COURSE GUIDE

POL853
INTERNATIONAL LAW AND DIPLOMACY

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INTRODUCTION

POL 853: International Law and Diplomacy is a three-credit unit course for postgraduate students of Political Science programme. The course provides an opportunity for you to understand the meaning and origin of international law and diplomacy, its evolution in Europe and some of the theories and conceptual arguments surrounding it. At the end of this course, you should be able to understand and explain the meaning of international law, diplomacy which evolved from European diplomatic practices, its use as instruments of foreign policy by, and for, modern states and its importance to international relations. You would also be expected to be familiar with the literature on international law, diplomacy and understand its role in interstate relations and world politics. It will also keep you abreast with the nature and functions of diplomatic principles and practices, principles of international law. Sovereignty and role of NGOs. This course guide also provides you with necessary information about the materials you will need to be familiar with for a proper understanding of the subject matter. It is designed to help you get the best of the course by enabling you to think and act productively about the principles underlining the issues you study and the projects you execute in the course of your study and there-after. It also provides some guidance on the way to approach your Tutor-Marked Assignment (TMA). You will receive on-the-spot guidance from your tutorial classes, which you are advised to approach with all seriousness. Overall, this module will fill an important gap in the study of international law and diplomacy as a sub-field of international relations and global politics which has been missing from the pathway of politics and international relations programmes offered in most departments.

COURSE DESCRIPTION

POL853 INTERNATTTTIONAL LAW AND DIPLOMACY (3 CREDIT UNITS)

This course is designed to provide comprehensive understanding of Political / legal foundations of international law and diplomacy. Meaning, sources and rationale for the study of international law, approaches, trends and nexus between international law, international relations and municipal law. Meaning, evolution, variants, of diplomacy, principles and practice of modern diplomatic practice. Diplomatic tools, post and personnel. Meaning of sovereignty, procedures for acquisition of territory. Treaties, terminologies and procedure for making treaty. Settlement of international dispute and critical study of the laws of treaties, of the sea and of the outer space. Case studies drawn from the foreign policies of states. Laws of war, war crimes, humanitarian intervention and the international criminal Court.

COURSE AIM AND OBJECTIVES

The general aim of this course is to provide indebt knowledge of Political cum legal foundations of international law and diplomacy in the contemporary society.

The specific objectives of the course are to:

a) Educate learners on the meaning, sources and rationale for the study of international law;
b) Educate learners on the approaches, trends and nexus between international law, international relations and municipal law;
c) Keep learners abreast with the meaning, evolution, variants, principles and practice of modern diplomatic practice, diplomatic tools, post and personnel and nexus between international law and diplomacy.

WORKING THROUGH THE COURSE

To complete the course, you are required to read the study units and other related materials. You will also need to undertake practical exercises for which you need a pen, a note-book, and other materials that will be listed in this guide. The exercises are to assist you in understanding the concepts being presented. At the end of each unit, you will be required to submit written assignment for assessment purposes.

By the end of the course, you will be expected to write a final examination.

THE COURSE MATERIAL

In all of the courses, you will find the major components thus:

1) Course Guide
2) Study Units
3) Textbooks
4) Assignments

STUDY UNITS

There are 16 study units in this course. They are as hereunder:

MODULE 1 The Nature of International Law

Unit 1 Contending meaning of international Law
Unit 2 Historical development of international law
Unit 3 Sources of international Law
Unit 4 Doctrine of international Law

MODULE 2 Theory and Practice of International Law

Unit 1 Major theories of international Law
Unit 2 The practice of international Law
Unit 3 Structural defects of international Law
Unit 4 Relevance of international law to diplomacy

MODULE 3 Modern Diplomatic Practice

Unit 1 Contending perspectives of diplomacy
Unit 2 Origin of diplomacy
Unit 3 Instruments of diplomacy
Unit 4. Types of diplomacy

MODULE 4. The Practice of Diplomacy

Unit 1 Objectives of diplomatic relations
Unit 2 Diplomatic mission
Unit 3. Diplomatic protocol and procedure
Unit 4 Diplomatic privileges and immunities in international law

As you can observe, the course begins with the basics and expands into a more elaborate, complex and detailed form. All you need to do is to follow the instructions as provided in each unit. In addition, some self-assessment exercises have been provided with which you can test your progress with the text and determine if your study is fulfilling the stated objectives. Tutor marked assignments have also been provided to aid your study. All these will assist you to be able to fully grasp knowledge of international law

TEXTBOOKS AND REFERENCES

At the end of each unit, you will find a list of relevant reference materials which you may yourself wish to consult as the need arises, even though I have made efforts to provide you with the most important information you need to pass this course. However, I would encourage you, as a post graduate student to cultivate the habit of consulting as many relevant materials as you are able to within the time available to you. In particular, be sure to consult whatever material you are advised to consult before attempting any exercise.

ASSESSMENT

Two types of assessment are involved in the course: the Self-Assessment Exercises (SAEs), and the possible answers to Assessment (SAEs) questions. Your answers to the SAEs are not meant to be submitted, but they are also important since they give you an opportunity to assess your own understanding of the course content. Tutor–Marked Assignments (TMAs) on the other hand are to be carefully answered and kept in your assignment file for submission and marking. This will count for 30% of your total score in the course.

TUTOR–MARKED ASSIGNMENT

At the end of each unit, you will find tutor-marked assignments. There is an average of two tutor–marked assignments per unit. This will allow you to engage the course as robustly as possible. You need to submit at least four assignments of which the three with the highest marks will be recorded as part of your total course grade. This will account for 10 percent each, making a total of 30 percent. When you complete your assignments, send them including your form to your tutor for formal assessment on or before the deadline.

Self–assessment exercises are also provided in each unit. The exercises should help you to evaluate your understanding of the material so far. These are not to be submitted. You will find all answers to these within the units they are intended for.

COURSE MARKING SCHEME

The following table sets out how the actual course marking is broken down.

Units	**Title of Work**	**Week Activity**	**Assignment (End-of-Unit)**
Course Guide			
Module 1	**The Nature of International Law**		
Unit 1	Contending meaning of International Law	Week 1	Assignment 1
Unit 2	Historical development of international law	Week 2	Assignment 1

Unit 3	Sources of International Law	Week 3	Assignment 1
Unit 4	Doctrine of International Law	Week 4	Assignment 1
Module 2	**Theory and Practice of International Law**		
Unit 1	Major Theories of International Law	Week 5	Assignment 1
Unit 2	The Practice of International Law	Week 6	Assignment 1
Unit 3	Structural Defects of International Law	Week 7	
Unit 4	The Relevance of International Law to Diplomacy	Week 8	Assignment 1
Module 3	**Modern Diplomatic Practice**		
Unit 1	Contending Perspectives of Diplomacy	Week 9	Assignment 1
Unit 2	Origin of Diplomacy	Week 10	Assignment 1
Unit 3	Instruments of Diplomacy	Week 11	Assignment 1
Unit 4	Types of Diplomacy	Week 12	Assignment 1
Module 4	**The Practice of Diplomacy**		
Unit 1	Objectives of Diplomatic Relations	Week 13	Assignment 1
Unit 2	Diplomatic Mission	Week 14	Assignment 1
Unit 3	Diplomatic Protocol and Procedure	Week 15	Assignment 1
Unit 4	Diplomatic Privileges and Immunities in International Law	Week 16	Assignment 1
	Revision	Week 17	
	Examination	Week 18	
	Total	18 Weeks	

FINAL EXAMINATION AND GRADING

There will be a final examination at the end of the course. The examination carries a total of 70 percent of the total course grade. The examination will reflect the contents of what you have learnt and the self–assessments and tutor-marked assignments. You therefore need to revise your course materials before-hand.

ASSESSMENT	**MARKS**
Four assignments (the best four of the assignments submitted for marking)	Four assignments, each mark out of 10%, but highest scoring three selected, then total of 30%
Final Examination	70% of overall course score
Total	**100% course score**

COURSE OVERVIEW PRESENTATION SCHEME

There are 16 units in this course. You are to spend one week on each unit. One of the advantages of Open and Distance Learning (ODL) is that you can read and work through the designed course materials at your own pace, and at your own convenience. The course material replaces the lecturer that stands before you physically in the classroom.
All the units have similar features. Each unit begins with the introduction and ends with reference/suggestions for further readings.

WHAT YOU WILL NEED IN THE COURSE

There will be some recommended texts at the end of each module that you are expected to purchase. Some of these texts will be available to you in libraries across the country. In addition, your computer proficiency skill will be useful to you in accessing internet materials that pertain to this course. It is crucial that you create time to study these texts diligently and religiously.

TUTORS AND TUTORIALS

The course provides sixteen (16) hours of tutorials in support of the course. You will be notified of the dates and locations of these tutorials, together with the name and phone number of your tutor as soon as you are allocated a tutorial group. Your tutor will mark and comment on your assignments, and watch you as you progress in the course. Send in your tutor-marked assignments promptly, and ensure you contact your tutor on any difficulty with your self-assessment exercise, tutor-marked assignment, and the grading of an assignment. Kindly note that your attendance and contributions to discussions as well as sample questions

are to be taken seriously by you as they will aid your overall performance in the course.

ASSESSMENT EXERCISES

There are two aspects to the assessment of this course. First is the Tutor-Marked Assignments; second is a written examination. In handling these assignments, you are expected to apply the information, knowledge and experience acquired during the course. The tutor-marked assignments are now being done online. Ensure that you register all your courses so that you can have easy access to the online assignments. Your score in the online assignments will account for 30 per cent of your total coursework. At the end of the course, you will need to sit for a final examination. This examination will account for the other 70 per cent of your total course mark.

TUTOR-MARKED ASSIGNMENTS (TMAs)

Usually, there are four online tutor-marked assignments in this course. Each assignment will be marked over ten percent. The best three (that is the highest three of the 10 marks) will be counted. This implies that the total mark for the best three assignments will constitute 30% of your total course work. You will be able to complete your online assignments successfully from the information and materials contained in your references, reading and study units.

FINAL EXAMINATION AND GRADING

The final examination for POL.853 will be of two hours duration and have a value of 70% of the total course grade. The examination will consist of TMAs and POPs which will reflect the practice exercises and assignments you have previously encountered. All areas of the course will be assessed. It is important that you use adequate time to revise the entire course. You may find it useful to review your tutor-marked assignments before the examination. The final examination covers information from all aspects of the course.

HOW TO GET THE MOST FROM THIS COURSE

1. There are 16 units in this course. You are to spend one week in each unit. In distance learning, the study units replace the university lecture. This is one of the great advantages of distance learning; you can read and work through specially designed study materials at your own pace, and at a time and place that suites you best. Think of it as reading the lecture instead of listening to

the lecturer. In the same way a lecturer might give you some reading to do. The study units direct you when to read and which are your text materials or recommended books. You are provided exercises to do at appropriate points, just as a lecturer might give you in a class exercise.

2. Each of the study units follows a common format. The first item is an introduction to the subject matter of the unit, and how a particular unit is integrated with other units and the course as a whole. Next to this is a set of learning objectives. These objectives let you know what you should be able to do, by the time you have completed the unit. These learning objectives are meant to guide your study. The moment a unit is finished, you must go back and check whether you have achieved the objectives. If this is made a habit, then you will significantly improve your chance of passing the course.
3. The main body of the unit guides you through the required reading from other sources. This will usually be either from your reference or from a reading section.
4. The following is a practical strategy for working through the course. If you run into any trouble, telephone your tutor or visit the study centre nearest to you. Remember that your tutor's job is to help you. When you need assistance, do not hesitate to call and ask your tutor to provide it.
5. Read this course guide thoroughly. It is your first assignment.
6. Organise a study schedule - Design a 'Course Overview' to guide you through the course. Note the time you are expected to spend on each unit and how the assignments relate to the units.
7. Important information; e.g. details of your tutorials and the date of the first day of the semester is available at the study centre.
8. You need to gather all the information into one place, such as your diary or a wall calendar. Whatever method you choose to use, you should decide on and write in your own dates and schedule of work for each unit.
9. Once you have created your own study schedule, do everything to stay faithful to it.
10. The major reason that students fail is that they get behind in their coursework. If you get into difficulties with your schedule, please let your tutor or course coordinator know before it is too late for help.
11. Turn to Unit 1, and read the introduction and the objectives for the unit.
12. Assemble the study materials. You will need your references for the unit you are studying at any point in time.
13. As you work through the unit, you will know what sources to consult for further information.

14. Visit your study centre whenever you need up-to-date information.
15. Well before the relevant online TMA due dates, visit your study centre for relevant information and updates. Keep in mind that you will learn a lot by doing the assignment carefully. They have been designed to help you meet the objectives of the course and, therefore, will help you pass the examination.
16. Review the objectives for each study unit to confirm that you have achieved them. If you feel unsure about any of the objectives, review the study materials or consult your tutor. When you are confident that you have achieved a unit's objectives, you can start on the next unit. Proceed unit by unit through the course and try to space your study so that you can keep yourself on schedule.
17. After completing the last unit, review the course and prepare yourself for the final examination. Check that you have achieved the unit objectives (listed at the beginning of each unit) and the course objectives (listed in the course guide).

CONCLUSION

This is a theoretical as well as empirical course and so, you will get the best out of it if you can read wide, listen to as well as examine international arbitration, wars, and get familiar with international law and diplomatic affairs and reports across the globe.

SUMMARY

This Course Guide has been designed to furnish you with the information you need for a fruitful experience in the course. In the final analysis, how much you get from it depends on how much you put into it in terms of learning time, effort and planning.

I wish you all the best in POL853 and in the entire programme!

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MODULE 1

Unit 1 Contending meaning / conception of international Law
Unit 2 Historical development of international law
Unit 3 Sources of international Law
Unit 4 Doctrine of international Law

Unit 1 Contending Meaning/Conception of International Law

Unit Structure

1.1 Introduction
1.2 Learning Outcomes
1.3 Meaning of international law
1.4 Western conception of international law
1.5 Communist conception of international law
1.6 Third world conception of International Law
1.7 Self-Assessment Exercises (SAEs)
1.8 Summary
1.9 References/Further Readings/Web Sources
1.10 Possible Answers to Self-Assessment Exercises (SAEs)

1.1 Introduction

This unit is significant as it provides background knowledge on the contending meaning of international law. It demonstrates the various conception of the study with a focus on the meaning of international law. The main section of this unit traces the western, communist and third world conception of international law.

1.2 Learning Outcomes

By the end of this unit, you will be able to:

- understand the nature of international law
- know the meaning of international law
- understand the different conception of international law

1.3 Meaning of international law

Introduction

International Law is law just as customary law is law, as common law and statutory law are laws but each operate in every case in its peculiar way. The nature of international law arises from a wrong perception of what international law is supposed to be. In customary law, the emphasis is often on norms and justice. In statutory law, the emphasis is often on command and authority. In international law, it takes elements of both command on the one hand, authority on the other and finally justice.

The central argument is that these attributes of international law if it is to be understood have to be linked with the nature of international community. The international community on the one hand is not interstate community, on the other hand it is not a world community. Hence, international law is not necessarily international command because there is no one apex of international authority from where the command can be given. Equally, international law is not the same thing as international justice. It relates to justice as a reference point and ideal, the application of which responds effectively at the both the environment and the circumstance at hand.

In case of command, international law can go absolute. It may command by delegation for example the Iraq and Kuwait conflict was taken to the United Nations and the U.N made up at that time of 154 members nations could not have moved entirely into allowing Iraq to move into Kuwait territory; hence, they agreed to stop Iraq from dominating or annexing Kuwait oil field. This delegation to command in international law is always given to that board or agent that is capable of executing the command. In other words, if that agent or board makes himself available for the task; international law is deemed to have delegated that power to it. This underscores the role of United States and its allies in the Iraq versus Kuwait conflicts.

The argument is that the delegates must be capable of performing his duty for which he is chosen. For example, neither Equatorial Guinea nor Nigeria could never have been expected to receive delegated authority to deal with Iraq case nor the Israelites under the Palestinan crises then, is expected to receive such delegation in a case of Iraq. In such a case, international law would have seen that delegated authority ab-initio for the simple reason that Equatorial Guinea cannot stand the power of Iraq. Therefore, if such decision is reached, it will at the beginning frustrate the efforts and incidentally delegation stops at that point at the first delegate.

In other words, if you delegate power, the delegated power stops with the person you are delegating the power to who may not delegate the power to another person without proper power from the delegation. In this case, if he gets that clearance to sub-delegates to another, Then, in law, it is not sub delegation, it is a new delegation skipping the first delegation, Hence, in law it is called the principle of delegatus non pantus delegaree. The real nature of international law lies probably with two concepts (i.e) commands and justice. On the other hand, if we follow power or dominant theory to explain international influence. That is to say there exists divergent views and attitudes of people in the way they see, interpret and understand international law. Protagonist defers on their assumptions but "they both assume that international law is a subject on which any one can form his opinion intuitively, without taking the trouble, as one has to do with other subjects, to inquire into the relevant facts" (Brierly,1944:2).

1.3 **Meaning of International law**

International law is not necessarily international justice. It is not international command either. It does not necessarily stipulate conditions for giving every nation its dues. In application, it is sensitive to this factors that make for communal justice which is higher than communicative and mathematical justice. The only type of justice it is not higher than is natural justice, it encompasses them all and even goes further. By justice we mean "title to claim". Therefore, international law does not mean a body of rules stipulating or rather awarding claims to people or nations on the basis of ownership or title. It cannot be a command either because there is no institution that command the comity of nations in the world.

The problem of sanction is unique in international law. For example, in a modern state we are accustomed to find a legislature which enacts the law; a judiciary which interprets and tries violators of the law; and an executive body which among other things, enforces the decisions of the legislature and the judiciary. In international law, these features are almost wholly lacking. To a large extent, states create international law for themselves and need not accept a new rule unless they agree to it, they need not appear before an international tribunal unless they agree to do so, and there is no centralized executive body charged with the task of enforcing the law.

The implication is that if one state commits an illegal act against another state, and refuses to make reparations or to appear before an international tribunal, there is only one sanction or option in the hands of the injured state: Self -help. Self- help exists as a sanction in all legal systems especially when society has lost faith with custodians of the

law. In Nigeria, some State Governors in the likes of Simon Bako Lalong of Plateau state and Samuel Otom of Benue state have respectively advised their subjects on year 2022 to save themselves through self- help from the hands of Fulani Herdsmen who constantly unleash mayhem on their citizens.

