservations or redefining concepts to suit its acceptability by a country, is allowed. What is important is that countries usually endure each other's reservations since such will not out rightly affect the purpose and spirit of the covenant.

Once those stages have been overcome, a government then becomes accountable to other parties to the treaty as well as to any international agency so pinpointed in the covenant to superintend over its implementation. In practice, such processes lead to such treaties becoming part of the domestic law in most countries. By extension, those officials of the governments that have taken part in the consolidation of the treaties are accountable to the institutions of the country for adhering to its provisions. Because of the complexities involved in ensuring compliance by a government, non-governmental human rights groups are found quite pertinent to act as watchdogs on how their government adhere to the spirit and content of the treaties and if found ambivalent, a report could be lodged with the international body where appropriate actions to compel obedience would be made. I wish to mention in passing that the often repeated Universal Declaration of Human Rights is not an International Law, but it is a resolution of the UN General Assembly which was not submitted for signature and ratification by member governments. Hence, it is considered a collective advice for the promotion of human rights. This was corroborated by the former UN Secretary General, U. Thant (1971) thus:

- *"During the years since its adoption, the declaration has come to have a marked impact on the pattern and content of International Law and to acquire a status extending beyond that originally intended for it. In general, two elements may be distinguished in this process, first the use of the declaration as a yardstick by which to measure the content and standard of observance of human rights; and second, the reaffirmation of the declaration and its provisions in a series of other instruments. These two elements ... have caused the declaration to gain a cumulative effect"* corroborated by Henkin, L. Pugh, R.C., and others (1993:607)

It is considered necessary to add the effect of the civil and political rights of individuals which could be said to have evolved from the draft of the unsigned and unratified Universal Declaration of Human Rights.

3.2 International Covenant On Civil And Political Rights

This covenant, which emphasizes the rights of individuals against abuse of government power, rule of law, and the rights of participation by citizens in the polity, springs from the UN General Assembly's Resolution 2200 of 1966, which came into force in march 1976, after its ratification by over a hundred countries.

It is the view of the covenant that some of those rights are so fundamental to human beings that nothing could obstruct it, even the much talked about security matters. As a student, and for clarity and elucidation of those clauses, be reminded that Article 4, paragraph 2 states thus": No derogation from Articles 6, 7,8 paragraphs (1 and 2), 11, 15, 16, and 18 may be made".

Quoting from the UN General Assembly Resolution 2200 of 1966, and corrobated by Brown (2000:77), the protected parts of the covenant contain the following provisions:

Article 6

1. Every human being has an inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes….. this penalty can only be carried out pursuant to a final judgment rendered by a competent court.
3. …..[I]t is understood that nothing in this article shall authorize any state party to the present covenant to derogate in any way from any obligation assumed under the provisions of the convention on the prevention and punishment of the crime of genocide.
4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence…..
5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

Article 7

1. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be

subjected without his free consent to medical or scientific experimentation.

Article 8

1. No one shall be held in slavery: slavery and the slave-trade in all their forms shall be prohibited.
2. No one shall be held in servitude.

Article 11. No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

Article 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offense, under national or International Law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offense was committed….

Article 16

1. Everyone shall have the right to recognition everywhere as a person before the law.

Article 18

1. Everyone shall have the right to freedom of thought, conscience, and religion. This right shall include freedom to have or adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Convention undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Another lacuna observed in the Covenant on Civil and political rights, which any state could employ to impose her will on the citizens is in Article 4 which is so fluid that it could be interpreted to suite the will of any state is that in time of public emergency which threatens the life of the nation, and the existence of which is officially proclaimed, the states

that are parties to the covenant could set it aside up to the extent of what brought about the exigency, and must not be inconsistent with the provisions of the International Law. This is a chance which a totalitarian regime could employ to abuse human rights.

3.3 International Covenant On Economics, Social And Cultural Rights

Quite similar the International Covenant on Civil and Political Rights but the outstanding differences are only evident in the call in Article 2 of the Covenant on Economic, Social and Cultural Rights countries to salvor the gains inherent in the covenant. By inference, the basic non-discriminatory clause of Article 2 where the parties to the covenant mutually agree guarantee the rights clearly itemized in the covenant, without any form of discrimination regarding race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status, is a water-tight link between the champions of liberal and socialist democracy. It is all encompassing and some areas touched include:

- the right to work (Article 6). The right gives everyone the opportunity to earn his/her living through the legitimate means chosen by any individual.

Article 7 – condition of work and remunerations: the right to a good working environment and fair wages; equal pay for equal value.

Article 8 – the right to form or join Trade Unions. This right is of the view that no restriction may be placed other than those prescribed by law which are consistent with a democratic setting, and in consonance with the national security or public order or for eliciting the dictates of the rule of law.

Article 9 – this recognizes the rights of everyone to social security and social insurance. By practice, this section seems admonishing the states to observe the principle of at least, minimum standard of health and welfare, synonymous with a good life for individual throughout his or her life.

Article 10 – this advocates special provision for matters, before and after child – delivery, such that they are granted paid leave or leave with commensurate security benefits. If working mothers. Its section 3 states that children and young person's should be protected from economic and social exploitations. By inference, states are expected to set age limit below which the paid employment of child labour should be prohibited and any violation made punishable by law.

Article 11- is about the right to an "Adequate Standard of living" which is contestable, even, in its formation. Provision of adequate food, clothing, and housing, and to the continuous improvement of living conditions, are its prerequisites. How feasible? However, the states parties to the covenant are admonished to take appropriate steps to ensure the realization of these rights.

Article 12-is about the right to health and health care, emphasizing the right of everyone to the enjoyment of the highest standard of physical and mental health as well as government obligations to put in place measures for their realization. In the face of severe disparity between the developed and developing countries, this is another utopian legislation which could draw Africa and developing countries closer to it realization, if good governance respect for International Law and human rights are firmly rooted.

Article 13 -is about the right to education. A key to poverty alleviation, ignorance and diseases is education. This article lays out public policy on education, stating that primary education shall be compulsory and available free to all, while secondary and higher education shall also be made available, and accessible to all, on the basis of capacity, by every appropriate means, and in particular, by progressive introduction of free education.

Article 14 -is a follow up to 13, which commits any state that has not been practicing a free primary education policy to adopt a detailed plan of action within two years, for its adoption.

Article 15 – is predicated on rights concerning culture and science. It recognizes the rights of everyone to partake in cultural life and the benefits of scientific, literary, or artistic production to special moral and material interests in such original work.

Students need to know that laws are being formed while existing ones are being updated. The core issue is the implementation of the laws. How the countries which are signatories to the various conventions should incorporate and implement them in their legal system is predicated on the continuing international dialogue and debate among the countries coupled with series of domestic debate in the political systems of various states.

SELF- ASSESSMENT EXERCISE

What is your opinion about fundamental human rights as regards to health and health care in your country?

4.0 CONCLUSION

Arguably, difficulties may arise over the interpretation of International Law, vis-à-vis, international human rights. It is difficult to enforce compliance, and more difficult to ensure a universal standard. However, it is gratifying and more rewarding to live in the global sphere where the rights of individual embracing political, economic, social rights are regarded as sacrosanct.

5.0 SUMMARY

This unit has discussed issues germane to the analogy or otherwise between International Law and human rights. Emphasis was laid on the International Bill Of Rights, International Covenant on Civil and Political Rights, and International Covenant on Economic, Social and Cultural Rights. The homogeneity of both the Covenant on Civil and Political Rights and Covenant on Economic, Social and Cultural Rights, brought to bear through Article 2 of the latter, was discussed, with explanations of those unifying clauses.

6.0 TUTOR-MARKED ASSIGNMENT

1. How do you reconcile the tension between the state's autonomy and universal rights?
2. What practical step could be taken to get sovereign states to acknowledge universal human rights?
3. How feasible is the International Covenant on Civil and Political Rights in the African Continent, drawing lesson from Sudan, Democratic Republic of Congo and Cote D' Ivory?

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UNIT 5 LAWS OF WAR AND WAR CRIMES

CONTENTS

1.0 INTRODUCTION

The law of war is a body of laws concerning acceptable justifications to engage in war (jus ad bellum) and the limits to an acceptable wartime conduct (jus in bello or International Humanitarian Law). The law of war is considered an aspect of public International Law (the law of nations) and is distinguished from other bodies of law, such as the domestic law of a particular belligerent to a conflict that may also provide legal limits to the conduct or justification of war.

Among other issues, modern laws of war address declarations of war, acceptance of surrender, and treatment of prisoners of war, military necessity, along with distinction and proportionality, and the prohibitions of certain weapons that may cause unnecessary suffering. (Michael & Mark (1994).

2.0 OBJECTIVES

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

- define and explain laws of war, together with the institutions for enforcing them
- narrate those issues that constitute war crimes, and
- state exploratively what declarations of war, acceptance of surrender, and treatment of prisoners of war, denote.