In primitive law (eg) in English law before the Norman conquest, most sanctions involved the use of self -help in one form or another. Even in modern English law an individual may defend himself against assaults, retake property which has been stolen from him, evict trespassers from his land and terminate a contract if the other party has broken a major term of the contract. But in modern societies, self -help has become the exception rather than the rule, whereas in international law it has remained the rule.

At one time states could even go to war to enforce their legal rights. However, this is no longer advised, with certain exceptions such as self -defense against armed attack. Other methods of self -help includes; Retorsion and Reprisals. Retorsion is a lawful act which is designed to injure the wrong- doing state through cutting off economic act while Reprisals are act which would normally be illegal but which are rendered legal by a prior illegal act committed by other state. For example, if state A expropriates property belonging to state B's citizen without compensation, state B can retaliate by doing the same to property of state A's citizens.

The argument is that a state is entirely free not to belong to the groups who obey the dictates of international law and still loose not more for it. For instance, if you look through the roll call of states in United Nations, you hardly see Switzerland whereas the United Nations is assumed to be the highest authority in international law in terms of power and demonstration of influence in international politics.

If there is still need for definition, then let us discuss five definitions that equally represents the views of different scholars of international law. J.G Starke in his introduction to international law defined it as " that body of laws which composed for a greater part of the principles and rules of conduct which nation's feel themselves bound to observe in their relations with each other. Note-that the definition has neither mentioned authority or command, nor, has it denied authority and command.

Max Sorenson in his " Manual of International Law: avers that international law connotes that “system of law whose primary function (not sole or clear function) is to regulate the relations of states with one another". This definition gives international law a night watchman role. It subsumes that states in their dealing with one another are free to go

any height provided their dealing do not impinge on the rights of other states or threaten world peace. This is to say, that the stronger a state is, the fewer the laws it wants and the weaker a state is, the more law the state wants (eg), the law of piracy or law of Territorial Waters stipulates earlier rules of 3 nautical miles was shifted to 12 nautical miles for ships sailing in the high seas for fishing purpose. Apart from these laws, Soviet Union later maintained that all waters are for all mankind while the United States' territorial rule is areas you can achieve by hot pursuit. This informed Emperor Alexander's gimmick thus " Because I do my own stealing with a basket, I am called a thief, because you steal with a steam engine you are called a steamer".

According to Hans Kelsen, international law is " the law regulating the intercourse of states which doesn't take its origin from individual nation's but from customs and international treaties and which is considered binding upon civilized nations in their mutual relations with one another. For instance, the definition captures the development of international airways, law of traffic light which insists that " A plane must ply at night by brake light, by day with red head light. The law arose because of the collusion of British ship and Argentina ship and in the settlement, the law was made and today it became a part of international law. International law in this case becomes a received law.

Phleder defined international law as:

Those rules of international conduct which have met general acceptance among the community of nations. It rests upon the common consent of civilized communities.

Looking at these definitions, one can say that international law" is a system of rules founded upon long established customs and acts of states and international agreements not inconsistent with the principles of justice which Christians and civilized states recognize as obligatory. This to a large extent displays that international law "is of Christian origin which is derived from Roman Law. It must, however, be emphasized that before such rules have binding effect, they must be generally acceptable and be specific as held by the Permanent Court of International Justice in LOTUS CASE (1927)" (Egbewole,2013)

1.4 Western Conception of International Law

Historically international system in the mid-1860s, was dominated by absolute monarchies hostile to any idea of representative government (Gustavo Gozzi,). The unsustainability of this scenario prompted the 1862 Brussels conference of Association Internationale pour le Progrès des Sciences Sociales, with G. Rolin and J. Westlake as its most

prominent and vitalizing members. The association undertook to promote liberal principles and ideas of tolerance. The same goals inspired, in 1868, the founding of the international-law journal Revue de droit international et de legislation compare (Koskenniemi, 2002:14). Thereafter, in 1872, this group of liberal thinkers joined with J. C. Bluntschli, who proposed a charter for what would become the Institut de Droit International in Ghent. Bluntschli took a historical approach he had developed through the teaching of Savigny. The innovation in this approach assisted in conceiving the law as the expression not of a sovereign will but of a popular consciousness (Bluntschli, 1868). Hence-forth, international law was to extend its reach across all of Europe and beyond (Bluntschli,1894:81).

This development brought to fore the basic elements of international law in the second half of the 19th century: International law hence – forth, was developed as the expression of a shared European consciousness and culture devoid of monarchist rule instrument. This evoked the consciousness forming the substratum of international law development within an area geographically bounded by the community of European peoples, which meant the area of "civilized" peoples. The implication is that international law was the legal consciousness developing within the community of the European peoples that formed the basis of which is in essence designated an international law of the peoples of Europe.
International law therefore with all its universalizability today, clearly took its origin from a Western mold, for it "sprang from the family of Christian and European peoples to other Muslim societies and the global community.

1.5 Communistic Conception of International Law

In the profile of Communist/Marxist legal theorist, Evgeny Pashukanis is perhaps the most outstanding due to his contribution. Most of the 'revivals' in Marxist legal theory have been centered around the 'rediscovery' of his thought, and he remains a key reference point. Pashukanis was a Bolshevik jurist who came to prominence following the Russian Revolution. "He was the main Soviet legal theorist in the 1920s and 1930s, establishing a loyal school and dominating the Soviet legal academy" (Robert Knox,2011:31).

For Pashukanis, any account of law had to look at what differentiated it from other social forms. Such differentiation could not lie in law's 'function' in regulating social life, since we know that "collective life exists even among animals', yet 'it never occurs to us to affirm that the relationship of bees or ants is regulated by law" (Pashukanis,1980). Instead, the correct starting point was to note that 'under certain

conditions, the regulation of social relationships assumes a legal character' (Ibid).

Henceforth, our task is to analyse what this 'character' (or form) of law is, and what conditions gave rise to Marxist conception of international law. This brings to the fore, a discuss of class struggles with a positive theory of law, which invariably features history of economic forms with a more or less weak legal outlook. In this context, we present Marxist perception of international law. Aligning with Marx, Pashukanis argued that the conditions that give rise to the legal form are those of commodity exchange. In order for commodities to be exchanged, their 'guardians must recognize each other as owners of private property'; this 'juridical relation, whose form is the contract mirrors the economic relation" Accordingly, each commodity owner must recognize the other as an equal, in an abstract, formal sense. But since within any exchange relations there is the possibility of dispute, hence, the need to regulate these disputes, and it is here that law arises. For Pashukanis, the legal form is that which regulates disputes between formally equal, abstract individuals. The argument is that since capitalism came to dominate, so did commodity exchange, and therefore law. In his account of international law, Pashukanis combined this commodity form theory with Lenin's account of imperialism.

Pashukanis argued that international law was in fact the oldest form of law, since one could trace rudimentary international legal institutions 'to the most ancient periods of class and even pre class society'(ibid). This is because commodity exchange initially took place not between individuals but amongst communities. However, as with domestic law, it was only with capitalism that international law came to stay. This is because capitalism witnessed the extension and blossoming of commodity exchange internationally. Secondly, the independent sovereign state, generally seen as the central subject of international law, was itself a product of the development of capitalism. This began with the formation of absolute monarchies, whose economic basis was 'the development of mercantile capital'(ibid:173). With the bourgeois revolutions, this process was fully completed. These developments separated 'state rule from private rule, and transformed political power into a special force and the state into a special subject', a subject 'not to be confused with those persons who were the bearers of state authority'(ibid:74). International law therefore "is a product of international imperialism. international law becomes universal, permeating 'every international incident and the very fabric of the international system" (Miéville, 2005).

1.6 Third World Conception of International Law

A lot of disagreement exists as to the precise meaning of third world. Some scholars use it to refer to the "new" states of Africa and Asia, without including Latin America.

Others extend its meaning to “include all those states which basically by reason of the stage of their economic development, but also because of differences in culture, tradition, current political regime and national interests-are distinct from both the economically developed states of the West and the developed or semi-developed states of the Soviet bloc” (Balandier (ed).1956). Third World therefor refers to a group of countries with certain common features. Whereas, the developed capitalist countries constitute the first world, the socialist ideological based countries are called the second world. The underdeveloped countries in Africa, Asia and Latin American that were subjected to colonial domination are called the third world. The superpowers are categorized as the first world, other developed countries including United Kingdom, Germany, Australia and Canada are classified together as the second world. “The third world consists of underdeveloped countries of Latin America, Africa and Asia” (Manor, 1991).

The assertion that following the increasing number of actors in international law and challenges on its essence, the Western developed countries have continued to construct and reconstruct the norms of international law in their favour to the detriment of the third-world countries has attracted a debate especially from third world scholars. Hence, the need for third world conception of international law in order to address the injustices against the third world due to the hijacking of international law by the developed countries. It is in this context that Chimni points out that “the dismal experience of the vast majority of third-world peoples and states in recasting colonial international law as universal international law in the last six decades has compelled a new generation of scholars to revisit the history of international law in a bid to find answer” (Chimni,2007). He further insists that international law is playing a crucial role in helping to legitimize and sustain the unequal structures and processes that manifest themselves in the growing north-south divide. Indeed, “international law is the principal language in which domination is coming to be expressed in the era of globalization” (Chimni,2006).

International law in the context of the people of third-world countries, have been replete with accounts of dominations, manipulations and subjugation, schemed and master-minded by the Western world.

International law has been constructed and reconstructed within this period to favour the Westerners or to protect their activities and undertakings in an unequal world. This is transparently reflected by the general equality-gap between the Global North and Global South.

According to Ikejiaku, (2016) "international law from the early stage, is a creation guiding the activities of the States of the North and the South that are unequal in all respect – political, economic and military, etc. This has been a cause for challenge by the States of the South". He states further that international law was used by the Westerners in the past to legitimize colonialism and all their acts of exploitation in the developing countries; whereas in the modern period, international law is predominantly used to protect, project and promote (3Ps) the interest of the Westerners. This includes their multinational businesses scattered globally, and protectionist bid against terrorist attacks.

Self-Assessment Exercises (SAEs) 3

Attempt these exercises to measure what you have learnt so far. This should not take you more than 7 minutes.

1. Define international law according to the opinion of J.G Starke.

2. Using a definition, justify the assertion that international law is of Christian origin.

3. Discuss the option open to states when international law fails to address conflicts?

1.7 Summary

The unit examined contending meaning of international law and its various conception with emphasis on western, communist to third world view of international law.

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1.9 Possible Answers to Self-Assessment Exercises (SAEs)

1. *J.G Starke in his introduction to international law defined it as " that body of laws which composed for a greater part of the principles and rules of conduct which nation's feel themselves bound to observe in their relations with each other*

2. *International law" is a system of rules founded upon long established customs and acts of states and international agreements not inconsistent with the principles of justice which Christians and civilized states recognize as obligatory. This to a large extent displays that international law "is of Christian origin which is derived from Roman Law.*

3. If one state commits an illegal act against another state, and refuses to make reparations or to appear before an international tribunal, there is only one sanction or option in the hands of the injured state: Self - help. Self- help exists as a sanction in all legal systems especially when society has lost faith with custodians of the law.

UNIT 2 HISTORICAL DEVELOPMENT OF INTERNATIONAL LAW

Unit Structure

2.1 Introduction
2.2 Learning Outcomes
2.3 Slave Trend Origin of International law
2.4 Ancient Greek Origin of International law
2.5 Medieval / Renaissance Origin of International law
2.6 Westphalia Origin of International Law
2.7 Self-Assessment Exercises (SAEs))
2.8 Summary
2.9 Possible Answers to Self-Assessment Exercises (SAEs
References /Further Readings/Web Source

2.1 Introduction

In the previous unit a background knowledge on the subject of international law was discussed with a focus on the rationale for the study as well as the meaning of international law. In this unit, we shall discuss historical origin /development of international law. In the process emphasis shall be on Slave Trend, Ancient Greek, Medieval / Renaissance and Westphalia origin of international law.

2.2 Learning Outcomes

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

- understand historical development of international law.
- slave trend origin of international law
- understand ancient greek origin of international law.
- understand renaissance and westphalia origin of international law.

2.3 Slave Trends Origin of International Law

Slavery existed in antiquity and formed one of the major characteristics of ancient society. It was therefore recognized by the ancient law of nations. The Church gave its blessings and theologians writing in support propounded three theories. Firstly, they claimed that slavery was the result of original sin and of the wickedness of former generations as a retribution for which divine vengeance allowed the enslavement of one people by another" (Augustines, 1947). The second theory was that “certain races were born slaves. Thus, Ferdinand's Privy Council

claimed in 1513 that the servitude of the 'Red Indians' was ordained by the laws of God and man. The third theory was that" a conqueror waging a just war could enslave his prisoners. This opened the way for the strong Christian to enslave the weak "infidel" if only to Christianize him".

International law in its present form developed around the 16th century when the African slave trade was growing roots. The Europeans were the beneficiaries and Africans, the victims. The law which was directed towards the promotion of European interests naturally gave recognition to an expanding business that proved very rewarding. Most writers like Gentili (1552-1608) and Wolff (1679-1754) without specifically mentioning the African slave trade followed the traditional line but a few dissentients, like Bodin (1530-1596) thought that slavery was contrary to the Law of Nature. Bynkershoek (1673 —1743) who lived through some of the worst horrors of the slave business referred to it approvingly. He wrote:

But since slavery has now generally fallen into disuse among Christians, it is no longer employed against war captives. Yet we may make use of it if we so desire, and indeed at times we do against those who exercise the right against us. For this reason, the Dutch usually sell as slaves to the Spaniards the people of Algiers, Tunis and Tripoli that they capture in, the Atlantic or in the Mediterranean, for the Dutch do not use slaves except in Asia, Africa, and America. (questionum jurispublic:11)

In promoting the slave trade, European states employed those techniques and principles of international law that were convenient and specifically developed others to facilitate it. A 19th century international lawyer wrote that the slave trade was "once considered not only a lawful but desirable branch of commerce, participation in which was made the object of wars, negotiations, and treaties, between different European States" (wheatley, 1964). The Anglo-Spanish Treaty of Utretch 1713, which concluded the war of Spanish succession, raised transactions in African slaves into definite international obligations. Under it, Britain obtained the valuable monopoly (which was made over to the South Sea Company) of supplying 144,000 slaves "of both sexes, and of all ages, at the rate of 4,800 negroes" a year over a period of years. The price of each slave "of regular standard of seven quarters not being old or defective" was "331/3 escudos"(see treaties of peace alliance between Britain and other powers:375-399).

Oppenheim maintains, correctly, that "(i) it is difficult to say that customary international law condemns two of the greatest curses which man has ever imposed upon his fellow-man, the institution of slavery and the traffic in slaves. (Oppenheim, 1963:733). In the Antelope'

(Wheaton's report:66) the U.S. Supreme Court found that since Europe and America had embarked on the slave trade for two centuries without opposition and without censure, no jurist could hold that it was illegal or that those who engaged in it might be punished or deprived of their property (slaves).

In view of circumstances of modernity, what was legal gradually became condemned. The Church again took the lead and the law reluctantly followed suit. In the English case of Sommersett versus Steward (English Report, kings' bench:499) counsel reviewed the ancient authorities on the slave trade and slavery. Sommersett had been detained in a ship on the' Thames pending his return to the West Indies. A writ of Habeas Corpus was brought on his behalf in the English court.

Chief Justice Mansfield ruled inter-alia:

The state of slavery is of such a nature, that it is incapable of being introduced on any reasons, moral or political, but only (by) positive law, which preserves its force long after the reasons, occasion, and time itself from whence it was created, is erased from memory; it's so odious, that nothing can be suffered to support it but positive law. Whatever inconvenience, therefore, may follow from (this) decision, I cannot say this case is allowed or approved by the law of England; and therefore, the black must be discharged (British Act, 1808)

His lordship gave his judgment in disregard of prognostications by the defendant's counsel that freedom for the slave might lead to a similar demand by 14,000 slaves then in England, that a large population of slaves will be attracted to England and that dire consequences would follow in the colonies with large slave populations. In insurance cases, subsequently brought before the same judge, he treated slaves thrown overboard or killed while forcefully demanding freedom as mere chattels for which damages was payable and not as cases of homicide.

At the inception of the 19th century, the slave trade was abolished by the municipal law of certain states and treaties were concluded to that effect. With the Treaty of Paris 1814, the eight powers participating agreed to suppress "the sin of the slave trade" and by a separate article Britain and France agreed to canvass for other nations to abolish it. *The parties to the Congress of Vienna daubed the slave trade as being "repugnant to the principles of humanity and of universal morality" and bound themselves to take measures to eradicate it*. As between Britain, Sweden, the Netherlands and Portugal, there were provisions for the right of visit and search either generally or within geographical limits and for trials by mixed commissions. 'The trade thus became criminal vis-a-vis the nationals of certain states but not others.

In The Diane Lord Stowell held that England could not set itself up as the legislator and *custos morum* of the world and thus could not in a bid to stop the trade interfere with the shipping of other nations with whom it had no treaty rights. In The Louis 1817, the Court of Admiralty insisted that slave trading was not piracy. It held that no one nation had a right to force its way to the liberation of Africa by trampling on the independence of other states, or to procure an eminent good by unlawful means, or to press forward to a great principle by breaking through other great principles that stood in the way.' (Dodson's Admiralty report: 210).

Following the decision in The Louis, "Britain which had strong economic interests in abolition, concluded treaties with the major maritime powers conferring reciprocal rights of search" (Badapest,1966:193). There were also treaties with lesser powers, like Brazil, banning the trade. Treaties with the Imam of Muscat in 1822 and with Seyyid Siad in 1845, authorized Britain to search and seize slave-carrying ships in an area extending from the Indian Ocean on the eastern coasts of Africa on the Red Sea and the Persian Gulf. Between 1840 and 1860 Britain also, concluded with West African Kings and Chiefs treaties of commerce which at the same time banned the slave trade. In 1849-1850 Britain was party to 24 treaties for the suppression of the trade, ten of these provided for a right of search and for mixed tribunals, 12 gave the right of search with trials only by the national tribunals of the accused, while two (U.S. and France) gave neither the right of search nor mixed tribunals but provided for naval cooperation.

(Phillemore: 322-333) "Freed slaves" were not always free for in Fernando Po,s they were turned into labourers under semi-slavery conditions. The Anglo—American treaty of 1862 was an effective counteraction against evasions by nationals whose states had officially banned the trade. Where a merchant vessel was suspected of engaging in the slave trade, the treaty provided for the right to detain, search, seize and send it in for adjudication by a cruiser of either power specifically authorized for the purpose. The right was however restricted to 220 miles from the African coast and southward of 32° N and within 30 leagues of Cuba and never within territorial waters. There was room for evasions. It also provided for mixed tribunals for the adjudication of vessels but persons were to be sent home for trial by their national states. Condemned vessels could be broken up or commissioned by the state whose cruiser effected the seizure. Slaves on board were to be delivered to the state for liberation.