3.0 MAIN CONTENT

3.1 Definition of the Concepts

Attempts at working definitions to regulate the conducts of individuals, nations and other actors in war, as well as attempts at mitigating the disastrous effects of war go into a distant past. In the words of Roberts & Co (2008), the earliest known instances are found in the Hebrew Bible (Old Testament), directing us specifically to Deuteronomy, 20:19-20, which limits the amount of acceptable collateral and environmental damage, thus:

- *When though shalt besiege a city a long time, in making war against it to take it, thou shalt not destroy the trees thereof by forcing an axe against them, for thou mayest eat of them, and thou shalt not cut them down (for the tree of the field is man's life) to employ them in the seige: only the trees which thou knowest that they be not trees for meat, thou shalt destroy and cut them down; and though shalt build bulwarks against the city that maketh war with thee, until it will be subdued.*

In a similar tone, the same Hebrew Bible in Deuteronomy 21:10-14, requires that female captives, who were forced to marry the victors of a war could not be sold as slaves. In the early 7th Century, as advanced by Wikipedia, the free encyclopedia, the first Caliph, Abu Bakri, while instructing his Muslim Army, laid down the following rules concerning warfare, thus:

- *Stop, o people, that I may give you ten rules for your guidance in the battle field. Do not commit treachery or deviate from the right path. You must not mutilate dead bodies. Never kill a child, or a woman, or an aged man. Bring no harm to trees, nor burn them with fire, especially those which are fruitful. Slay not any of the enemy's flock, save for your food. You are likely to pass by people who have devoted their lives to normadic services; leave them alone.*

Equally worthy of mention are issues germane to defining laws of war in medieval Europe. It was an era when the Roman Catholic Church began to promulgate teachings on just war, which reflected to some extent in movements such as the Peace and Truce of God, while the impulse to restrict the extent of warfare, and especially, protect the lives and properties of non-combatants continued with Hugo Grotius and his attempts to write laws of war.

On the other hand, war Crimes, according to Evans (2008), are those serious violations of the rules of customary and treaty law concerning International Law that have become accepted as criminal offences for which there is individual responsibility. In the same vein, colloquial distinctions of war crime include violations of established protections of laws of war, but also include failures to adhere to norms of procedure and rules of battle, such as attacking those displaying a peaceful flag of truce, or using that same flag as a ruse of war to mount an attack.

Attacking enemy troops while they are being deployed by way of a parachute is not a war crime, as equally corroborated by Best (2004). However, by virtue of Protocol Article 42 of the Geneva Convention, it is explicitly forbidden to attack parachutists surrendering when they land. Further, war crimes include such acts as mistreatment of prisoners of war or civilians. Instances of mass murder and genocide, though, more broadly covered under international humanitarian law, and described as crimes against humanity, also fall under war crime.

War crimes are significant in international humanitarian law, according to the set standard because it is an area where international tribunals, such as the Nuremberg Trials and Tokyo trials have been convened. Recent examples are the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda, which were established by the UN Security Council under Chapter VIII of the UN Charter. It is further explained that under the Nuremberg Principles, war crimes are different from crimes against peace which include planning, preparing, initiating, or waging a war of aggression, or a war in violation of international treaties, agreements, or assurances. In view of the debatable definition of a state of war, war crime definition has seen different usage under different systems of international and military law. It has some degree of application outside what may be considered as a state of war, besides in areas where conflicts persist enough to constitute a state of social instability.

In the opinion of Simmons (2009) , the legacies of war have been accused of sometimes containing favouritism towards the winners (called Victor’s justice) as some controversies have not been ruled as war crimes. Corroborating this view is Michael & Co. (1994) , with some examples which include the Allies destruction of civilian Axis targets during World War II, such as the firebombing of the German City of Dresden and the use of atomic bombs on Hiroshima and Nagasaki, and the use of Agent Orange against civilian targets in the Vietnam War. An Na’im (1991) equally cited the mass killing of Bibaries by Kader Siddique and MuktiBahini before or after victory of Bangladesh Liberation War in Bangladesh between 1971 and 1972, and the Indonesian occupation of East Timoh between 1976 and 1999.

Before halting the definition of war crime, which is inexhaustible, we wish to add the views of Michael & Co (1994), who cited the example of the re-designation of German POW (Prisoners of War) by the Allied Powers (under the protection of the Geneva conventions) into Disarmed Enemy Forces (allegedly unprotected by the Geneva conventions), many of which then were used for forced labour, such as clearing minfields, and by December 1945, it was estimated by the French authorities that 2000 German prisoners were being killed or maimed each month in mine-clearing accidents.