The American ban was complemented by the Emancipation Proclamation of President Lincoln in the same year. In 1873 the Sultan

of Zanzibar agreed to abolish the trade. The growth of British imperial power in East Africa and the Sudan during the last quarter of the 19th century ensured a drastic reduction in Arab participation. Treaties of search and seizure were concluded with Egypt in 1877, Turkey in 1880 and Persia in 1882.

By the 1860s the principle and practice of abolition were accepted by so many states that a rule of international law banning the trade was generally recognized although there were breaches. The Treaty of Berlin 1885 had an article provision on the illicit trade:

Art. IX: Seeing that trading in slaves is forbidden in conformity with the principles of international law as recognized by the Signatory Powers, and seeing also that the operations, which, by sea or land, furnish slaves to trade, ought likewise to be regarded as forbidden, the Powers which do or shall exercise sovereign rights or influence in the territories forming the conventional basin of the Congo declare that these territories may not serve as a market or means of transit for the trade in slaves, of whatever race they may be. Each of the Powers binds itself to employ all the means at its disposal for putting an end to this trade and for punishing those who engage in it (Hertlet 1896: 96).

Although the slave trade was by 1885 generally recognized as being contrary to international law, the parties to the Convention agreed to suppress it only in the Congo Basin. There was no machinery for its abolition, this being left to individual states except where obligations had been incurred in bilateral treaties. The General Act of the Brussels Conference Relative to the African Slave Trade 1890 reaffirmed that the slave trade was illegal in international law and made specific stipulations for its abolition. These induced the intensification of colonial administration, the construction of armed posts for the suppression of the trade, the improvement of communications and the restrictions in the sale of firearms and ammunition.

Under Article XVII:

A strict supervision shall be organized by the local authorities at the ports and in the countries adjacent to the coast, with the view of preventing the sale and shipment of slaves brought from the interior, as well as the formation and departure from the interior of man-hunters and slave-dealers.

Freed slaves were to be repatriated, if possible and provided with the means of subsistence. Abandoned children were to be cared for. The signatories agreed to reciprocal rights of visit and search but France declined to ratify this. The embarkation of Negro passengers was to be

closely scrutinized and Negro children embarking ships had to be accompanied either by relations or respectable persons. This was calculated to prevent exportation of Black slaves. An international office was under the treaty set up in Zanzibar to supply information on the repression of the trade and consolidate on documents to this effect.

The treaty was to operate within a zone of the Indian Ocean and not generally and only vessels of "less than 500 tons burthen" could be searched. It was thus still possible for Europeans to evade detection. If boats described by the treaty as "native vessels" were found carrying slaves, they were to be captured and slaves found in them were entitled to liberty. The only African country invited was Zanzibar which, through the insistence of Britain and Germany, was represented by Sir John Kirk and M. Guillaume Gohring. On the other hand, Congo Free (sic) State under the personal rule of the Belgian King, was represented as a sovereign country by the King's nominees.

In the Muscat Dhows Arbitration Britain successfully established that France could not register as French vessels belonging to the save-trading subjects of international law and Colonialism in Africa the Sultan of Muscat, an act that exempted them from the Sultan's jurisdiction. The slave trade was still carried on in spite of the Berlin and Brussels treaties, though on a much-reduced scale. The parties to the Convention of St. Germain 1919 which replaced the Treaty of Brussels, as between the signatories, professed to lay down "principles which should guide their commercial and civilizing action in the little known or inadequately organized regions of a continent where slavery and the slave trade still flourished".

Under Article 11

The Signatory Powers exercising sovereign rights or authority in African territories will continue to watch over the preservation of the native populations and to supervise the improvements of the conditions of their moral and material wellbeing They will in particular, endeavour to secure the complete suppression of slavery in all its forms and of the slave trade by land and sea. (League of national treaty, Vol. ix: 253).

The Mandate system set up by the Paris Peace Conference in 1919 required that the mandatories should suppress the slave trade and slavery in territories assigned to them. The work of the Temporary Slavery Commission appointed by the League Council in 1924 led to the Slavery Convention of 1926, which for the first time defined both the slave trade and slavery.

According to this Convention.

Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised; the slave trade includes all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and in general, every act of trade or transport in slaves.

The parties bound themselves to suppress the trade, abolish slavery in all its forms and prevent forced labour from developing into conditions analogous to slavery. Article 5, however, allowed reservations with regard to "some or all of the territories placed under (the) sovereignty of a party. The definitions of slavery and the slave trade were endorsed in the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery 1957 but there was an addition to the latter of the following — "by whatever means of conveyance", thus including transportation by air. A slave was also defined as "a person in such condition or status (slavery)". Unlike the 1926 convention, no reservation could be made to exclude any area for which a party was responsible in international relations such as a colony, a trust territory or other non-metropolitan territory.

The ban was extended to debt bondage, serfdom, other institutions concerning transfer or inheritance of wives and the exploitation or delivery of young persons with a view to exploiting their labour. The United Nations has also directed its attention to practices akin to slavery such as aspects of colonialism, apartheid and forced labour (U.N.T.S Vol. 320:19).

The Charter of the United Nations provides in general terms for respect for fundamental human rights. These are elaborated in the Universal Declaration of Human Rights which is "a common standard of achievement for all peoples and all nations." Under Article I, "All human beings are born free and equal in dignity and rights." In Article 4 "No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms. The Universal Declaration of Human Rights has through its adoption in constitutions and in subsequent conventions become part of international customary law. The International Covenant on Civil and Political Rights, a legal instrument, states in Article 8: "No one shall be held in slavery; slavery and the slave trade in all their forms shall be prohibited. . . No one shall be held in servitude." Under the Geneva Convention on the Law of the Sea (The High Seas Convention, Article 13) "Every state shall adopt

effective measures to prevent and punish the transport of slaves in ships authorized to fly its flag, and to prevent the unlawful use of its flag for that purpose. Any slave taking refuge on board any ship, whatever its flag, shall, ipso facto, be free." Full respect for fundamental human rights should ensure the complete eradication of slavery and institutions akin to it. It can be expected that the United Nations will continue to exert itself for the achievement of these objectives.

2.4 Ancient Greek Origin of International Law

A cursory look at the origin of international law is traceable to antiquity. This is akin to peace treaties signed between the Mesopotamian city-states of_Lagash and Ummain about 2100 BCE, and an agreement between the Egyptian pharaoh Ramses II and the Hittite king, Hattusilis III,_concluded in 1258 BCE". International treaties of various dimensions were also negotiated, concluded and signed by state actors across the world, from the eastern Mediterranean to East Asia states. The development of functional idea of governance and international relations has been credited to Greeks in their practice of city state system which subsequently, contributed to the formation of the international legal system.

2.5 Medieval / Renaissances origin of international law

International law in this modern age is born out of Renaissance Europe and is strongly entwined with the development of western political organisation at that time. The development of European notions of sovereignty and nation states would necessitate the development of methods for interstate relations and standards of behaviour, and these laid the foundations of what is today branded international law. However, while the origins of the modern system of international law can be traced back 400 years, the development of the concepts and practices that underpin the system can be traced back to ancient historical politics and inter- state relations.

2.6 Westphalia origin of international law

Events at cities of Münster and Osnabrück gave rise to the Treaty of Westphalia of 1648 which left an indelible mark of ending the Thirty Years War (1618-1648) which devastated Europe with both human and material causalities. It also halted the Eighty Years War (1568-1648). The Eighty Years War "was a struggle for independence by the Habsburg Netherlands (encompassing the border regions of modern Belgium, Luxembourg, France and The Netherlands) from the Spanish crown" (Akkaya, 2022)

However, the main outcome of this peace treaty is much broader than ending two bloody wars. The Treaty of Westphalia is accepted as the beginning of modern international relations since it introduced the concepts of sovereignty, mediation, and diplomacy (Patton, 2019:91). Besides this, the basis of international organisations and the first attempt to codify international law can be found in this treaty. Furthermore, the Treaty of Westphalia stands out for being the first secular Congress that gathered in Europe for peaceful co-existence.

The Peace of Westphalia ended with the signing of two treaties between the empire and the new great powers, Sweden and France, and settled the conflicts inside the empire with their guarantees. This "compromise in 1648 meant a change of the empire's fundamental Golden Bull of 1356 and was a symbol that all conflicts occurring since 1618 were resolved and that those who made peace did not avoid radical cuts and invented fresh ideas in order to make peace" (Tischer,2022). The Peace of Westphalia is regarded as a milestone in the development toward tolerance and secularization with the concept of sovereignty enthroned as a guiding principle for inter-state relations.

2.7 Self-Assessment Exercises (SAEs)

Attempt these exercises to measure what you have learnt so far. This should not take you more than 12 minutes.

1. Theologians writing in support that slavery existed since antiquity propounded three theories. Discuss.

2. Discuss the impact of General Act of the Brussels Conference Relative to the African Slave Trade of 1890 *on international law*.

3. What authority did Treaties with the Imam of Muscat in 1822 and with Seyyid Siad in 1845 confer on Britain*?*

2.8 Summary

This unit traced the historical development of international law. It also traced the historical issues from slave origin, Ancient Greek, medieval / renaissance and Westphalia origin of international law. This introduces students to the roots of the divergent historical factors that propelled its development as a course of study.

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2.10 Possible answers to Self-Assessment Exercises (SAEs)

1. The theologians proposed as follows:

   Firstly, they claimed that slavery was the result of original sin and of the wickedness of former generations as a retribution for which divine vengeance allowed the enslavement of one people by another." (Augustines, 1947) The second theory was that certain races were born slaves. Thus, Ferdinand's Privy Council claimed in 1513 that the servitude of the 'Red Indians' was ordained by the laws of God and man. The third theory was that a conqueror waging a just war could enslave his prisoners. This opened the way for the strong Christian to enslave the weak "infidel" if only to Christianize him

2. The General Act of the Brussels Conference Relative to the African Slave Trade 1890 reaffirmed that the slave trade was illegal in international law and made specific stipulations for its abolition. These induced the intensification of colonial administration, the construction of armed posts for the suppression of the trade, the improvement of communications and the restrictions in the sale of firearms and ammunition.

3 .Treaties with the Imam of Muscat in 1822 and with Seyyid Siad in 1845, authorized Britain to search and seize slave-carrying ships in an area extending from the Indian Ocean on the eastern coasts of Africa on the Red Sea and the Persian *Gulf.*

UNIT 3 SOURCES OF INTERNATIONAL LAW

Unit Structure

3.1 Introduction
3.2 Learning Outcomes
3.3 Customary Practices
3.4 Treaties /International Agreements
3.5 General Principles of law
3.6 Judicial Decisions /Legal Writings
3.7 Self-Assessment Exercises (SAEs))
3.8 Summary
3.9 References /Further Readings/Web Source
3.10 Possible Answers to Self-Assessment Exercises (SAEs

3.1 Introduction

The question of sources is necessary in any system of law. Law making is an ongoing activity in every viable legal system. International legal system can accommodate the changing requirements for regulation by law making in new areas; and by upgrading and refinement of existing laws, in the light of its law sources. Considering the sources of international law, it is realized that the term "sources" implies many different, sometimes, conflicting meaning (Degan,). Herbert Briggs pointing "the confusion of the term "sources" describes it as "the methods or procedures by which international law is created" (Briggs,1952).

George Schwarzenberger "proposed the term law creating process for primary sources i.e. treaties, customs and general principles of law; and law determining agencies for 'subsidiary means for determination of law', i.e. judicial practice and doctrines." Oppenheim, (1996) discussing its various meanings differentiates between formal and material sources: formal being the source from which the legal rule derives its legal validity; and material providing the substantive content of that rule, e.g. the formal source of custom may have its material source found in a treaty concluded.

Sources of international law therefore means processes; procedures where international law are derived. Sources of international law include but not limited to the underlisted: Treaties, Customs, Judicial decisions. Statutes of I.C.J and the general principles of law recognized by civilized nations, academic writers, others include Dets of international organizations, Equity and natural laws.

3.2 Learning Outcome

By the end of this discussion, students shall be exposed to where international are derived from:

- Customary practices
- Treaties/ International agreements
- General principles of law
- Judicial Decision/legal Writings

3.3 Customary Practices

A custom is a general principle/practice accepted by nations as Law and considered binding. It is the second source of international law listed in the statute of the international court of justice as evidence of a general practice accepted as law.

The main evidence of customary law is to be found in the actual practice of states and a rough idea of a state practice can be gathered from published materials, from newspapers reports of actions taken by states and from statements made by government spokesman to parliament, to the press at international conference and at meetings of international organizations and also from states law and judicial decisions because the legislature and the judiciary form part of a state just as the executive does.

Evidence of customary law may sometimes be found in the writings of international lawyers, and in judgements of national and international tribunals which are mentioned in the subsidiary means for the determination of rules of law in article 38(1)(d) of the statute of international court of justice (see Paquette Habana 1900 versus Lola Case in U.S supreme Court 1900).

This is a case between two fishing boats which were engaged in fishing in the coast of Cuba, Cuba was then under Spanish rule in 1898. This period US defeated Spain in war and occupied Cuba. During the war the two ships were running in and out of Cuba bearing Spanish flags, owned and commanded by the Spanish subjects. By this time, it was a custom that fishing boats which carried fresh fish for immediate sale was never molested in times of war even by belligerents, however, both the Pacquette Haban and the Lola were captured by the U.S navy crew and brought by the captors in the American waters on April 27,1898. Both vessels were labelled interpose a claim based in ground of custom in favour of the U.S

The district court of United States for the southern district of Florida condemned the two fishing boats and their cargoes as prices of war. They were sold by auction viz: Pacquette Habona-460 dollars, Lola- 800 dollars. The case was appealed and it went to supreme Court of appeal in 1900 and the judgement of the district court was reversed. In the opinion of the presiding Judge Justice Gray based in custom and practice of individual nations for these reasons:

a) By an ancient usage among civilized nations beginning from centuries ago and gradually ripening into law into a rule of international law, coastal fishing vessels pursuing their vocation of catching and bringing fresh fish have been recognized.

However, it is a general rule that no one but the flag state may exercise jurisdiction in the sense of powers of arrest or acts if physical interference over a ship on the high seas (see, Articles 8, and 9 of the Geneva convention on the High seas 1958). This in turn shows that evidence of history abounds that seizure of cargo and crew men is reorganized although with occasional setbacks to the rules.

For instance, between 1403 and 1406 Henry (IV) gave orders to his admirals and officers titled “safety of fishermen basing it on a treaty between him and French kings stipulating that fisherman from France, Florida and Britain are protected with their boats and cargos in the high seas”.

The emphasis here is that where there is a treaty and there is no executive, legislative act or judicial decision, resort must be made to custom and usages of civilized nations. Such works are cited and resorted to by Judicial tribunals because of their reliability as trustworthy evidence.

Moreso, the right of innocent passage applies: Article 1 of the Geneva Convention on the Territorial Sea 1958 says that the coastal state exercises sovereignty over its territorial sea. But the coastal states sovereignty is subject to a very important limitation which is foreign ships have a right of innocent passage through Territorial Sea. Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal state; Fishing vessels must comply with laws enacted by the coastal state to prevent them from fishing and submarines must navigate on the surface and show their flag. (Article 14 of the convention).

It is worthy of note that treaties can be evidence of customary rule; but great care must be taken when inferring rules of customary law from treaties. For instance, laws dealing with a particular subject matter may

contain a certain provision like extradition treaties always provides that political offender shall not be extradited. It has been argued that a standard provision of this type has become so habitual that it should be regarded as a rule of customary law to be inferred even when a treaty is silent on that particular point. A case in point is Umaru Dikko in London was kidnapped in July 1994 by Nigeria government under Mohammed Buhari / Idiagbon regime but intervention from London Metropolitan police foiled the attempt because Nigeria did not follow the extradition treaties process. This action by Nigerian state negatively affected Anglo-Nigerian relations during the regime.

The argument is why should state bother to insert such standard provision in their treaties if the rule existed already as a rule of customary law? The problem now is that states must be careful in invoking a standard treaty provision as evidence of customary law because state's intention is not known.

3.4 Treaties /International Agreements

Article 2(1)(a) of the Vienna convention defines a treaty for the purpose of the convention, as an international agreement concluded between states in written form and governed by international law whether embodied in a single document or in two or more related instruments and whatever it's particular designation. This definition excludes agreement between states which are governed by municipal law (eg) agreement for the sale of goods) and agreements between states which are not intended to create legal relations at all.

The exclusion of these two types of agreement from the definition of treaties is fairly orthodox but the definition given in the Vienna convention is more controversial in so far as it excludes oral agreements between states and agreement of any sort between international organization or between states and international organization. Such agreements are usually called treaties and the only reason why they are not regarded as treaties for the purposes of the convention is that the rules governing written treaties between states are not followed. They were not therefore covered by the convention, in order to prevent the convention becoming too complicated. In any case, treaties made by the international organization are more usefully studied as part of the law of international organization and oral treaties are extremely rare nowadays.

Forms and Terminology of Treaties

Principal forms:

1. Head of state form of treaty: treaties between sovereigns or Heads of states and they are bound as high contracting parties.
2. Intergovernmental form of treaty: Agreement between government usually employed for technical and non-political agreements.
3. Interstate form: Explicitly and implicitly between states. The signatories are most often referred to as the parties (eg) N.A.T.O.
4. Ministerial form of treaty. This is treaties negotiated and signed between minister of the respective countries concerned through their respective foreign ministers.
5. Interdepartmental forms. This is a treaty concluded between representatives of particular government departments (eg) the Munich agreement of September 1938 signed by the British and French premiers, and the Korean Armistice Agreement of July 27, 1954.

Procedure for Making Treaties

1. Accreditations of Negotiators
   (a)Negotiators are those given full recognition, authority to enter into treaty and sign or not sign usually by the Head of State or the foreign minister describing the power clearly. The instruction given to them is called **Full power** and the negotiator is known as "plenipotentiary.

   In multi-lateral treaties a committee of Full powers is appointed to report on the nature of the full powers of each representative. The delegates hand in their full powers to the secretary of the committee.

2. Negotiation. This is usually done by official delegates. This may involve the Head of state, foreign ministers, diplomats. The delegates remain in touch with their governments and may obtain free instructions as at and when due.

Authentication and signature.