3.2 Laws of War and War Crimes

"States…are political systems possessing community, consensus, and a monopoly of the means of violence; by contrast, international systems lack these characteristics. Hence, the basic difference between domestic and international politics is most strikingly manifested in the fact that while peace is the rule in domestic politics, war is the distinguishing feature of international relations. The state of war is the direct result and the unavoidable consequence of the lack of community, consensus, and monopoly of the means of violence in the world at large. Thus war, the expectation of war, and the diplomatic and strategic behaviour consequent upon it become the explicanda of international relations." (George Modelski (1970:617).

Attempts at prohibiting or outlawing wars are of a very recent historical past, otherwise, states that are aggrieved would have had no means of redressing wrongs where there was no availability of a formal structure for remedial processes. In such a situation, it would amount to an injustice if states under threats could not exercise self-help when no external assistance is available. While it is realized that war may be inevitable in certain circumstances, it does not mean that the warring states are free to destroy, maim, kill or deal with themselves as they or the stronger free. In order to create an arena for peace, obligations for both belligerents are set out. The aforementioned are what led to the invocation of laws of war.

Some of the central principles underlying laws of war are:

- Wars should be limited to achieving the political goals that started the war, (e.g. territorial control) and should not include unnecessary destruction;
- Wars should be brought to an end as quickly as possible;

People and property that do not contribute to the war effort should be protected against unnecessary destruction and hardship.

To this end, laws of war are intended to mitigate the hardships 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 the sick and civilians:

Facilitating the restoration of peace

Laws of war on land and sea were formulated through various Geneva Conventions, especially the conventions drafted at the Hague conferences of 1899 and 1907 respectively. These conventions spelt out areas of warfare dealing with the following items, thus: privateering, blockade, price courts, the care of the sick, and wounded, protection for medical personnel and facilities, the qualifications of lawful combatants, the treatment of prisoners, forbidden weapons and agencies, the powers of military commanders in occupied enemy territory, the status of spies, the beginning of hostilities, the use of merchant vessels as worships, naval bombardments, the use of submarine mines, the right of capture in maritime warfare, the rights and duties of neutrals, and the use of poison gases – (Garner, (1937: XV, 363).

A salutary effect of the laws of war, irrespective of wars undesirability or otherwise, is that they helped to humanize warfare. Further, even totalitarian regimes have been observing them, despite difficulties in preventing them from distancing themselves from some in-human practices like unrestricted sub-marine warfare and the use of flame-throwers, napalm, and atom bombs. Ironically, the laws of war have not been adequately revised to cover those extra-ordinarily destructive weapons developed during the First World War and II as well as in the intervening years. As aptly canvassed by a United States President of an evergreen era, President John Fitzgerald Kennedy, that the wonders, and not the terrors of the stars that should be explored and emphasized, the constant efforts of the powers to sustain balance of power have never been in any attempt to create panic, but to adapt those weapons of mass destruction, in such a way as a deterrence to meet the needs of the age of enlightenment.

As opined by Jessup (1937:XI, 364), before the First World War, an important offshoot of the laws of war was the laws of Neutrality, which were concerned with the forms of neutrality and of neutralization, the proclamation of neutrality, and especially, the relations between neutral states and belligerent states, and between states and individuals. In the documents, the rights and duties of neutrals over envisaged specific

problems, among many obligations, included the maintenance of the inviolability of the territorial jurisdiction of neutrals, the need for the neutrals not to allow the use of their territory for military operations, and the regulation of the rights of asylum and of internment. Others included those conditions under which enemy ships may enter and leave neutral ports, the obligations of a neutral state not to furnish military assistance to any belligerent or to permit enlistment of troops for a belligerent state. Equally, as a prevention of violations of a state's neutrality, a neutral state has the obligation to enforce its neutrality laws and to exercise, what was referred to as, due diligence.

As good as the intention of the aforementioned laws of war were, the practices of the combatants in the first world war made nonsense of them as they were disregarded with utmost impunity while the flagrant abuse was also noticed in the use of new weapons as the airplane and the submarine. The United States of America, a Neutralist, was deeply infuriated by the German's use of the submarine which the American President considered a violation of America's rights as a neutral state, because its use affected the smooth-sailing of American ships while Britain's interference with American ships, goods, and nationals also angered the U.S. administration.

However, the relevance of the law of neutrality in the laws of war is highly debatable in a situation of total war. Again, we remind ourselves of those immortal admonitions by the former Prime Minister of India in 1960, during the Congo Crisis, before a full-blown war broke out. He was an international personality of peace whose actions were informed by empirical circumstances and when the Congolese State Actors were unbending in their various camps of ideological divide, he was still optimistic. When his optimism was becoming cynical, he warned all the actors that war knows no rule, when the chips are down. Reminding himself of the failure of traditional laws of neutrality, he told them that in a full scale war, fathers will rise against their sons and mothers, a community against another, and at the end of it all, the greatest leveler would be "FAMINE" which would devastate all the belligerents. In the present setting of globalization, the sore issue to contend with is the relationship between neutrality and collective security. As reasoned by Phillip C. Jessup (1937), it may well be argued that in the present or future condition of the world solidarity, neutrality is an anti-social status."

It is considered necessary to avail students with a list of declarations, conventions, treaties and judgments and on the laws of war. While this will take a sizeable part of this unit, some are listed hereunder while others could be assessed on the website of en.wikipedia.org/wiki/laws of war:

- 1856 Paris Declaration Respecting Maritime Law which abolished privatizing
- 1864 First Geneva Convention "for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field
- 1868 St. Petersburg Declaration Renouncing the Use, in time of War, of Explosive Projectiles Under 400 grams Weight
- 1874 Project of an International Declaration concerning laws and customs of War (Brussels Declaration)
- 1880 Manual of the laws and customs of War at Oxford
- 1899 Hague Conventions consisted of four main sections and three additional declarations.
    a. Pacific Settlement of International Disputes
    b. Laws and Customs of War on Land
    c. Adaptation to maritime warfare of principles of Geneva Convention of 1864
    d. Prohibiting launching of Projectiles and Explosive from Balloons.
- 1907 Hague Conventions had thirteen sections of which twelve were ratified and entered into force and two declarations:
    - The Pacific settlement of international disputes
    - The limitation of employment of force for recovery of contract debts
    - The opening of hostilities
    - The laws and customs of war on land
    - The Rights and Duties of Neutral Powers and Persons in case of war on land
    - The status of Enemy Merchant Ships at the Outbreak of Hostilities
    - The conversion of Merchant Ships into Warship
    - The Laying of Automatic Submarine Contact Mines
    - Bombardment by Naval forces in time of war
    - Adaptation to maritime war of the principles of the Geneva Convention
    - Certain restrictions with regard to the exercise of the right of capture in Naval war
    - The Creation of an international price court
    - The rights and duties of Neutral Powers in Naval War

- Declaration I – Extending Declaration II from the 1899 Conference to other types of Aircraft
- Declaration II – on the obligatory arbitration.

1909 London Declaration concerning the laws of Naval War largely reiterated existing law, although, it showed greater regard to the rights of neutral entities, as well as others.

- *Additional information could be sourced from:*
  a. *Roberts, Adam, and Guelff; Richard (Editors) Documents on the Laws of War, Third Edition, Oxford University Press ISBN 0-19-876390-5.*
  b. *Tests and commentaries of 1949 Geneva conventions and Additional Protocols (http://www.icrc.org/ihl.nsf/CONVPRES).*

War Crime

War crimes are serious violations of the laws applicable in armed conflict (also known as international humanitarian law), giving rise to individual criminal responsibility. Such conducts include, but not limited to "murder, the ill-treatment or deportation of civilian residents of an occupied territory to slave labour camps, the murder or ill-treatment of prisoners of war, the killing of prisoners, wanton destruction of cities, towns and villages, and any devastation not justified by military or civilian necessity.

In a similar vein, actions bothering on betrayal of trust have existed for many centuries as customs between civilized countries but these customs were first codified as International Law in the 1899 and 1907 Hague Conventions.

It will be recalled that the development of modern concept of what constitutes a war crime occurred under the auspices of the Nuremberg Trials, based on the definition in the London Charter that was published on August 8, 1945. That charter also defined crimes against peace as well as crimes against humanity, regarded as usually committed in times of war, and in concert with war crimes.

As contained in Article 22 of the Hague IV which concerns laws and customs of war on land, effective from 18th October 1907, "the right of belligerents to adopt means of injuring the enemy is not unlimited similarly, there are in vogue other enactments which have been introduced to serve as constraints on belligerents, such as those in the Hague, the Geneva, and Genocide conventions, considered to be part of customary International Law and binding on all, while there also are those binding on individuals if the belligent power, to which they belong is a party to the treaty which introduced the constraint.