3. Ratification. Is a process whereby the chief executive or the parliament or both approve a treaty.

4. Accession and Adhesion. Accession is the total acceptance of the provision of a treaty while Adhesion means a partial acceptance of a treaty ‘s provision
5. Entry into force
6. Registration and publication
7. Application and Enforcement

3.5 General Principles of Law

Other sources of international law listed in the statute of ICJ is the general principles of Law recognized by civilized nations. The phrase was inserted in the statue of permanent court of international justice; the forerunner of the ICJ in order to provide a solution in cases where treaties and customs might be unable to decide some cases because of gaps in treaty law and customary law. However, there is disagreement about the meaning of the phrase. Some is of the opinion that it is general principles of international law, others say it is general principle of national law. Actually, there is no reason why it should not be both. In essence, the greater the number of meaning which the phrase possess, the greater the chances of finding something to fill the gaps in treaty and customary law.

General principles of International Law: According to this definition above, general principles of Law are not so much a source of law as a method of using existing sources; extending existing analogy, inferring the existence of broad principles from more specific rules by means of inductive reasoning. English Judges and Lawyers have difficulty in understanding why international court should need statutory authorization, however, it is an acceptable fact that the function of the lawyer is to interpret the law, the judges to apply the law.

General principles of National Law: According to the 2nd definition of general principles of law, gaps in international law can be filled by borrowing principles which are common to all or most national system of law. Specific rules of law usually vary from country to country, but the basic principles are often similar.

Legal systems are grouped in families: the law of English-speaking countries is very similar, just as the law in most Latin American countries is very similar. Hence, once one has proved that the principle exists in English law, one is fairly sure that it exists also elsewhere. Other sources include: Academic writers, Acts of international organizations, equity and natural laws.

3.6 Judicial Decision/ Legal Writings

Pursuant to Article 38(1)(d) judicial decisions is a subsidiary means for the determination of rules of law. In contrast to the position in common law countries, there is no doctrine of binding precedent in international law. Indeed, the Statute of the ICJ expressly provides that a decision of the Court is not binding on anyone except the partiers to the case in which that decision is given and even then, only in respect of that particular case (Article 59). Nevertheless, the ICJ refers frequently to its own past decisions and most international tribunals make use of past cases as a guide to the content of international law, so it would be a mistake to assume that "subsidiary" indicated a lack of importance.
Judicial decisions therefore do not make law but are declaratory of pre-existing law qualifying them as indirect, law identifying or material sources of law. Article 59 of the Statute of the International Court of Justice, provides that decisions of the courts have no binding force, except for the parties and in respect of the case concerned (Omar Shagufta,2011)

Article 38(1)(d) does not distinguish between decisions of international and national courts. The former is generally considered the more authoritative evidence of international law on most topics (though not those which are more commonly handled by national courts, such as the law on sovereign immunity). But decisions of a state's courts are a part of the practice of that State and can therefore contribute directly to the formation of customary international law (Greenwood,2008)

Scholarly / Legal Writings

Article 38 1 (d) also includes as a subsidiary means 'the teachings of the most highly qualified publicists of the various nations. With marked influence in the history of international law from 16th-18th writers such as Gentili, Grotius, Pufendorf, Bynkershoek and Vattel were considered authorities in determining the scope, form and content of international law. Today, juristic writings are considered a material or evidential source only. Hence, writings of international lawyers serve as a persuasive guide to the content of international law but they are not themselves creative of law and there is a danger in taking an isolated passage from a book or article and assuming without more that it accurately reflects the content of international law.

3.7 Self-Assessment Exercises (SAEs)

Attempt these exercises to measure what you have learnt so far. This should not take you more than 12 minutes.

1. Outline the procedures for making of treaties.
2. Define treaty according to Article 2(1)(a) of the Vienna convention
3. Outline forms of treaties you have studied.

3.8 Summary

In this unit, we examined the sources where international law germinated from. We observed the sources ranging from customs, treaties, general principles of law to judicial decisions and legal writing from international law scholars.

3.9 References/ Further Reading, and Web Resources

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3.10 Possible answers to (SAEs)4

1 .The procedure for making a treaty include: accreditations of negotiators, negotiations, authentication and signature, ratification, accession and adhesion, entry into force, registration and publication, application and enforcement.

2 Article 2(1)(a) of the Vienna convention defines a treaty for the purpose of the convention, as an international agreement concluded between states in written form and governed by international law whether embodied in a single document or in two or more related instruments and whatever it's particular designation.

3 .Forms of treaty includes:

a) Head of state form
b) Intergovernmental
c) . Interstate form
d) . Ministerial form
e) . Interdepartmental form

MODULE 2 Theory and Practice of International Law

Unit 1 Theory And Practice Of International Law
Unit 2 The Practice of International Law
Unit 3 Structural Defeats of International Law
Unit 4 The Relevance of international law to Diplomacy

UNIT 1 THEORY AND PRACTICE OF INTERNATIONAL LAW

Unit Structure

2.1 Introduction
2.2 Learning Outcomes
2.3 Naturalist theory of international law
2.4 Positivist theory of international law
2.5 Marxist / Communist theory of international law
2.6 Eclectic School theory of international law
2.7 Anglo-Dutch School theory of international law
2.8 Self-Assessment Exercises (SAEs)
2.9 Summary
2.10 References/Further Readings/Web Sources
2.11 Possible Answers to Self-Assessment Exercises (SAEs)

2.1 Introduction

This unit is significant as it provides you with background knowledge on the theories of international law with emphasis on naturalist, positivist, Marxist theory, Eclectic and Anglo- Dutch school.

2.2 Learning Outcomes

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

- understand naturalist theory of international law
- understand positivist theory of international law
- understand marxist theory of international law
- understand eclectic and anglo-dutch school of international law

2.3 Theories of International Law

Theories are tools for explanation of a phenomena. It represents schools of thought of ardent writers, their perspective prisms and ideological stands on a particular concept or phenomena. We have two contending theories of international law viz; Naturalists and positivists among others that will be discussed hereunder:

Naturalists: The leading naturalist writers was a Dutchman Hugo Grotius (1583-1645) who is often regarded as the founder of modern international law. Other writers include: Spaniards Victoria (1480-1546,) Gentile (1552-1608), Zouche (1590-1660) Although they disagreed on many things arising from their different stand points. However, all these writers are in agreement that the general principles of all law (national as well as international) were derived not from barely deliberate human choice or decision but from principles of justice which had a universal and ethical validity and which could be discovered by pure reason; To them law was to be found, not made

.

The basic principles of law were called natural law. Natural law was originally regarded as having a divine origin, but Grotius wrote that natural law would still have existed even if God had not existed; instead, Grotius considered that the existence of natural law was the automatic consequence of the fact that men lived together in society and were capable of understanding that certain rules were necessary for the preservation of society. According to this line of arguments the prohibition of murder for instance, was a rule of natural law, independently of any legislation forbidding murder, because every rational man would realize such a rule was just and necessary for human existence.

The essence of this school of thought is that law was derived from justice and that although lawyer and judges often appeal to justice in order to fill gaps or to resolve uncertainties in the law, the theory of natural law must lead to a more radical conclusion than an unjust law which is not law at all and can be disregarded by the judge; but this is a wrong conclusion that no modern legal system would accept. This school is associated with the writings of Samuel Pufendorff (1632-1694), a German who postulated the belief in theological principles. The school is criticized on the grounds that rather than embarking on theory building, its views are regarded as ego-centric. George Schwarzenegger commented on the school in the follow words:

"Those propositions were so vague as to become practically meaningless as they try to elevate assertions of transient decadence significant into eternally valid principles" (Haris, 1998).

2.4 Positivists:

Between 16th and 17th centuries the natural law theory was universally accepted. It encouraged respect for justice at a time when the collapse of feudal system and the division of Europe between the Catholics and Protestants might have led to complete anarchy. After the death of Grotius, the intellectual climate became more skeptical and international law would have lost its value if it had remained stagnant with the assumption of naturalist writers. By 1700, men have started arguing that law was largely positive (i.e) Man made; consequently, law and justice were not the same thing and laws might vary from time to time and from place to place according to the whims and caprices of the legislator.

The protagonist includes: Cornelius Van Bynkershoek (1673-1743), Emerich de Vattel (1714-69). They regarded the real behavior of states as the basis of international law. They emphasized the inherent rights which states derive from natural law but argued that they were accountable to their conscience for the observance of the duties imposed by natural law. They reject natural law as a source and accept only those laws which were created by independent nations and expressed in terms of treaties and customs as international law. Legal positivism believes in law as it is and not what it ought to be.

Zouche and Eden are also pioneer protagonist of positivism in international law. Zouche attempted to draw a distinction between Positivist and the Naturalist School, dealing extensively with international relations in times of peace and war, suggesting that there should be a system of law to regulate the affairs between subjects of international law. Bynkershock popularized this school in his opinion that consent of state is evident in state practice. By the nineteenth century, most writers were positivists reflecting the general change of attitude to natural law thinking.

2.5 Marxist /Communist theory of international law.

When we say communist theory, what readily comes to our mind is views expressed by Soviet workers or Soviet opinion as it affects international law. The central thesis of Marxist faith is that economics is the determining force in society. Law and political institutions are merely the super structure; reflecting the will of the ruling class (i.e) the class which controls the means of production, distribution and exchange.

Since there exist different ruling classes in different states, one might imagine that there could be no international law of universal validity. But communist theory assumes that international law of universal validity exists. In other words, efforts to reconcile this position from general Marxist theory becomes tortuous. Immediately after Russian revolution, one expected two contending views viz. One international law applying among capitalist states and the other applying between capitalist and socialist states, but this idea was discarded. Since the 1920's orthodox view has been that there is only one system of international law; this seems to reflect a compromise or coincidence of interest between different ruling classes in different states.

Since this war was averted because of the new doctrine of peaceful co-existence between states with different economic system, international law was embraced by Soviet Union. However, one striking characteristics of communist thinking about international law is the emphasis on sovereignty and the pre-eminence of states. The idea of world government is anathema to the true communist; as long as states have different ruling classes, it is unthinkable that they will surrender their sovereignty. For them, the only true world government will be the communist one, when the state has both withered away, a world state or world government is a contradiction in forms.

To be specific communist theorists say that international law can be derived only by treaties or agreement between states. In principle when a state agreed to a rule of international law it cannot revoke it unilaterally. But for them there is an exception to this principle. They claim that when a class revolution takes place within a state, the new ruling class is not bound by the rules accepted by the old regime, if those rules existed solely for the benefit of the old ruling class.

2.6 Eclectic School

This school is associated with the works of Wolff (1979-1754) and Vattel (1714-1767). They selected from natural law school some legal maxims quoted from decisions of both national and international tribunals which examined incidence of state practice and adopted what can fit into their impression of what international law should be. The objective of the various schools or writers has been questioned by. Arbitrator Huber in the SPANISH ZONES OF MOROCCO CLAIMS (1925) in the following words:

“It is true that great majority of writers show a very marked tendency to restrict the responsibility of states. Their doctrines, however, are frequently politically inspired and represent a natural reaction against unjustified intervention in the affairs of certain nations”.

This view cannot but be seen as representing the position of writers and articles in today's world especially if gauged from the generally biased positions from which they analyze the growing tendency of international law and its usefulness in volatile world polity.

2.7 Anglo-Dutch School

This school was represented by Alberico Gentili, a protestant international lawyer of Italian origin. He engaged in legal practice and used precedence in his international law postulations adopting the views of some naturalists, while relying on the authorities of classical writers. He made frequent incursions into Justinian literature and drew largely from his experience in state practice. It was the position of Gentili that international law as a body of laws is applicable between states and should not be 'regarded only as moral obligations. In this school is also Hugo Grotius (1538-1645) who was regarded as a pedantic man who in his closet dictates the “law of nations” (Harris, 1998). He drew largely from diplomatic practice as the Swedish Ambassador in Paris without paying much attention to state practice. He propounded the Theory of the Seas as depicted in *Marie Liberium* in 1609 -which was informed by the events during his days when international traders were constantly made victims of those known as 'sea dogs'.

Self-Assessment Exercises (SAEs) 1

Attempt these exercises to measure what you have learnt so far. This should not take you more than 12 minutes.

1. Discuss the concept “theory” as it relates to the study of International law.
2. Discuss the major assumptions of naturalist school.
3. Access the central thesis of communist theory of international law

2.8 Summary

In this unit we have elaborately discussed theories of international law starting from the naturalist to positivist, Marxist/ communist theories, eclectic school and Anglo -Dutch school theories of international law. This enhances our theoretical understanding of contribution scholars through analytical insights and assumptions on the discipline of international law.

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2.9 Possible Answers To Self Assessment Exercises

1. A theory is a tool for explanation of a phenomena. It represents schools of thought of ardent writers, their perspective prisms and ideological stands on the concept of international law.

2. Naturalist writers are in agreement that the general principles of all law (national as well as international) were derived not from barely deliberate human choice or decision but from principles of justice which had a universal and ethical validity and which could be discovered by pure reason; To them law was to be found, not made.

3. The central thesis of communist school is that economics is the determining force in society. Law and political institutions are merely the super structure; reflecting the will of the ruling class (i.e) the class which controls the means of production, distribution and exchange.

Unit 2 The Practice of International Law

Unit Structure

2.1 Introduction
2.2 Learning Outcomes
2.3 Practice of International Law
2.3.1 Meaning of Practice
2.3.2 Principles of international law
2..3.3 Adjudication of International Disputes
2.3.4 Peaceful Settlement of International Disputes
2.3.5 Case Studies of International Dispute Adjudication
2.4 Summary
2.5 References/Further Readings/Web Sources
2.6 Possible Answers to Self-Assessment Exercises (SAEs)

2.1 Introduction

This unit is significant as it provides you with background knowledge on the practice and principles of international law with a purpose to ascertain whether there is a general practice, principles and whether that practice is accepted as law (*opinio juris*) in the conduct of inter-state relations. It will also address issues of adjudication of international disputes with illustrative case studies.

2.2 Learning Outcomes

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

- Understand the meaning of practice
- ascertain whether there is a general practice that is accepted as law (opinio juris)
- Access the principles of international law
- Access adjudicated cases studies by International Court of Justice

2.3 Practice of International Law

2.3 .1 Meaning of Practice

The meaning of practices, like other concepts is contested based on perspective prisms of scholars and practitioners of both domestic and international law. From the late twentieth century four contending conceptions viz: Michael Oakeshott's procedural conception, Alasdair MacIntyre's cultural conception, Theodore Schatzki's agentic conception, and Pierre Bourdieu's "subjectivist" conception subsists.

Michael Oakeshott as part of advancing his theory of action referred to a practice is a set of considerations, manners, uses, observances, customs, standards, canons, maxims, principles, rules, and offices specifying useful procedures or denoting obligations or duties which relate to human actions and utterances. It is a prudential or an authoritative adverbial qualification of choices and performances, more or less complicated, in which conduct is understood in terms of a procedure (Oakeshott,1975).

Alasdair MacIntyre, also arguing from philosophy, defines practices as

" coherent and complex form[s] of socially established cooperative human activity through which goods internal to that form of activity are realized in the course of trying to achieve those standards of excellence which are appropriate to, and partially definitive of, that form of activity, with the result that human powers to achieve excellence, and human conceptions of the ends and goods involved, are systematically extended" (MacIntyre,1981).He also gave example following his analysis as follows: "Tic-tac-toe is not an example of a practice in this sense, nor is throwing a football with skill; but the game of football is, and so is chess. Bricklaying is not a practice; architecture is. Planting turnips is not a practice; farming is. So are the enquiries of physics, chemistry and biology, and so is the work of the historian, and so are painting and music" (ibid).

In the opinion of Schatzki, a practice refers to "a temporally evolving, open-ended set of doings and sayings" constituted and maintained by "practical understandings, rules, tele - affective structures, and general understandings. This seems to be a valuable contribution in specifying the nature of practices by suggesting that the nexus between doings and sayings is brought about and shaped by the interplay among understandings, procedures, and engagements that vary independently from one another depending on context, and that determine the kinds of performances that some theorists say are part and parcel of all forms of "praxis," by which is meant the world of human action (in contrast to the world of human reflection).The implication of this in the practice of international law of Schatzki's concretization of the nature of practices is that, on his conception, "practices can easily overlap and the same doing can be part of two practices."(ibid:168).

Another author who defined it is Bourdieu that has featured so prominently in recent international theory although his practice theory did not convince Schatzki. Schatzki faulted the French sociologist for an excessively structural account centered on the concept of "habitus,". According to Bourdieu, practices are sometimes referred to, not much more helpfully, as activities or "games" that are played in the context of particular "domains of practice," which he calls "fields" (See infra text

accompanying notes :174–177). The challenge of capturing the nature of practices should not distract our attention of probing the principles of international law.

2.3.2 Principles of International law

The general principles of law are always used to "fill the gap" when there is no provision in an international treaty or statute nor any recognized customary principle of international law available for adjudication in an international dispute. One "common way of resolving disputes under the rule of law is by reference to, and application of, the language of applicable multilateral or bilateral treaties or statutes, or some other writing which provides evidence of the relationship and past positions of the parties to a dispute. Another method is by reference to custom, the practice of nations in a particular area (customary international law) and principles of law derived from such" *(Apple.G.*,2007) This may occur when there is no such guiding authority for the benefit of those involved in resolving the dispute, inevitablyy in any legal system, such gaps exist including the international legal system, because treaties (contracts), statutes, and rules derived from custom cannot be designed to cover all situations which give rise to disputes. However, International law provides an answer to that question for the resolution of international disputes where general principles of law may used to fill the void or "gap." These may be referred to principles of international law as adopted by United Nations in 1970.