Falk, Richard, and Co (2006), opine that large-scale abuses of human rights often occur during war and serious violations of this kind are considered war crimes. Arguably, International Law is difficult to enforce in war time but extensive norms of legal conduct in war as well as international treaties are largely adhered to. It is usually after a war that losers are punished for violations of the laws of war, similar to the

situation of the Germans and Japanese in the Nuremberg trials after the 2nd World War. It was an irony of the early 20th Century German Law which did not see the murders committed by the Nazis as against any German law but the Nuremberg tribunal treated them as having committed crimes against humanity, considered as highly inhuman in the pursuit of an unreasonable and an unjust end.

Moghalu (2008) reminds us that in the 1990s, for the first time since World War II, the Security Council of the UN authorized an international war crimes tribunal, directed against war crimes in the Former Yugoslavia. Similar tribunals were later set up in Rwanda and Sierra Leone for acts of genocide. Indictments were issued against top Bosnian Serb Leaders and other Croatian Officers at the tribunal on former Yugoslavia held in Hague, Nether lands, while in 1999, a similar war crime indictment was issued against Slobodan Milosevic, the Serbian President for his expulsion of Albanians from Kosovo. His eventual arrest was facilitated by his loss of power in Serbian. The new Croatian government that won the 1999 elections gave co-operations to the tribunal, resulting in the arrest, and arrangement of Milosevic at the International Criminal Court in Hague. He was in the custody of the ICC until 2006 when he died suddenly in custody. Yet, in 2008, the Bosnian Serbs leader, accused of ordering his forces to kill thousands of Muslims in Bosina was arrested after 13 years in hiding. He is now on trial at the Hague charged with persecuting Bosman Muslims and Croats, shelling civilian population centres, and destroying property, including places of worship. As a result of the civil war in Sierra-Leone, a war-crime tribunal was set up to try the violators of the law of war there. In 2003, it indicted the next-door head of State in Liberia, Charles Taylor for his roles in the war, which was described as that of an extreme brutality. He was eased out of office and took refuge in Nigeria. In 2006, he was arrested while escaping from his base in Nigeria and is currently undergoing trial at The Hague.

Following up on the tribunals for former Yugoslavia and Rwanda, in 1998, most of the countries in the global community signed a treaty to create a permanent International Criminal Court, as identified by Schiff, B.N. (2004). It is set up to hear cases from anywhere in the global community on issues bothering on cases of genocide, war crimes, and crimes against humanity. It opened for business in 2003 at the Hague with 18 judges from across the globe.

The Darfur conflict in Sudan has caught the attention of the international community where a UN Commission discovered a grave short of genocide. In 2009, the International Criminal Court indicted the sitting Sudanese President Omar al-Bashir, on charges of war crimes and crimes against humanity and ordered his arrest. This action of the I.C.C.

infuriated Bashir who retaliated by expelling the humanitarian organisations from Dar'fur to enable him aggravate the sufferings he is accused of having engineered! The I.C.C is a global institution which has the power to prosecute individuals of any nation and when we remember that the world court, its predecessor within the global realm prosecutes only states, and not individuals, it will be seen that it is quite a feat. Three indices are the prerequisites for initiating any trial at the ICC. First, is a State which can send in an individual for trial if it so deems it fit. Second, a special prosecutor at the I.C.C. can begin a trial if the crimes occurred in the territory of a signatory to the ICC, even against the wishes of such state, while the third is that the Security Council of the UN can initiate proceedings even, against individuals from non-signatory states.

Prominent Indictees

Up to date, the present and former heads of State and Heads government that have been charged with war crimes include:

- German GroBadmiral and President Karl Donitz and Japanese Prime Ministers and Generals Hideki Tojo and Kuniaki Koiso in the aftermath of World War II.
- Former Yugoslav President Slobodan Milosevic, brought to trial for alleged war crimes, but died in custody in 2006 before the trial could be concluded after more than 4 years of proceedings.
- Former Liberian President Charles G. Taylor was also brought to the Hague charged with war crimes; his trial stretched from 2007 to March 2011; a verdict is still being awaited.
- Former Bosnian Serb President Radovan Karadzk was arrested in Belgrade on 18th July 2008 and brought before Belgrade's War Crimes Court a few days after. He was extradited to Netherlands, and is currently in the Hague, in the custody of the International Criminal Tribunal for the former Yugoslavia. The trial began in 2010 and is expected to continue until 2014
- Omar Al-Bashir, current head of state of Sudan for action in Darfur.
- Former Libyan Leader Muammar Gaddafi has been indicted for allegedly ordering the Killings of protesters and Civilians during the 2011 Libyan Civil War, but however, he was killed in October 2011 before he could stand trial.