1970 DECLARATION ON PRINCIPLES OF INTERNATIONAL LAW CONCERNING FRIENDLY RELATIONS AND CO-OPERATION AMONG STATES IN ACCORDANCE WITH THE CHARTER OF THE UNITED NATIONS (GAR 2625) UNOFFICIAL TEXT · CENTRE FOR INTERNATIONAL LAW · www.cil.nus.edu.sg Page 2 of 9

Adopted on 24 October 1970

THE GENERAL ASSEMBLY, Recalling its resolutions 1815 (XVII) of 18 December 1962, 1966 (XVIII) of 16 December 1963, 2103 (XX) of 20 December 1965, 2181 (XXI) of 12 December 1966, 2327 (XXII) of 18 December 1967, 2463 (XXIII) of 20 December 1968 and 2533 (XXIV) of 8 December 1969, in which it affirmed the importance of the progressive development and codification of the principles of international law concerning friendly relations and co-operation among States, Having considered the report of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States, which met in Geneva from 31 March to 1 May 1970, Emphasizing the paramount importance of the Charter of the

United Nations for the maintenance of international peace and security and for the development of Friendly relations and Co-operation among States, Deeply convinced that the adoption of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations on the occasion of the twenty-fifth anniversary of the United Nations would contribute to the strengthening of world peace and constitute a landmark in the development of international law and of relations among States, in promoting the rule of law among nations and particularly the universal application of the principles embodied in the Charter, Considering the desirability of the wide dissemination of the text of the Declaration,

1. Approves the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, the text of which is annexed to the present resolution;
2. Expresses its appreciation to the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States for its work resulting in the elaboration of the Declaration;
3. Recommends that all efforts be made so that the Declaration becomes generally known**.**

ANNEX PREAMBLE THE GENERAL ASSEMBLY

Reaffirming in the terms of the Charter of the United Nations that the maintenance of international peace and security and the development of friendly relations and co-operation between nations are among the fundamental purposes of the United Nations, Recalling that the peoples of the United Nations are determined to practice tolerance and live together in peace with one another as good neighbours, Bearing in mind the importance of maintaining and strengthening international peace founded upon freedom, equality, justice and respect for fundamental human rights and of developing friendly relations among nations irrespective of their political, economic and social systems or the levels of their development.

Bearing in mind also the paramount importance of the Charter of the United Nations in the promotion of the rule of law among nations, Considering that the faithful observance of the principles of international law concerning friendly relations and co-operation among States and the fulfillment in good faith of the obligations assumed by States, in accordance with the Charter, is of the greatest importance for the maintenance of international peace and security and for the

implementation of the other purposes of the United Nations, Noting that the great political, economic and social changes and scientific progress which have taken place in the world since the adoption of the Charter give increased importance to these principles and to the need for their more effective application in the conduct of States wherever carried on, Recalling the established principle that outer space, including the Moon and other celestial bodies, is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means, and mindful of the fact that consideration is being given in the United Nations to the question of establishing other appropriate provisions similarly inspired, Convinced that the strict observance by States of the obligation not to intervene in the affairs of any other State is an essential condition to ensure that nations live together in peace with one another, since the practice of any form of intervention not only violates the spirit and letter of the Charter, but also leads to the creation of situations which threaten international peace and security, Recalling the duty of States to refrain in their international relations from military, political, economic or any other form of coercion aimed against the political independence or territorial integrity of any State.

Considering it essential that all States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations, Considering it equally essential that all States shall settle their international disputes by peaceful means in accordance with the Charter, Reaffirming, in accordance with the Charter, the basic importance of sovereign equality and stressing that the purposes of the United Nations can be implemented only if States enjoy sovereign equality and comply fully with the requirements of this principle in their international relations, Convinced that the subjection of peoples to alien subjugation, domination and exploitation constitutes a major obstacle to the promotion of international peace and security, Convinced that the principle of equal rights and self-determination of peoples constitutes a significant contribution to contemporary international law, and that its effective application is of paramount importance for the promotion of friendly relations among States, based on respect for the principle of sovereign equality, Convinced in consequence that any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a State or country or at its political independence is incompatible with the purposes and principles of the Charter, Considering the provisions of the Charter as a whole and taking into account the role of relevant resolutions adopted by the competent organs of the United Nations relating to the content of the principles.

Considering that the progressive development and codification of the following principles of international law:

(a) The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations,
(b) The principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered,
(c) The duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter,
(d) The duty of States to co-operate with one another in accordance with the Charter,
(e) The principle of equal rights and self-determination of peoples,
(f) The principle of sovereign equality of States,
(g) The principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter, so as to secure their more effective application within the international community, would promote the realization of the purposes of the United Nations, Having considered the principles of international law relating to friendly relations and co-operation among States,

Solemnly proclaims the following principles:

1. The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State or in any other manner inconsistent with the purposes of the United Nations

2 . Every State has the duty to refrain in its international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations. Such a threat or use of force constitutes a violation of international law and the Charter of the United Nations and shall never be employed as a means of settling international issues.

3. A war of aggression constitutes a crime against the peace, for which there is responsibility under international law.

4. In accordance with the purposes and principles of the United Nations, States have the duty to refrain from propaganda for wars of aggression.

5 . Every State has the duty to refrain from the threat or use of force

to violate the existing international boundaries of another State or as a means of solving international disputes, including territorial disputes and problems concerning frontiers of States.

6. Every State likewise has the duty to refrain from the threat or use of force to violate international lines of demarcation, such as armistice lines, established by or pursuant to an international agreement to which it is a party or which it is otherwise bound to respect. Nothing in the foregoing shall be construed as prejudicing the positions of the parties concerned with regard to the status and effects of such lines under their special regimes or as affecting their temporary character.

7. States have a duty to refrain from acts of reprisal involving the use of force.

8. Every State has the duty to refrain from any forcible action which deprives peoples referred to in the elaboration of the principle of equal rights and self-determination of their right to self-determination and freedom and independence.

9. Every State has the duty to refrain from organizing or encouraging the organization of irregular forces or armed bands including mercenaries, for incursion into the territory of another State.

10. Every State has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts, when the acts referred to in the present paragraph involve a threat or use of force.

11. The territory of a State shall not be the object of military occupation resulting from the use of force in contravention of the provisions of the Charter. The territory of a State shall not be the object of acquisition by another State resulting from the threat or use of force. No territorial acquisition resulting from the threat or use of force shall be recognized as legal. Nothing in the foregoing shall be construed as affecting:

(a) Provisions of the Charter or any international agreement prior to the Charter regime and valid under international law; or

(b) The powers of the Security Council under the Charter

12. All States shall pursue in good faith negotiations for the early conclusion of a universal treaty on general and complete disarmament under effective international control and strive to adopt appropriate measures to reduce international tensions and strengthen confidence among States.

13. All States shall comply in good faith with their obligations under the generally recognized principles and rules of international law with respect to the maintenance of international peace and security, and shall endeavour to make the United Nations security system based on the Charter more effective.

14. Nothing in the foregoing paragraphs shall be construed as enlarging or diminishing in any way the scope of the provisions of the Charter concerning cases in which the use of force is lawful.

2. The principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered

a) Every State shall settle its international disputes with other States by peaceful means in such a manner that international peace and security and justice are not endangered.

b) States shall accordingly seek early and just settlement of their international disputes by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies arrangements or other peaceful means of their choice. In seeking such a settlement the parties shall agree upon such peaceful means as may be appropriate to the circumstances and nature of the dispute.

c) The parties to a dispute have the duty, in the event of failure to reach a solution by any one of the above peaceful means, to continue to seek a settlement of the dispute by other peaceful means agreed upon by them.

d) States parties to an international dispute, as well as other States shall refrain from any action which may aggravate the Situation so as to endanger the maintenance of international peace and security, and shall act in accordance with the purposes and principles of the Nations.

e) International disputes shall be settled on the basis of the Sovereign equality of States and in accordance with the Principle of free choice of means. Recourse to, or acceptance of, a settlement procedure freely agreed to by States with regard to existing or future disputes to which they are parties shall not be regarded as incompatible with sovereign equality.

f) Nothing in the foregoing paragraphs prejudices or derogates from the applicable provisions of the Charter, in particular those relating to the pacific settlement of international disputes.

3. The principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter.

a) No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are in violation of international law.

b) No State may use or encourage the use of economic political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind. Also, no State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another State, or interfere in civil strife in another State.

c) The use of force to deprive peoples of their national identity constitutes a violation of their inalienable rights and of the principle of non-intervention.

d) Every State has an inalienable right to choose its political, economic, social and cultural systems, without interference in any form by another State.

e) Nothing in the foregoing paragraphs shall be construed as reflecting the relevant provisions of the Charter relating to the maintenance of international peace and security.

4. The duty of States to co-operate with one another in accordance with the Charter

1) States have the duty to co-operate with one another, irrespective of the differences in their political, economic and social systems, in the various spheres of international relations, in order to maintain international peace and security and to promote international economic stability and progress, the general welfare of nations and international co-operation free from discrimination based on such differences.

2) To this end:

(a) States shall co-operate with other States in the maintenance of international peace and security;

(b) States shall co-operate in the promotion of universal respect for, and observance of, human rights and fundamental freedoms for all, and in the elimination of all forms of racial discrimination and all forms of religious intolerance;

(c) States shall conduct their international relations in the economic, social, cultural, technical and trade fields in accordance with the principles of sovereign equality and non-intervention;

(d) States Members of the United Nations have the duty to take joint and separate action in co-operation with the United Nations in accordance with the relevant provisions of the Charter.

3) States should co-operate in the economic, social and cultural fields as well as in the field of science and technology and for the promotion of international cultural and educational progress. States should co-operate in the promotion of economic growth throughout the world, especially that of the developing countries.

5. The principle of equal rights and self-determination of peoples

a) By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter.

b) Every State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of the principle, in order:

2.3.3 Adjudication of International Disputes

The vast majority of disputes between states are settled by negotiation. International Law is not unique in this respect; The vast majority of disputes in any legal system are settled by negotiation. When a municipal lawyer is negotiating the settlement of a dispute, he can always threaten to go to court if the other side will not give way.

Such threat can seldom be made in international law, where the jurisdiction of tribunals is dependent on the consent of states. We have seen that states have other motives for obeying international law, motives which have nothing to do with fear of litigation, for example states obey international law not only because of fear of sanction. Fear of sanction has very little to do with the obedience. There are other factors inherent in the very nature of international law and of international society which induce states to obey international law.

It is not difficult to see why it is in the interest of states to agree to the rules of international law. States are naturally interdependent in many ways (eg), international trade and international law facilitates international cooperation. Hence, it is in every one's interest to have an agreed rule to deal with all such cases as it affects international relation, instead of leaving every individual case to be decided by a trial of strength between the particular states concerned.

Even when the relevant rule of international is improvise, it still performs a useful function, it may not eliminate the area of disagreement between states, but at least it reduces that area and thus makes it easier for disputes to be settled without much friction.

The fact that international law largely reflects the interest of states does not justify the conclusion that states would act in the same way even if there were no law; still less does it justify the cynical view that states only obey international law when it is in their interest to do so. In the first place as we shall see, the mere fact that a rule is a rule of international law provides states with reasons for obeying it even when there appear to be short term gains to be derived from breaking it.

Secondly, a rule acquires a life of its own when it becomes a rule of international law.

Out of habit states obey international law even when it goes against their interest and claim their legal rights even when their interest is not involved. Both legal and political argument are used in disputes about application to their rule. But a state that breaks a rule may find that it has created a precedent which can be used against it not only by the original victim; but also, by third states, when the wrong doing states

wants to claim the benefit of that rule in the future. Realization of the possibility often deters states from breaking international law. Moreover, most states have legal advisers who know enough about international law, to recognize a valid claim when they see one, and who can usually be relied upon to advice their own state to give way when its legal position is weak. In this case negotiation is an option although negotiation is not always a good method of settling international disputes. There is no guarantee that a state will listen to its legal advisers. In addition, their parties seldom take part in negotiations and this means there is no impartial machinery for resolving disputing state from putting forward extreme claims especially where its bargaining power is very strong.

Sometimes, third states or international organization, may try to help the disputing states to reach agreement. The method of settling a dispute depends on the nature of the dispute in question or the subject matter of the controversy. Disputants are generally reluctant to submit to international arbitration that would threaten their status quo adversely. This political dispute calls for appropriate political methods for its settlements. The method ranges from dialogue or debate reference to the public affected, verification of power. direct methods are used in the settlement done at the international tribunals.

A dispute is therefore legal if it is to be settled by the application of existing positive law. It is political if it is settled by application of social norms such as the principle of equity, justice and the likes. Therefore, the political nature of a case depends on the nature of the norms to be applied in a settlement but note that every dispute even political can become legal by the mere agreement, by the disputing parties to submit it to judicial settlement since whatever norms should be used in that case can be reduced to general principles of Justice and general principles of Law recognized by civilized nations. See article 30 of the statute of I.C.J.

2.3.4 Peaceful Settlement of International Disputes

The process of peaceful settlement of disputes in international arena takes the following:

1. **Good offices:**

Sometimes a third party or international organization may try to help the disputing states to reach an agreement. In this case, the third states offer his services to resolve conflicting groups. The parties to the dispute in invitation may not accept to dialogue which is not binding on them, although rejection of the invitation by any of the party is not considered a friendly act. When a third states makes effort to bring the conflicting parties to settle their disputes, without recourse to legal procedure, it is called the offer of good offices. This a form of friendly intervention. A state is said to offer its good offices when it tries to persuade disputing states to enter into negotiations when the negotiation starts, its functions are at an end.

2. **Negotiation and Mediation:**

Negotiation is the legal and orderly administrative process in which government in the exercise of their unquestionable powers, conduct their relations one way or the other, adjust their differences. When diplomatic negotiation reaches a deadlock, intervention of third party whose friendly intervention and impartial authority are acknowledged by disputants becomes necessary and this sometimes leads to amicable settlement of international dispute.

The third party to this case becomes a mediator. A mediator on the other hand actually takes part in the negotiation and suggests terms of settlement to the disputing states. Obviously, a mediator has to enjoy the confidence of both sides and it is often difficult to find a mediator who fulfills this requirement.

3 **Arbitration:**

Arbitration panel is set up either by a central organization or the parties involved or by statutes. It is made up usually of a group of people who are vast on the topic being discussed. They are usually called to form an arbitration panel and preside over the case. The parties to the case are bound to accept the ruling of the panel because of the judicial powers given and in use by them in deciding the case. This means that immediately you submit yourself to arbitration panel, you are bound to accept the judgement of the arbitrators. The arbitration panel is made

up of more than one person and must have an odd number eg, 3,5,7, e.t.c, and judgements is delivered through voting. Arbitration panel could be appointed by international organization eg, OAU, UNO. The odd number man in the panel is usual appointed by members already appointed by the disputing parties.

4 **Conciliation**

Conciliation is a combination of inquiry and mediation. The conciliator is appointed in agreement between the parties. The conciliator investigates the facts of the dispute and suggests terms of the settlement. Conciliator sometimes has discussion with each of the parties behind the scene with a view of finding an area of agreement between them before issuing his report. The parties are not obliged to accept the concillators terms of settlement but apart from that concillation often resemble arbitration particularly when the dispute involves difficult points of law. In order to make a good impression on the concillator, states are forced to rephrase their case in the moderate language, as they would before an arbitrator. Apart from the aforementioned, international law recognizes five traditional customary way of settling disputes via;

a) Retortion
b) Reprisals
c) Wars- diplomatic surgery
d) Denials of Technical aids
e) Interception of assets and Quarantine which is denials of giving Visa
f) for those who wish to come inside or go outside the country.

2.3.5 Case Studies of International dispute adjudication

1) **Scotsia versus Bailsyer in U.S Supreme Court of 1867**
The case:

About midnight in April 8,1867, the British steam ship Scotsia and American sailing ship, Bailsyer colluded in Atlantic Ocean Midway between Network and Liverpool.The sailing ship Bailsyer with its full loads of Cargo got lost while Scotsia survived. When the British steamman, the Scotsia arrived in New York, the owner of the American vessle, the Bailsyer filed a suit against Scotsia, alleging that the collision was caused by the Scotsia steamer's recklessness.

Note that in this case, the ship is now a person or a body corporate which can sue and can be sued. United State supreme court which adjudicated the case on final appeal after it was first introduced in the

New York District Court deliberated on the case and concluded that the law in effect was international law. Hence, it is neither the law of the United States nor that of the Britain. It is also not the concurrent regulation of the two government but the law of the Sea. In order to determine what the international law of the Sea decried about navigation rights; the court turned back to the municipal law to which it have denied jurisdiction.

In this case many of the usages which prevailed and which have the force of law, the court said " Doubtless originated in the positive prescription of some states which were at first, of limited effect but when generally accepted became a universal obligation. In applying this reasoning, the court concluded that the Bailsyer- American ship by showing white light violated international law and that the Scotsia was without fault. The reason for the judgement is that " a particular rule has been found internationally acceptable and has in practice been adopted as international law.

2) **Craig vs Garscheteter Case**

In this case, there was a lieutenant Garscheter and American in the Vietnam war. He was married to a woman called Mud when he was in service. Mud gave birth to Craig outside the matrimonial set up. In other words, by law the (child) is an illegitimate. When Garscheteter came back and discovered what has happened, he took Mud to court, sought and obtained a divorce.

The second case over the custody of Craig came up. Craig is in Law both an American and a Briton since Mud was a Briton and a child derives ancestry from the father. Garscheter contested the case and won. But mud the mother of Craig appealed against the verdict. The higher court entertained the case, hence, the court dispensed Garscheteter of the obligation to provide alimony to his wife but granted a custody of the child to mud the mother. The reason for the judgement is that a child is better taken care of by the mother than his father.

However, the ruling was not to hold in perpetuity, it further provided that Craig whenever he attained 21 years the age of maturity or fulfilment, it is entirely left to him to choose to become either American or a Brition. In this case one can see that in many cases particularly those that involve the human person, international law doesn't strain itself. It is in fact, very accommodative of issues that involves human person.

(3) **Swiss Canal Crises of 1956: Gamal Abdel Nassar versus Britain, Israel and France**.

In the case, Nassar nationalized Swiss Canal by suddenly extending the sovereignty of Egypt over the Swiss Canal which is immune to single sovereignty, because it is an international water way just as the great bays of baygull between Egypt and Middle East. In this case, Egypt pushed itself against the world as the rights of states were deprived singularly and collectively and this comes within the category of those subjects where a singular state can assert his right if he can.

It was on the moral justification that the former prime minister of Britain mobilized the royal Navy and air force and Charles de Gualle of France with his French legion came on combat against the Egyptians. In this process both the Royal Navy and French legion were battle ready on the Mediterranean Sea. They warned that showed Egypt fail to obey the law of the great bays or territorial sea, as enshrined in the Vienna convention, they have no option than to strike through war. In the encounter, Egyptian on seeing the advancing 6000 men interposing the Atlantic Ocean withdrew from the Swiss Canal and gave way for easy passage and the case ended up till today.

The end result is that Egypt withdrew and the French legion with the British Naval forces withdrew and Swiss Canal became open again for international transaction although some royalties was paid to Egypt later. The point being made here is that the charter of the United Nations endorsed on forming a treaty is legally bound on all Nations and should a nation prove stubborn against the world interest, the world powers will force the state to toe the line.

Self-Assessment Exercises (SAEs)3

1. Examine the faith of the use of “good offices” in resolving international dispute.

2. In Craig vs Garscheteter Case, where did the verdict of the appeal court symbolize municipal law.

3. Why did former prime minister of Britain mobilized the royal Navy and air force and Charles de Gualle of France with his French legion came on combat against the Egyptians.