Other equally prominent indictees include:

- Yoshijiro Umezu, a general in the Imperial Japanese Army.
- Seisho Itagaki, War Minister of the Empire of Japan.
- Hermann Goring, Commander in Chief of the Luftwaffe.

- Ernst Katten brunner and Adoff Eichmann – high ranking members of the SSS.
- Wilhelm Keitel – General Field Marshall, Head of the Oberkomimando der Wehrmacht
- Erich Raeder – Gro Badmiral, Commander in Chief of the Kriegsmarine.
- Albert Speer – Minister of Armanents and War Production in Nazi Germany 1942-45.
- Ratco Mladic, indicted for genocide amongst other violations of humanitarian law during the Bosnian War; he was captured in Serbia in May, 2011, and has been extradited to face trial in the Hague.

-Sourced from en.wikipedia.org/wiki/war crime 12/12/11

3.3 The International War Crimes Tribunals, The Landmine Treaty, And The International Criminal Court

According to Arend (1999), during the last decade of the twentieth century, a number of major new International Law initiatives took place, and together, they enhanced a continuing international impetus for legal rules. What Arend is referring to, cuts across a wide range of issues including the environment, human rights, and telecommunications but quite conspicuous in the evolution of three distinct new bodies, thus:

International War Crimes Tribunals for the former Yugoslavia and Rwanda, a treaty to ban landmines, and an agreement to create an International Criminal Court.

In essence, these developments reflected a move towards homogeneity, concomitant with the end of the Cold War, and growing respect for the upliftment of human rights discourse. Beyond that, they also indicated great input of the Non-Governmental Organisations (NGOs) such as Human Rights Watch, Amnesty International, Doctors withouts Borders, the International Rescue Committee, and many others. In a further meticulous reflection of the activities of these NGOs, they have actually moved to a level where their roles, even, as non-state actors, have become so visible in shaping world opinion, state actions, and international agreements.

International Tribunals for Yugoslavia and Rwanda

The Security Council of the U.N. set up the war time tribunals to prosecute those accused of being responsible for the mass murder and other crimes in the former Yugoslavia and Rwanda. These tribunals were the first setup since the Nuremberg and Tokyo courts put in place by the Allied Powers after the Second World War to try the Nazi and

Japanese war criminals. It is on record that by Resolution 827 of May 25, 1993, the International Tribunal for War Crimes for the former Yugoslavia was set up by the UN Security Council. This was due to the international outcry against perceived ethnic cleaning and murderous brutality which took place after the 1992 eruption of conflict in Bosnia. One astonishing issue in it was that it was established while war was on-going, and by powers not directly involved in the conflict. The Rwanda episode, which followed a similar pattern, equally had a Security Council backed authorization of the establishment of a Tribunal to checkmate the recalcitrant state actors. While the importance attached to human right reflected in the establishment of Yugoslavia's Tribunals, the existing international system, coupled with its realities was its constraints. In essence, it should be realized that the UN Peace Keeping force had minimal success in accomplishing their mission, as they could not halt a brutal civil war or prevent its widespread atrocities. Critics took the tribunal to be a substitute for the military intervention which was not only expensive, but unable to enforce compliance. After the appointment of eleven judges and the Chief Prosecutor, the first meeting of the tribunal was in May 1996. As good as the setting up of the Tribunal was, its first four years witnessed the trial of two men and within that period, committed $120M to its operations.

The Economist (1998:51-2 of Jan. 31), revealed that from that period, the activities of the court gathered momentum as more than 70 persons were indicted. The ineptitude of officials in Croatia, Bosnia and Serbia was a problem as those highly paid officials, most responsible for the commission of those heinous crimes have avoided the court's jurisdiction through their state's protection while scape goats were being turned in as pugns. Further, it is disturbing that while actually the establishment of the court signals a great deterrence to many irrational state and non-state actors, its process has been slovenly painful, as it works at snail speed, and despite its costly operations, its bureaucracy is equally a matter of concern.

The Landmine Treaty

The Landmine Treaty banned the production, stock-pilling, transfer, and the use of anti-personnel land mines. The Ottawa convention, after being signed by 133 countries, and ratified by 65 of them came into force on March 1st, 1999. It was astonishing because while initiative for such action used to be the preserve of super-powers in the past, it was the activities of a wide coalition of human rights groups, led by the International Committee of the Red Cross (IRC) and other organisations that launched an International Campaign to Ban Landmines (ICBL). Their actions were supported by the Canadian Government. The campaigners were hiked by the killing and maiming of thousands of unsuspecting citizens scattered over more than 70 countries – these

landmines, buried in the soil of countries that have been the scene of deadly domestic or international conflicts like Afghanistan, Angola, Bosnia, Cambodia, Croatia, Eritrea, Iraq, Mozambique, Namibia, Nicaraqua, Somalia, and Sudan. Their efforts yielded fruits when in 1997, the Campaign Organisers were awarded the Nobel Peace Prize, which indicated that non-governmental Organisations as well as private citizens could become effective international actors apart from the leadership or wishes of major states. It is hoped that countries in the global community would comply with the ban when, and if they find themselves in conflict.