2.4 Summary

In this unit, you have been introduced with the concept of practice, principles of international law, adjudication of international disputes and process of peaceful settlement of international disputes through good offices, negotiation, conciliation e.t.c. The unit has also demonstrated issues involved in international adjudication by sampling case studies.

2.5 References /Further Readings/Web Sources

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PIERRE BOURDIEU, Fieldwork in Philosophy, in OTHER WORDS: ESSAYS TOWARDS A REFLEXIVE SOCIOLOGY 3, 22 (Pierre Bourdieu ed., 1990).

Schatzki, Introduction: Practice Theory, supra note 9, at 5.

Theodore R. Schatzki et al. eds., 2001) [hereinafter Schatzki, Introduction: Practice Theory]. My conception of the nature of "analytic narratives"—the term I choose to classify the empirical analyses collected in this issue—is grounded in this understanding of what constitutes theoretical work in the social sciences.

Theodore R. Schatzki, Practices and Actions: A Wittgensteinian Critique of Bourdieu and Giddens, 27 PHIL. SOC. SCI. 283, 285 (1997) [hereinafter Schatzki, Practices and Actions].

2.6 Possible Answers to Self-Assessment Exercises (SAEs)3

1. In this case of the use of good offices, the third states offer his services to resolve conflicting groups. The parties to the dispute in invitation may not accept to dialogue which is not binding on them, although rejection of the invitation by any of the party is not considered a friendly act. When a third states makes effort to bring the conflicting parties to settle their disputes, without recourse to legal procedure, it is called the offer of good offices.
2. The ruling of appeal court after entertaining the case, is that the court dispensed Garscheteter of the obligation to provide alimony to his wife but granted a custody of the child to mud the mother. The reason for the judgement is that a child is better taken care of by the mother than his father. However, the ruling was not to hold in perpetuity, it further provided that Craig whenever he attained 21 years the age of maturity or fulfilment, it is entirely left to him to choose to become either American or a Brition.
3. It is because Nassar, Egyptian president nationalized Swiss Canal by suddenly extending the sovereignty of Egypt over the Swiss Canal which is immune to single sovereignty. The leaders threatened that showed Egypt fail to obey the law of the great bays or territorial sea, as enshrined in the Vienna convention, they have no option than to strike through war and they eventually prepared for it.

Unit 3 Structural Defeats of International Law

The arguments that surrounded the discipline of international law from inception is whether international law is law or no law. This argument makes its study to be cynical and negative. Hence, there is enough reason for international legal system to be classified as nebulous, lacking clear focus and boundaries; for example, why should one step into the internal affairs of another country without recourse to international constitutionalism? Another question is "Why did Bill Clinton pronounce that the death of M.K.O Abiola has no foul play before the international community despite all American effort to nurture and consolidate democratic tradition in Nigeria? Why did even Kofi Anan and Emeka Anyaoku come to Nigeria and held meeting with individuals over the June 12, election annulment other than the then Head of State of Nigeria, Ibrahim Babaginda who annulled the 1993 general election?

What picture do these leaders of notable international organization viz: United Nations Organization and Commonwealth of Nations wants to paint the boundaries and legitimacy of sovereignty as applied in international law. The fact that is indisputable today is that the dimensions of demonstration of power in international arena shows that the discipline of international law is progressively moribund because of supervening interplay of naked politics through demonstration of power. The implication is that the god of politics is on the side of big battalion. For example, when Soviet Union invaded Czechoslovakia in August 1968 only to have condemnation from international community without any attempt to sanction them for that. The Soviet Union publicly justified that invasion by reference to the concept of spheres of influence. The recent case of Russia versus Ukraine where the NATO allies and China are taking opposite camps equally demonstrates the interplay of naked politics in the warfare.

Hugo Grotius, one of the prominent jurists in international law once said that "A man cannot govern a nation if he cannot govern a city; he cannot govern a city if he cannot govern a family; he cannot govern a family unless he can govern himself; and he cannot govern himself unless his passions are subject to reason" (cited by Ibrahim Ahmed, 2020).

This quote is also applied in international governance, one cannot simply govern the international community if he cannot govern his own nation. That is why nowadays we can see clearly that a lot of nations have violated international law especially those who are "so called" the enforcers of the law in which they are proud call themselves as the Security Council of the United Nations. This is because the leaders of the permanent members of the Security Council themselves are not

qualified and efficient enough to become the leaders in their own country and because they fail in managing their citizens, so they fail in governing the international community. This can be seen throughout a lot of major events which involves a lot of disputes and war emerged between nations and interference from the five permanent members of the United Nations, and the latest one is the Nagorno-Karabakh conflict between two states, Armenia and Azerbaijan (Emerald. 2020).

However, placing aside the outraging war and disputes enmeshed in the international community, as in other national/ domestic laws, international law which governs the international community also has structural defeats in terms of its ineffectiveness compared to the national legal system and its enforcement malfeasance as will be pointed out hereunder:

The structural defects inherent in international law shall be focused on three grounds with the first, being that the international law lacks international legislature. In the international legal system, there is no law-making authority that can make law for the whole international community in accordance with their contemporary needs. Even though, as enshrined in the Charter of the United Nations, the function of the General Assembly of the United Nations is to discuss, debate, and make recommendations on subjects pertaining to international peace and security, including development, disarmament, human rights, international law, and the peaceful arbitration of disputes between nations, the General Assembly is not tantamount and equivalent to the world (see Chapter IV, of the Charter of United Nations).

According to Celine Van Den Rul (2016) "emphasized the fact that General 4 Assembly resolutions are merely recommendations and shall not be considered as laws". Thus, the resolutions are not binding on member states. The General Assembly resolutions merely reflect a symbolic gesture by the international community to stigmatize and formally condemn the practice of states. This can be seen through Resolution 1761 condemning Apartheid in South Africa whereby it shows us that the resolution did not stop the South African government's discriminatory policy and Nelson Mandela's life-long imprisonment sentence two years later.

Also, Resolution 217 on the Universal Declaration of Human Rights also shows that the declaration is not legally binding, however its influence on national constitutions, treaties or international laws since 1948 cannot be denied as it introduces the concept of human dignity as the central concept from which all human rights are derived (see First line of preamble, Universal Declaration of Human Rights,1948).

Obviously, the General Assembly of the United Nations is not equivalent to the world legislature or parliament. It has no legislative power and therefore its decisions or resolutions are recommendation in status and has binding force on states since it merely reflects a symbolic gesture by the international community to stigmatize and formally condemn the practice of states who violated international law. Hence, the international law lacks legitimate legislature.
Secondly, it lacks international court with compulsory jurisdiction and this is demonstrated in how the International Court of Justice (ICJ) functions. ICJ is not that more powerful than the national legal system as their competence is limited because resort to them is not compulsory. Its jurisdiction is not compulsory as there is no compulsory jurisdiction as to the general rule. The ICJ can only have jurisdiction when both parties of the dispute consented and submitted their case to ICJ then only ICJ can exercise its jurisdiction.

Pursuant to Article 36(1) of the Statute of ICJ, on its voluntary jurisdiction. The Statute provides that the jurisdiction of the Court comprises all cases which the parties refer to it. Such cases normally come before the Court by notification to the Registry of an agreement known as a special agreement, concluded by the parties specially for this purpose. An example of the case to illustrate how this provision functions is the case of Malaysia v Singapore. This case was generally a dispute between Malaysia and Singapore as both of them claimed that they have sovereignty over three (3) islands which were Pulau, Batu, and Puteh or also known as Pedra Branca, Middle Rocks and South Ledge. Due to emerging disputes between the two countries, the foreign ministers of both countries later on signed on the special agreement on 6 February 2003 based on Article 36(1) of the Statute of ICJ and formally notified the ICJ on 24 July 2003 requesting the adjudication over sovereignty of these three islands, to determine whether it belonged to Malaysia or Singapore. Thus, ICJ has the jurisdiction to hear and decide the dispute by both countries, Malaysia and Singapore since these both countries gave their consents for this case to be decided by ICJ (ICJ, 2008). This shows that there is no compulsory jurisdiction as to the general rule since the ICJ can only have jurisdiction when both parties of the dispute gave their consents and submitted their case to ICJ; therefore, it can be seen that international law lacks courts with compulsory jurisdiction.

Thirdly, international law also lacks effective law enforcement machinery. As applicable in national legal system, international law enforcement is weaker. In the national legal system enforcement, the government is backed by sovereignty, and that is why the enforcement is also backed by the sovereign political authorities such as the police

force, army and other para-military agencies which got the enforcement power from the federal constitution.

Although the Security Council of the United Nations is saddled with the responsibility of enforcement of international law as provided for in Article 24 of the Charter of the United Nations, the question worthy of answer is how has it performed the task?

Unit 4 The Relevance of International Law to Diplomacy

Unit Structure

4.1 Introduction
4.2 Learning Outcomes
4.3 Relevance of International Law in Today's (Unipolar or Multipolar) World
4.3.1 International law and Diplomacy Nexus
4.3.2 Relationship between international law and Municipal law
4.3.3 The Attitude of English (national) law to international law
4.4 Summary
4.5 Reference/Further Reading/Web Sources
4.6 Possible Answers to Self -Assessment Exercise

4.1 Introduction

The need to study international law is still a subject of controversy and intellectual debate because some scholars still see international laws from the perspective of it being of moral adjuration as depicted by Llyod (1970). Some scholars believe that we study international law for expediency, while others believe it is for concern.

However, Elias puts it beyond per adventure that:

The truth is that modern international law for all its lack of enforceability has developed and will continue to develop to meet the constantly changing needs of the world of today and tomorrow, a world of growing interdependence and indivisibility that is also committed to the achievement of peace and happiness for all mankind.

In order to stem disorder, truces, treaties and other legal instruments have always been put in place at the international level both in the ancient and contemporary world. To further underscore this position, it is as a result of the study of international law that we now have in place International Court of Justice which has succeeded in concluding a number of cases which were potentially volatile and would have been a source of serious crises. Example include maritime boundary dispute between Mali and Burkina Faso in 1986, Nigeria versus Cameroun case over ownership of Bakaasi Peninsula in 2020 among several others. it is difficult not to be persuaded by the fact that international law in serving as a stabilizing and balancing force in world of today.

4.2 Learning Outcomes

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

- understand the relevance of international law to diplomacy
- understand the nexus between international law and diplomacy
- understand the relationship between international law and municipal law
- understand the attitude of english (national) law to international law

. 4.3 Relevance of International Law in Today's (Unipolar or Multipolar) World

The controversy surrounding the relevance of international law is still today and the perspective have virtually crystalized into two extremes. The position Frowein (1988) that treaties play an increasing role has confirmed the views of some scholars who believe in the relevance of international l aw now than before. It cannot be over-emphasized that states are belligerent in nature. Thus, there is need for some mechanisms to be put in place to regulate the regulate the affairs among them and the world at large. It would be recalled that dating back to 1920s, the United States and the France, visualized the need for such regulatory measures by came together and putting in place the Kellogg-Briand Pact of 1928 which decreed to exterminate war as an instrument of national policy. A global approach was given to this instrument via the Doctrine of Stimson in 1933.

Also, article 33(1) of the United Nations Charter has given vent to this approach by providing:

The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security shall first of all seek solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional organs or arrangement or other peaceful means of their own.

The existence of war, crises and civil strife in various part of the world today actually justifies the relevance of international law. Pollock (1890) had cause to elaborate on the relevance of international law in the following words:

If International law were only a kind of morality, The framer of state papers concerning foreign Policy would throw all their weight and strength on moral argument but as a of fact, this is not what they do, they appeal not to the general feelings of moral rightness but to

precedence, to treaties and to opinions of specialists. They assume the existence among statesmen and publicists of series of legal as distinguished from moral obligations in the affairs of nations.

It has been argued by a school of thought that the absence of sanctions has made it impossible for international law to be relevant in the affairs of states. This argument is spurious especially if viewed from the angle that municipal laws are equally breached with impunity in spite of their imposed sanctions and the existence of the courts to punish such offenders; this omission will not be tantamount to non-existence of municipal laws or even its relevance.

In order to justify the existence and relevance of international Law in the contemporary world, various states have adopted and given credence to international law dictates in their constitution as well as through judicial pronouncement. The Constitution of former Western Garmany (1949) Article 25 states:

The general rules of international law shall form part of the federal Law, they shall take precedence over federal law and create rights and duties directly for the inhabitants of federal republic of Germany.

Also, the Constitution of the Republic of Korea in 1948 recognized the potency of international law. The Philipines Constitution of 1945 also acknowledged the role international law plays in the municipal setting. In the United States, the courts variously hold that, international law is part and the parcel of its system as held by Marshall, C.J. in the case of THE CHARMING BESTY (1504) that: An act of congress ought never to be construed to violate law of nations if any other possible construction remains.

4.3.1 International law and international relations Nexus

The concept of international law and international relations appears to be together, apart and also together in usages on issues affecting international society or international regimes and the likes. This is sequel to issues or areas such as trade, finance, regimes and regime types and other areas of global concern. This attracts attention of political science, international relations experts, international lawyers as well as economists. The distinction between social scientists, the economists and political scientists on one hand and international lawyers on the other is not fully appreciated despites attempts by scholars for its boundary demarcation. However, there is a consensus that lawyers actually are knowledgeable about the specific character of international regimes, such as the rules of General Agreement on Trade and Tariffs (GATT) (Krasner, 2000:1) Obviously, the political scientist and

economists and other social scientist disciplines are more interested in formulating proposition and empirical verifications of claims. Despite this, they share a common explanatory mechanics as well as methodology.

Hence, the study of international Law and international relations has not always been sharply distinguished until the 1970's and even later, international law would have been part of the curriculum of almost international relations programmes. The break came because of the changes in the study of international relations, rather than in the study of international Law (Krasner,2000:1) Presently, the study of international relations is driven by quest for a use of theories as investigative and explanatory compass. The theories include but not limited to the following:

Realism: which existed as a general frame of reference and even a set of normative prescription long before the 1970s, has been the most prominent of these approaches. Its most acclaimed post-war exponent, Hans Morgenthau, was a refugee from Nazi Germany appalled by what he saw as the consequences of ignoring the distribution of power as the basic determinant of outcomes in the international environment (Krasner,ibid). Morgenthau, like his contemporaries, was more of an essayist than someone who tried to systematically associate explicit propositions with empirical evidence. While he emphasized the importance of the distribution of power among states, he also pointed to human nature as a basic cause of conflict, and distinguished between states following status quo and imperialist policies (Morgenthau,1967:4-5). Morgenthau's assessment of the nature of human beings, the domestic characteristics of states, or the international distribution of power is still under contention following dynamism in today's interstate relations. In 1979, Kenneth Waltz published theory of international politics, in which he made a clear distinction between systemic and domestic, or what he called reductionist arguments (Waltz, 1979).

Waltz was not so explicit about the specific causal arguments that followed from his approach, the most obvious was the stability of bipolarity, although, he did provide a framework that guided other scholars. For Waltz's approach, which came to be labeled neo-realism, international law played essentially no role. The international system was anarchical. There were no authoritative decision-making structures, no mechanism for resolving conflict about how the law should be decided. If there were rules at all, they would be set by powerful states, and these rules would change if the distribution of power changed. Realism from 1980s took a leading mark as an approach to the study of international relations. This was not only in the area of international security, but also in the study of international political economy as well,

where some analysts argued that the international rules are related, for instance, to international trade or finance would be determined by the most powerful states in the system, and that states, always alert to the dangers of losing relative ground, would be instinctively suspicious of international cooperation. In view of the import of realism at this period, "international law virtually disappeared from the study of international relations"http://scisearch2.lanl.gov:8082/stanford/ssci.html,retrieved, April 2022).

This dynamism introduced new theoretical approaches in the likes of liberalism and constructivism, which challenged, and in some horizons displaced, realism. Liberalism as a general approach has reproduced a number of specific research programs or specific theories. The defining core of realism is that power determines outcomes. In the international system which is anarchical, coercion, war of expected causalities and violent use of sophisticated armoury are always possibilities. In contrast, the defining core of liberalism is "let's make a deal". Coercion is not part of the equation although actors may have unequal bargaining power. In the 1970s, liberal thinking was associated with arguments about interdependence and transnational relations. While realism focused on states, interdependence and transnationals approached that there were many different actors in the international system including multinational corporations, nongovernmental organizations, foundations, and the Catholic Church.

As a result of information technological change reductions in the cost of communications and transportation, the number of interactions among these state actors was increasing. Outcomes were the result of bargaining among actors Interdependence and transnational arguments failed, not so much because they provided a poor description of developments in the international system, but because they could not generate a set of specific propositions that could be validated by empirical evidence. If the bargaining power and interests of actors could not be specified ex ante, and they could not, it was possible to explain any outcome ex post. There were too many actors and too many interests to make a clear causal argument in most situations. But, if any result was consistent with the theory, then it had no real explanatory power. After the fact, if was always possible to explain an outcome by positing interests and bargaining power for the relevant set of actors, but it was difficult to do this before the fact (Krasner,ibid).

Liberalism resurfaced with a new research program, which was initially termed neo-liberal institutionalisms and is now often simply labeled institutionalism. The most prominent exposition of this perspective is Robert Leohane's after Hegemony (Keohane and Nye,1972). Keonane radically made explicit the ontological base of liberal theory by

accepting the realist premise that the critical actors in the international system were states that could be understood as rational, unified, autonomous actors. Keohane and others using this approach have understood, obviously, that this is a radically simplifying assumption, but it is one that makes the study of international politics much more tractable and practicable. For neo-liberal institutionalism, the exemplary variable problematic in international politics is market failure and not, as it is for realists, a coercive struggle involving distributional and sometimes even zero-sum relative gains.

In an increasingly interdependent or globalizing world community, the opportunities for mutual gain will not necessarily be attained by Adam Smith's invisible hard which is the basic assumption of earlier liberal formulations. Individual actors seeking to maximize their own well-being will not necessarily generate pareto optimal outcomes. Pareto optimality will not occur, for instance, in prisoner's dilemma payoff situations with a specified number of players, where there are information asymmetries, and where it is necessary to provide collective goods.

For neo-liberals, states deal with these market failure problems by creating international institutions, and indeed, the number of international organizations has proliferated along asymmetrical outcomes. This institution can, among other things, provide information, monitor, offer opportunities for issue linkages, establish salient solutions or focal points, and increase interactions. Consequently, cooperation is made possible even in the global environment that lacks a centralized authority system. Neo-liberal institutionalism has spawned a huge body of research, not only because it is paradigmatically powerful, but also because it has been able to draw on non-cooperative game theory, perhaps the most powerful analytic framework in the social sciences, and a framework that has become increasingly prominent in political science and economics that stands at the top of the social science academic pecking order. Game theoretic orientation have also provided a unifying methodological framework across political science and have been applied by scholars working on problems as diverse as the American Congress, ethnic configuration amidst conflict, medieval guilds, and central bank regulation as well contemporary interstate relations in a globalized society.

Neo-liberal institutionalism has brought international legal and international relations scholarship closer together. The ontological framework of neo-liberal institutionalism is identical with that of much international legal scholarship. The classic model of international law is a replication of the liberal theory of the state (cited in Kreasner, 2000). The state is treated at the international level as synonymous to the

individual at the national level. Sovereignty, independence and cooperation are comparable to the position of the individual in the liberal theory of the state. States are viewed equal in the same way that individuals are equal; although inequality is sacrosanct in their dealings. Outcomes in the international environment are or should be the result of contracting among sovereign states, voluntary agreements, which they would not enter into were they not pareto improving.

If neo-liberal institutionalism is one perspective that promises to bring international law and international relations back together, constructivism, which emphasizes the importance of inter-subjective share understandings and mutually recognized identities, is another. Constructivism is a research orientation that has only been explicitly recognized in the last decade. Earlier studies that probed the importance of international norms were not seen as part of a more general research approach. Realism and liberalism have not problematized the preferences or identifies of actors; they have assumed them. For realism, states must always protect their relative power, even when they are seeking absolute gains, such as higher economic benefits, because these benefits could be seized, used as a source of leverage, or reduced in the future by some newly powerful player. Although liberal arguments, including neoliberal institutionalism, can be applied to any kind of objective that an actor might pursue, in practice these approaches have focused primarily on material gains. Constructivists have argued that this is far too simple, that the behavior of actors, even in an anarchic environment, depends upon their identities and their underlying values. Not all state act in the same way. National culture can be consequential. The values that informed German foreign policy in 1999 are very different from those that informed German policy in 1939. At the international level the identity of states can also be dynamic.

In the opinion of Alexander Wendt “the way in which states behave is determined not by the condition of anarchy but rather by inter-subjective share beliefs. An anarchical environment can be Hobbesian, in which states see each other as potential enemies; Lockean in which states accept each other’s right to exist but see other state as rivals; or Kantian; in which states see each other as friends who settle issues among themselves without violence and collectively resist threats from third parties (cited in Krasner,ibid)

Constructivism in international relations scholarship reverberates along assumptions that has sometimes been represented in the work of international legal scholars with emphasis with the notion that there is an international society and that the norms of international society influence or determine the behavior and identify of states. Thomas

Farer, for instance avers that international system can be described in terms of a set shared values or rules that constrain the behavior of actors.

The question/ argument is **Why are treaties often jettisoned by powerful states in pursuit of national interested (ie) USA and Soviet Union on North Atlantic Treaty Organisation (NATO) on expansionism and its consequent violation that today results to Russia versus Ukraine war of 2022.** However, evidence for the existence of such values is still found in treaties, the dictates of international tribunals, resolutions / decisions of international organizations, the writings / documentaries of authorities, vis a vis foreign policy pronouncement and actions of national policy executives. The core values in the contemporary system include avoiding behavior that would risk general war, self-determination and decolonization, minimum human rights, and economic modernization. In a similar vein, Louis Henkin writes "Although there is no international "government," there is an international "society", law includes the structure of that society, its institutions, forms, and procedures for daily activity, the assumption on which the society is founded and the concepts which permeate it, the status, rights, responsibilities, obligations of the nations which comprise that society, the various relations between them and the effects of those relations" (Krasner,ibid).

Constructivism is much less well-established in the international relations literature than realism or neo-liberal institutionalism. Arguments that the behavior of actors is based on deeply embedded, sometimes taken for granted, shared norms are difficult to demonstrate empirically. The beliefs of actors cannot be directly observed, but rather must be inductively derived from their behavior and justifications. It is often difficult to distinguish among economic, security, and normative motivations. The most compelling constructivist arguments have been associated with the national political cultures or values of individual states rather than inter-subjective shared understandings that operate across the whole international environment. Systematic accounts of how such norms are generated and reconstituted are more easily contrived for specific polities as opposed to the international system as a whole. Whether constructivist arguments will effectively challenge more established approaches in international relations-realism and liberalism-remains an open question. But constructivism is an orientation that complements the prescriptive focus of come international legal scholarship (Krasner,ibid).

In summary, from the 1960s to the 1990s, a new paradigm opened between the study of international relations and the study of international law. Scholars in these two fields were separated both by their methodology and their substantive views. Political scientists were

committed to a social science research program involving empirical claims about actual behavior. In many cases, public international lawyers were involved in a normative project to establish or demonstrate the existence of a set of rules that would facilitate or encourage appropriate behavior in the international environment. Substantively, realism was the most prominent approach to the study of international politics. For realism, international law is an oxymoron, mixture of contradictions opposite of each other more recently, liberal institutionalist and constructivist arguments have created a substantive space that can be shared by political scientists and international lawyers. Institutional analyses comprehend law as one mechanism that can be used to solve problems of market failure. Constructivist arguments see law as part of the basic cognitive structure of international system which defines the identities of actors in the contemporary world sovereign states as opposed to for instance, the tributary states of the traditional Sino-centric world or the Holy Roman Empire of medieval Europe.

Nevertheless, the methodological divide that separates political science and international law is not likely to be bridged, and that perhaps is not such a bad thing. The task of political scientists is primarily to explain what is and thereby to hint at what might be. The task of lawyers is more often to elucidate not what is but what might be. If the normative project that is central to international public law were more closely linked with the empirical project of international relations scholars, both enterprises might be enriched.

4.3.2 The Relationship between international law and Municipal law

Municipal law is the technical name given to the national or internal law of a state by international lawyers. The question of the relationship between international law and municipal law can give rise to many practical problems, especially if a conflict emerges between international law and municipal law. The attitude of international law to municipal law is that international law does not entirely ignore municipal law. For instance, as we have seen, municipal law may be used as evidence of international custom or of general principles of law, which are both sources of international law. Moreover, international law leaves certain questions to be decided by municipal law.

Thus, in order to determine whether an individual is a national of state X, international law normally looks at the law of state State X, provided that the law of state X is not wholly unreasonable. However, the general rule of international law is that a state cannot plead a rule or a gap in its own municipal law as a defense to a claim based on international law.

Thus, in the free zones case the PCIJ said: "it is certain that France cannot rely on her own legislation to limit the scope of her international obligation" (1932, PCIJ Series A/B case no 46). This is particularly true when, as often happens, a treaty in other rule of international law imposed an obligation on states to enact a particular rule as part of their own municipal law.

Self-Assessment Exercises (SAEs) 1

Attempt these exercises to measure what you have learnt so far. This should not take you more than 7 minutes.

1 .Discuss the major assumption of neo-realism in international law.
2. The study of international Law and international relations has not always been sharply distinguished until the 1970's and even later. Give reasons for the break.
3.Discuss the major assumption of Constructivism in international relations scholarship.

4.3.3 The attitude of English (national) law to international law

The attitude of municipal law to international law is much less to summarize that the attitude of international law to municipal law for one thing, the laws of different countries vary different in this respect. Consequently, for purposes of simplicity, discussion here will be mainly confined to the attitude of English law towards international law with emphasis on treaties, custom.

Treaties: In the U.K, the power to make or ratify treaties belong to the Queen acting on the advice of her ministers. Parliaments plays no part in the making or ratification of treaties. Consequently, a treaty does not automatically become part of English law; otherwise, the queen could alter English law without the consent of the parliament which could be contrary to the basic principles of English constitutional law that parliament has the monopoly of legislative power.

Hence, if a treaty requires changes in English law, it is necessary to pass an act of parliament to that effect in order to bring English law in conformity with the treaty. If the act is not passed, the treaty is binding on the U.K from the international point of view and the U.K will be guilty of breaking the treaty. An act of parliament giving effect to a treaty in English law can be repealed by a subsequent act of parliament, in those circumstances there is a conflict between international laws and English Law, since international law regards the United Kingdom as still

bound by the treaty. However, English courts usually try to interpret Acts of Parliament so that they do not conflict with earlier treaties made by the U.K.

As far as U.K is concerned, there is a clear difference between the effects of a treaty, in international law and the effects of a treaty in municipal law. A treaty becomes effective in international law when it is ratified by the queen but it usually has no effects in municipal law until an act of parliament is passed to give effect to it. In other countries, this distinction tends to be blurred. In democratic countries outside the Commonwealth, treaty making is part of the legislature functions which participates in the process of ratification, so that ratification becomes a legislative act and the treaty becomes effective in international law and in municipal law simultaneously. For instance, the law of U.S.A provides that the President shall have power and with the advice and consent of the Senate to make treaties, provided two third of the Senators present concur". Treaties ratified in accordance with the Constitution automatically becomes part of the municipal law of the U.S.A.

Custom

The traditional rule is that customary international law automatically forms part of English law that is known as Doctrine of Incorporation. Lord Chancellor Talbot said in Barbuits case in 1735 that the law of Nations in its fullest extent is and forms part of the law of England. Strictly speaking, this statement is too wide, because it is not true of treaties, but as far as customary international law is concerned; it was repealed and applied in a large number of Cases between 1764-1861.

However, it is possible to interpret some of the more recent cases as discarding the doctrine of incorporation in favour of the doctrine of transformation i.e, the doctrine that rules of customary international law form part of English law only in so far as they have been accepted by Lord Justice Alkin in commercial and Estate Co. of Egypt vs Board of Trade is sometimes regarded as supporting this doctrine: international law as such can confer no rights cognizable in the municipal courts, it is only in so far as the rules of international law are recognized as included in the rules of municipal law that they are allowed in municipal courts to give rights and obligations.

Other judgements emphasize the difficulty of discovering what are the rules of customary international law on any given subject and it is here that we can find an explanation of the apparent conflict between the incorporation doctrine and the transformation doctrine. The fact is that most English lawyers and judges know very little about international

law and therefore tend to overlook much of the evidence of customary international law. They usually seek evidence of customary international law only in the sources which are most familiar to them like in judicial decision of English courts or of the courts in other common law countries, if such law doesn't provide solutions, they resort to textbooks.

The reliance on textbooks is not so bad provided they are reliable and up to date, it is the heavy reliance on Judicial decision which is dangerous, because the most recent judicial decision may have been decided a long time ago and the customary international law may have changed since then.

The implication is that English courts may apply obsolete rules of international law instead of modern international law. Moreover, if there are no relevant decision, English courts may wrongly assume that there is no rule of customary law an may invent a new rule which conflicts with international law. The summary of it all, is that English law is in favour of the incorporation doctrine, but since English courts look to English judgement as the main evidence of customary international law practice approximates to the transformation theory. Apart from the problem of ascertaining the content of customary international law, there are number of situations which constitute exception to the general rule, and which English courts cannot apply customary international law viz:

1. If there is a conflict between customary international law and an act of parliament, the act of parliament prevails. However, where possible, English courts will interpret act of parliament so that they do not conflict with customary international law (see Maxwell's interpretation of statutes 12th Ed. 1969: 183-86)
2 Under the so called "act of state' doctrine in English constitutional law, an alien who is injured abroad by an act authorized or subsequently approved by the crown, has no remedy in English courts, the only remedy is to try to get his own state to make an international claim against the U.K.
3. If there is a conflict between customary international law and a binding judicial decision or precedent, the precedent prevails.
4. There are certain questions about how English courts accepts a certificate signed by the foreign secretary as conclusive. Foreign office certificates are most often used in connection with the recognition of states and governments although they can deal with others as like territory of another country, existence of state of war and out of their act of diplomatic status.

Self-Assessment (SAEs) 2

Attempt these exercises to measure what you have learnt so far. This should not take you more than 4 minutes.

1. Establish a fact that international law does not ignore municipal law.
2. Elucidate the circumstances when English courts cannot apply customary international law.
3. Explain the procedure for treaty making in United Kingdom

4.4 Summary

These units have exposed students to the relevance of international law to diplomacy, the nexus between international law and international relations as well as municipal law. It has shown that the study of international law is akin to the study of international relations although the break came because of the changes in the study of international relations, rather than in the study of international Law as maintained by (Krasner,2000:1). Presently, the study of international relations is driven by quest for a use of theories as investigative and explanatory compass of analysis. The connectivity is sequel to issues or areas such as trade, finance, regimes and regime types and other areas of global concern that always attract attention of political Science, international relations experts and international lawyers. However, according to (Krasner, 2000:1) there is a consensus that lawyers actually are knowledgeable about the specific character of international regimes, such as the rules of General Agreement on Trade and Tariffs (GATT).

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4.6 Possible answers to Self-Assessment Exercises (SAEs) 1

1. Waltz an exponent of neo-realism, maintains that international law played essentially no role in international system. The international system is anarchical. There were no authoritative decision-making structures, no mechanism for resolving conflict about how the law should be decided. If there were rules at all, they would be set by powerful states, and these rules would change if the distribution of power changes.
2. The break came because of the changes in the study of international relations, rather than in the study of international Law (Krasner,2000:1) Presently, the study of international relations is driven by quest for a use of theories as investigative and explanatory compass.
3. Constructivism argue that the behavior of actors is based on deeply embedded, sometimes taken for granted, shared norms are difficult to demonstrate empirically. The beliefs of actors cannot be directly observed, but rather must be inductively derived from their behavior and justifications. It is often difficult to distinguish among economic, security, and normative motivations. The most compelling constructivist arguments have been associated with the national political cultures or values of individual states rather than inter-subjective shared understandings that operate across the whole international environment.

Possible Answers Self-Assessment (SAEs) 2

International law does not entirely ignore municipal law because municipal law may be used as evidence of international custom or of general principles of law, which are both sources of international law. Moreover, international law leaves certain questions to be decided by municipal law, for instance, in order to determine whether an individual is a national of state X, international law normally looks at the law of

state State X, provided that the law of state X is not wholly unreasonable.

1. The circumstances include:

i. if there is a conflict between customary international law and an act of parliament the act of parliament prevails. However, where possible, English courts will interpret act of parliament so that they do not conflict with customary international law (see Maxwell's interpretation of statutes 12th Ed. 1969.pp 183-86)

ii. Under the so called "act of state' doctrine in English constitutional law, an alien who is injured abroad by an act authorized or subsequently approved by the crown, has no remedy in English courts, the only remedy is to try to get his own state to make an international claim against the U.K.

iii. If there is a conflict between customary international law and a binding judicial decision or precedent, the precedent prevails.

iv. There are certain questions about how English courts accepts a certificate signed by the foreign secretary as conclusive. Foreign office certificates are most often used in connection with the recognition of states and governments although they can deal with others as like territory of another country, existence of state of war and out of their act of diplomatic status.

2. In the United Kingdom, the power to make or ratify treaties belong to the Queen acting on the advice of her ministers. Parliaments plays no part in the making or ratification of treaties. Consequently, a treaty does not automatically become part of English law; otherwise, the queen could alter English law without the consent of the parliament which could be contrary to the basic principles of English constitutional law that parliament has the monopoly of legislative power.

MODULE 3 Modern Diplomatic Practices

Unit1 Contending Perspectives of Diplomacy

Unit 1 Contending Perspectives Of Diplomacy

Unit Structure

3.1 Introduction
3.2 Learning Outcomes
3.3 Meaning of Diplomacy
3.4 Contending Perspectives of Diplomacy
3.5 Instruments of Diplomacy
3.6 Types of Diplomacy
3.7 Summary
3.8 References/Further Readings/Web Sources
3.9 Possible Answers to Self Assessment Exercises (SAEs}

3.1 Introduction

This unit examines the meaning and contending perspectives of diplomacy with emphasis on the meaning and variants, evolution and functions of diplomacy. Also discussed is diplomatic tools, posts and personnel attached to foreign missions.

3.2 Learning Outcomes

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

- examine the contending perspectives of diplomacy
- understand variants of diplomacy
- be abreast with diplomatic tools, posts
- understand diplomatic personnel

3.3 Meaning of Diplomacy

Unlike tangible realities such as a dog; William Zamtman in his Prenegotiation: Phases and Functions (1989) published in International Journal of foreign affairs maintained that concepts have no clear beginnings and ends, no unambiguous middles and diplomacy being a concept cannot shake this boundary problem hence, the various definition given to diplomacy by scholars depending on their perception of the concept. Harold Nicholson (1950) in his book titled Diplomacy, (2^{nd} eds) published by Oxford University Press in his discourse on the subject, follows the Oxford English Dictionary in defining diplomacy as "the management of international relations by negotiation; the method

by which these relations are adjusted and managed by ambassadors and envoys, the business or art of the diplomat".

Jack C. Plano (1962) in his American Political Dictionary (8th eds) Chicago, Sanders's publishers defined diplomacy as "the total process by which states carry on political relations with each other. Its machinery includes a policy making foreign office and diplomatic mission. Adam Waston (1983) a practitioner and scholar in his book titled "diplomacy", Published in Philadelphia Institute for the Study of Human Affairs sees the substance of diplomacy as a "dialogue between independent states" including the machinery by which their government conducts it and the network of promises, contracts, institutions and codes of conduct which develop out of it".

A theoretician, James Der Derian (1987) in his book titled "On diplomacy", Oxford and New York, Brazil Blackwell refers diplomacy to "a mediation between estranged individuals, groups or entities and to a system of communication, negotiation and information".

Martin Wight (1966) in his Diplomatic Investigation: Essays in the Theory of International Polities published in London, by George Allen and Unwin Ltd described it "as instead of being a mere game of intrigue and subtlety might actually be creative art". Practitioners in the game are secret agents, political adventures and adroit manipulators in the international Political gaming.

Diplomacy is a continuing process. The skill lies in obtaining what your country wants, whether it is a treaty and exchange of students or a trade agreement while still leaving the other country satisfactory. The diplomatic job is not to make a policy that belongs to the politician and the states man. The task of the diplomat is the execution of foreign policy. He transmits details of that policy to foreign government; he tries to explain it and obtain support and when told to do so he negotiates agreement that seek to advance and embody it.

Today's modern diplomacy as an organized craft with its own practitioners and resident missions began to develop in Italy in the 13th and 14th centuries born out of the need for statesman diplomats to negotiate constantly changing alliances in the power struggle between individual states. Diplomacy is the total process by which states carry on political relations with each other. The machinery of diplomacy includes a policy making foreign office (Department of state in the United States) and diplomatic missions abroad (Foreign Office) or foreign service depending on the states' nomenclature. Diplomacy may be carried on through open or conference negotiations or in secret. Occasionally,

diplomacy is undertaken by heads of state, a process called "summit diplomacy".