The International Criminal Court

The evolution of the International Criminal Court was as a result of the meeting of a hundred and sixty countries in Rome in 1998, in which a hundred and twenty voted for the its creation. Located in the Hague, it is the institution responsible for trying individuals accused of genocide, war crimes, and crimes against humanity. The creation of the court was hailed by all lovers of fundamental human rights and the Secretary General of the United Nations, Kofi Anan was so elated that he described the court as a giant step forward in the March towards universal human rights and the rule of law. Further, its establishment was described as a worthy venture, capable of bringing into permanent existence an institution, whose need had been evident since the Nuremberg trials of Nazi War Criminals which was a fall-out of the Second World War. The international human rights groups, which were the greatest protagonist of its establishment, described it as an effective means of punishing those guilty of human rights abuses and a deterrent to such crimes in the future. One striking thing about the court is its ability to prosecute criminal acts by individuals on a global level, quite distinct from the existing International Court of Justice (ICJ) which deals only with disputes between states. Further, the principle of complementarily empowers the court to take actions where states in whose territory the crimes have taken place are reluctant to act.

A setback about the establishment of the court is that it is not universally supported, especially by the United States due to what she described as some reservations. She and other critics say it lacks accountability and oversight, because the court and its powerful prosecutor’s office will be accountable to almost no one, nor is it subject to check and balances that law enforcement in a democratic country requires. Critics were unrelenting in their observations about how fairness and equity could be the hallmark of the courts activities when, unlike the international court of justice, the International Criminal Court would not be answerable to the UN, while the ICC remains the ultimate judge of disputes concerning its judicial functions. Yet, the court, reserves the power to prosecute any accusation within the precept of “Crime of aggression”

whose definition is yet to be clarified, as well as a crime under the guise of yet to be cleared "severe damage to the environment." To further confirm the fears of the skeptics, prosecutors could launch investigations on any perceived offender, with the permission of only two or three judges, who could have been specifically targeted, particularly, those from countries that are yet to sign the treaty. Cynics still find it difficult to believe that while the court holds the power to supersede national judgements, even those democratically decided, they could not see any reason to try any perceived offender under an undefined concept while the definition of crimes is said to be sufficiently loose that an American President or Military Commander (George Bush, Bill Clinton, Collin Powell, Wesley Clark) could be a target for those who objected to the bombing campaigns against either Saddam Hussein of Iraq or Slobodan Milosevic of Serbia.

Rounding up their grouse against the court, they argued that the act setting up the court is capable of eroding the powers of the Security Council under the UN Charter, being the ultimate organ for the maintenance of international peace and security. However, as ably pholosophied by Hiat (1998), and corroborated by Rieff (1958), and Bolton (1999), respectively,

- *"to institutionalize a weakening of national sovereignty in favour of unelected human-rights groups on one end and unaccountable supranational courts and prosecutors on the other is fundamentally anti-democratic. To worry about such a trend is not to be pro-genocide."*

It is my conviction that within a foreseeable future, the global community will speak with one voice of acceptability for the structures put in place for global peace.

SELF-ASSESSMENT EXERCISE

Comment on the observations of the critics on the establishment of the International Criminal Court.

4.0 CONCLUSION

As aptly elaborated by Simmons (2007) & Best (1994) respectively, history has shown that the laws of war are traditionally more strictly applied to the defeated, as the victorious factions are placed in the role of policing themselves. While it can be argued that the victors may be less strict on their own forces, it can also be argued that the signing of the treaties involved in the laws of war implies a good-faith promise to adhere to them equally.

As with many facets of war, the aftermath and subsequent legal proceedings depend heavily on circumstances, and are different for each conflict.

5.0 SUMMARY

This unit has discussed laws of war and war crimes. It also discussed the enforcing institutions, with some case studies.

6.0 TUTOR-MARKED ASSIGNMENT

1. What is the significance of the law of war?
2. Pick two world Leaders, one African and the other elsewhere currently on trial at the international criminal court and narrate what led to it?
3. What obstacles confront the establishment of the International Criminal Court?

7.0 REFERENCES/FURTHER READING

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