Having seen all these developments we can now argue that diplomats are those charged with pursuing "national aims and interest in the international environment. At the international environment, the diplomats work point to: representing and projecting an image of his country, handling negotiations, protecting the interest of his nationals where the embassy is based, reporting and interpreting development, trying to influence public opinion, consular work from dealing with stranded tourists to witnessing marriage activities on behalf of all departments of the home government. Commercial liaison and trade promotion and where applicable giving or receiving aid and technical assistance.

Diplomats has three publics namely: the Country in which he works, his home community and the Corps. Diplomats from all nations share the characteristics that is replicas of every intuitive animal. Sir Harold Nicolson in his lecture at Oxford University listed some of the ideal qualities of diplomats of the 15th and 16th Century Viz: He should be a good linguist, hospitable, a man of taste, patient, imperturbable and tolerant of the ignorance and foolishness of his home government.

Francis De Callieres adds that the first quality of a diplomats is the need to be skilled in negotiation and the second is sociability. The work of a diplomat involves calm and caution. He is not to commit himself, that even in routine conversation with officials from another country, he would often pretend to know nothing about a subject even if he was well briefed on it simply to give himself more thinking time. They are specialist as well as generalist who fly by the seat of their pants. Logic is not a serious tool in diplomacy and is of no use in achieving diplomatic turnover, hence, emphasis is given to achievement devoid of serious confrontation.

A good diplomat knows how, when and what to compromise. In critical situation, war may result if diplomacy fails. Diplomacy contributes to an orderly system of international relation and assumes the key techniques used is peaceful settlement of international disputes. In a more restricted sense, diplomacy includes the operational techniques whereby a state pursues its interest beyond its jurisdiction. In the present increasing interdependence of states, the number of international meetings at the instances of multilateral conference, parliamentary diplomacy has expanded and states now deal with one another on such a number of occasions and topics, however, the bulk of diplomatic activity remains bilateral and is conducted through the normal diplomatic channels of the foreign ministry and the resident diplomatic mission. To cap it up,

Orngu (2013) maintains that "it is possible to identify some basic commonalities in the various explication of the concept as thrown up by both scholars and practitioners of the art and science of diplomacy. Such commonalities reside in the fact that diplomacy at the international realm, gravitates towards the art of managing international relations in a manner a state is adequately and reasonably protected, articulated and promoted as much as possible at *all times*".

Self-Assessment Exercise (SAEs) 1

Attempt these exercises to measure what you have learnt so far. This should not take you more than 4 minutes.

1.Outline the qualities of a good diplomat according to Sir Nicolson.

2. Define diplomacy according to Martin Wright.

3. Outline the qualities of a diplomat according to Francis De Calliere

3.4 Contending Perspectives of Diplomacy

The increasing demand for effective and mutual inter -state relations coupled with emerging complexity in the contemporary international society has given rise to different perspectives of diplomacy as captured here-under:

A. Conference diplomacy: This is a large-scale multilateral diplomatic negotiation conducted at international meetings. "It came to the fore following the successful results of the Hague conference of n1899 and 1907" (cited in Orngu, C.S 2013:49). It is historically associated with the establishment of peace after a major war and dates from the beginning of the Western State System at the Congress of Westphalia (1642-1648), which ended the thirty years war. Conference diplomacy was institutionalized and systematized on a global scale with the creation of the league of Nations in 1919. As a successor to the league, the United Nations constitutes a world diplomatic conference of dealing with any international, political, legal, social economic, cultural or technical problem. Regular conference diplomacy also occurs on a limited topical or geographical basis. For example, meetings held by the International Monetary Fund (IMF) the North Atlantic Treaty Organization (NATO) or the Organization of African Unity (OAU)

The formal and quasi-parliamentary nature of conference diplomacy involves selection of a chairman, adoption of standard working

procedures, the establishment of committee structure to expedite the work and a system for reaching decisions. Conference diplomacy is a form of open as opposed to secret diplomacy and it manifests to a kind of open covenant openly arrived at. The multi-lateral nature of conference diplomacy facilitates airing grievances, defining problems, exchanging and working cooperatively to find solutions to common problems.

As a mechanism for the conduct of international relations, it does not however guarantee agreement. For example, the records of both the league of Nations and the United Nations are replete with open disagreement openly arrived at. Nevertheless, the technique of conference diplomacy may encourage the solution of problem when national interests are not irreconcilable by providing a forum for discussion and bargaining.

B. Conversation diplomacy: This is a diplomatic exchange of views between governments. Conversation may be undertaken for information only, or may lead to more detailed negotiations. Conversations are a normal diplomatic activity carried on by an ambassador or member of his staff but they may also take place through the use of specially appointed diplomatic agent.

Conversation is exploratory and do not involve definite commitments continued contact, however by probing and putting our feelers on topic of interest to either or both sides enable a diplomat to determine when the time is right to launch a specific initiative. Conversations known also as "quite diplomacy are carried on continuously at both bilateral and multilateral levels at United Nations headquarters as well as National Capitals and International Conferences. All major international agreements are preceded by informal conversations that start the process of developing consensus.

C. Faith Accompli: This is an act by one or several states that creates a new situation. Following a faith accompli, the other side no longer shares in the power of decision but finds its options reduced to doing nothing or reacting to the altered situation. In diplomacy the fait accompli as a one-sided act of the anti-thesis of negotiation and is frequently the result of a diplomatic deadlock. At other times, it represents on initiative which brings advantages and can be carried through with the hope that other parties will accept it. Example is Adolf Hitler's remilitarization of the Rhineland of 1936 in defiance of Versailles's Treaty. Another is the building of Berlin Wall which presented the Western allies with a faith accompli. The determination to act in a faith accompli fashion is always risky since the other side is also free to react unilaterally.

D. Hegemony diplomacy: This is the extension by one state of preponderant influence or control over another state or region. A policy of hegemony may result in a client state or satellite relationship and the creation of a sphere of influence. Wide discrepancies in power may produce hegemonic relationships between otherwise sovereign and equal states. The preponderant power of one, even with the best intentions, represents at least a potential threat to the security of another. Hence, no sovereign state is expected to endure such a relationship indefinitely without trying to alter it.

Several East European satellites like Poland and Romania have increasingly asserted their independence from soviet domination. In 1968, however, Czechoslovakia's effort to liberalize their communist system were forcibly suppressed by a War-Saw Pact armed invasion directed by Soviet Union. Similar attempt to impose or maintain hegemony occurred in 1979 when China attacked Vietnam, Soviet Union invaded Afghanistan and in 1983 when the United States invaded Grenda. The 2022 invasion of Ukraine by Russia is another recent development of hegemonic diplomacy.

E. Machiavellian diplomacy: This is the use of diplomacy in the pursuit of national objectives by crafty, conspiratorial and deceitful tactics motivated solely by narrow self- interest. The term is derived from the name of Nicolos Machiavelli (1469 – 1529) the frontline diplomat and scholar who, in his celebrated book titled "The Prince" advocated unscrupulous tacks to win and hold political power.

In the absence of absolute standard of diplomatic conduct, the distinction between cleverness and Machiavellianism may depend on "whose ox is good". Diplomacy takes its nature more from the times and the international environment than from the personality of the negotiator or the characteristics of his or her country.

At this juncture in world history, the characteristics of the diplomat resemble those of the scientist, technician and economist. Covert operation carried on many states in promoting subversion, revolution and coup d' etat, however, are not dissimilar from the Machiavellian intrigues of the sixteenth century.

F. Parliamentary diplomacy: This is a form of conference diplomacy that emphasis the search for agreement through the construction of majorities within continuing international institutions. The term attributed to United State Secretary of State Dean Rusk emphasizes similar political processes in the United Nations General Assembly, other International

Organs and in National Parliaments. Parliamentary diplomacy call attentions to the maneuvering of the various regional and special interest groups which resembles legislative caucusing, pork barreling and leg rolling in National Assemblies.

Parliamentary diplomacy helps to define issues, focus attention and consolidate points of views, but it does not automatically lead to problem solving at the international level. The participants are the diplomatic representatives of sovereign states who function as instructed delegates without the freedom exercised by National Legislators in decision making.

In this case, numerical majorities do not automatically change national interest but they may create an atmosphere conducive to negotiation, steam roller majorities as a pressure tactic, however, may solidify disagreements and produce discord instead of harmony.

G. Summit diplomacy: This is diplomatic contact at a personal level by heads of states and government as district with diplomacy at the ambassadorial or ministerial level. Summit diplomacy emerged during the era of absolute monarch and has continued sporadically. Summit diplomacy has experienced a new vogue associated with the perplexing problems of U.S. / Soviet relations and summit conference between United State and other leaders have been held on relations with the Peoples Republic of China and Middle East problems. Summit diplomacy as a mechanism for the conduct of international relations is highly dramatic but has inherently no greater potential for success than other kinds of diplomacy. Diplomacy at the summit may establish broad arrears of agreement, leaving details to the worked out at lower levels or it may break deadlock at lower levels.

This technique may also be employed to improve the climate of relations between states. In some states it may be too expeditions for when Heads of States negotiate there is no fall back authority to which matters may be referred to gain time for reflection. The drama of negotiations between heads of state or government may also make failure at the summit more spectacle frustrating and dangerous. Summit diplomacy is less controversial when it formalizes agreements worked out in advance at lower levels.

H. Economic diplomacy: In the contemporary international system where interdependence drives economic issues, economic diplomacy emerged as the most efficient instrument of conducting foreign policy on one part. On the other, productivity of the policy thrust of economic diplomacy for achievement of set objective depends on its strategic and honest application. This is because it is absolutely necessary for any

policy thrust to aim at, achieve and maintain a self-reliant and prosperous economy. Adefuye (1992:140) adopts this view and asserts that "an economy that fails to sustain a society destabilizes that society". Nigeria is not left out of the strategic economic calculations since economic issue is the driving force behind its foreign policy in the 21st century. The dominant preoccupation of economic diplomacy is with the drive to achieve and protect the economic and political objectives of a country; and to attract foreign direct investment. The economic/shuttle diplomacy was applied by Olusegum Obasanjo to reverse the debilitating conditions of Nigerian economy. "In 2004, President Obasanjo has made exactly two hundred and forty-two (242) trips to foreign countries in the name of shuttle diplomacy" (Orngu,2006:66, Also see the New Nigeria, July 5,2004:5). This policy was focused on the affirmation of economic interest of Nigerian state as "the health of a nation's economy is one index of the vigour and purposefulness it displays in her relationship with others" (Rodee, 1983; 464).

In other-words, "a strong economic foundation and a happy and contended people provide a sound basis for effective pursuit of foreign policy" (Olusanya, 1988:525). Hence, foreign policy thrust of any state is pursued with diplomacy.

The primary thrust of economic diplomacy is to strengthen Nigerian political economy and reposition it for sustainable human and material development. "Economic diplomacy employs economic resources either as reward or sanctions in pursuit of a particular foreign policy objective. This is sometimes called "economic craft" (Harun, 2008:2). This is "to enhance human welfare and create an economic environment that will constantly satisfy the basic needs of man" (Eze,2015:44). Any diplomatic ties, bilateral, multilateral or institutional relations would be conducted in a manner or intention to impact on Nigeria's human and material development. In this context, Olusegun Obasanjo used economic/shuttle diplomacy to seek debt relief from international financial institutions.

I. Dollar Diplomacy: This is a concept used historically by Latin Americans to show their disapproval of the role the American government and giant American corporations have played in using economic diplomatic and military power to open up foreign markets and exploit the people. The term was originally coined by President Williams Howand Tapf, who claimed that United States operation in Latin American had changed from war like and political to peaceful and economic.

Under the Rosevelt, corollary of the Manroe doctrine, American Marines were frequently sent into countries of central America. Protectorates were established over cubs, Hait, microorganisms and Santo Damingo in the early part of the twentieth century. The term dollar diplomacy may also be used in the contemporary world to describe any use of a state's economic, political or military power to further the economic interest of its citizens or large business enterprises in foreign land (Yankee Imperialism) for Latin Americans.

J. Persuasive / Beggar thy Neigbour Diplomacy: This is beggarly, verbal, explanatory, preventive and pacific in orientation. It seeks to condemn; make promises and threats; promote government-to-government dialogue. President Olusegun Obasanjo applied persuasion/beggar thy neigbour diplomacy between 1999-2007 to lure Nigeria out of the heavy debt burden from Paris Club and other international financial institutions. A case in point is International Monetary Fund's endorsement of two-year Policy Support Instrument (PSI), which facilitated the cancellation of US$18.0 billion of Nigeria's external debt owed to the Paris Club of Creditors (CBN 2005: xxxii). Diplomatic strategies of exercising influence through persuasion are designed to signal, and convey the interest, intentions, perceptions and aspirations of States to one another. For this, nations and States have, over time, developed vested interest in diplomatic art and science. The fact is that every issue begs diplomacy. Every relationship invite diplomacy. The making of either war or peace relies on diplomacy. War or peace begins, first, in the minds of diplomats, who act as a buffer or bridge between and among governments.

Self-Assessment Exercise (SAEs) 2

Attempt these exercises to measure what you have learnt so far. This should not take you more than 4 minutes.

1.Discuss the concept of economic diplomacy
2. Examine persuasive/ beggar thy neigbour diplomacy as applied Nigerian- Paris Club debt forgiveness bargain.
3. Examine Machiavellian diplomacy with emphasis on pursuit of national interest.

3.5 Instruments of Diplomacy

These are words employed in the act of diplomacy which is backed by the power of the country which are represented by foreign service

officers. The tools employed by diplomats on accreditation by the host states ranges as follows:

Appeasement: This means surrender of a vital interest for a minor quid pro quo or for no reciprocal concession at all. Such an agreement could result from weakness or confusion over which of a nation's interest are vital and which are secondary. Appeasement is associated historically with the Munich conference of 1938, where the British Prime Minister Neville Chamberlain and French Premier Edouard Daladier accepted Adolf Hitter's demand for the Sudetenland in Czechoslovakia in return for the empty promise of peace.

The significance is that the charge of appeasement is often invoked as a term of opprobrium applied to any concession promoted to diplomatic opponent. The development of modern communication technique, the glare of publicity and the concept of open diplomacy have made genuine negotiation difficult. The general public often fails to appreciate that negotiation involves the search for agreement through compromises and may view any concession as appeasement. Negotiation viewed mainly as a technical for achieving diplomatic victory may seriously limit the diplomat's room for maneuver and may impair the development of a stable world community based on resolution of problems through mutual agreement.

Comity: This is courtesies extended by one state to another. Comity is based on the concept of the equality of states and is normally reciprocal. The idea of comity emerged during the monarchical era, when the relations of states involved the relations of Personal Sovereigns and their agents.

Its significance is that practices based on comity are indispensable in promoting and maintaining friendly relations between countries. Comity is involved in such patterns as viz; extradition, execution by local courts of judgment handed down by foreign courts, one state bringing a suit in the courts of another. Country and diplomatic immunity as an exemption from local jurisdiction, Customs and traditions based on comity have supplemented the development of international law in regularizing the relations of states.

Détente: This is a diplomatic term indicating a situation of lessened strain or tension in the relations between two or more countries. A period of détente may be established by formal treaty or may evolve out of changes in national strategies and tactics over several years. The concept of détente describes an improved environment that may in time contribute to the amelioration of fundamental point of conflicts between

states. The Locarno treaties of 1925 for example ushered an era of relative stability in Europe. It helped in strengthening the League security system through the conclusion of several treaties like the General Act of 1928 and the Kellogg-Briand Pact of Paris of 1928. Beginning in the 1960s, a détente in U.S Soviet-relations based on the idea of peaceful coexistence started to evolve out of an awareness of mutual destruction and because of the growing nationalism among alliance partners within each group rather than from the conclusion of a major treaty. This détente however was jeopardized by the Soviet invasion of Afghanistan in December 1979. It is a matter of decision maker's judgment as to whether a conciliatory or confrontational style of diplomacy will better serve the national interest in a particular situation.

Rapprochement: This is a reconciliation of interest of rival states after a period of entanglement. Rapprochement in diplomatic parlance, implies a policy of attempting to re-establish normal relation. Rapprochement is a common diplomatic term of French origin that describes one of the critical changes that take place in the relations of states. Following (WWII) a rapprochement in French German relations has virtually ended more than a century of bitter rivalry.

Treaty: This is a final agreement or contractual obligation among sovereign states that establishes, defines or modifies their mutual rights and obligation. Treaties are sources of international law and in the United States are also domestic law by virtue of the supreme law of the land vide clause (Article VI of the U.S Constitution. A treaty and other types of international agreements such as acts, aide memoires, charter, covenant, convention, modus vivinde and protocol may involve such topics as peace, territorial cession, alliance, friendship, commerce or other matters of international concern.

The judicial effect or binding nature (pacta sunt servanda) of a treaty is not dependent upon the name of the instrument. A treaty may be multi-lateral or bilateral and of specific or specific or indefinite duration. Treaty making as a process involves negotiation, signature, accreditation, ratification, exchange of ratification, publication, execution etc. Ratification of treaties on executive act by which the state finally accepts the terms of the agreement is accomplished for each signatory in accordance with constitutional process. International contractual agreement, obligations may be terminated after specified conditions have been met at the end of a stated time period by mutual consent by unilateral denomination as during a state of war between the parties or theoretically when conditions essential to the agreement have changed. Since WWII, the relations of states have been regulated with increasing frequency by multi-lateral treaties on a variety of topic (e.g)

the UNO charter, the North Atlantic Treaty, the War Saw Pact, the Rome treaties on European integration etc.

Ultimatum: This is a formal final communication from one government to another requiring the receiving government to comply in some stated fashion with the wishes of the sender or be prepared to take the consequences which may ultimately result to war. An ultimatum indicates that the diplomatic process is but one step short of a breakdown and that one sovereign state is willing to risk the use of force if necessary to impose its will upon another.

The option of giving ultimatum signify a serious crisis in international relations. It indicates that one of the parties has decided to abandon negotiation and will seek its objectives by other means. In 1914 Germany sent an ultimatum to Belgium to permit the passage of German troops through Belgium against France, or to be treated as an enemy of Germany. Both the United Nations and the League of Nations were designed in part to provide meeting places and techniques whereby settlement might be sought beyond the limits inherent on bilateral diplomacy free from delivery of ultimatums.

Self-Assessment Exercise (SAEs) 3

Attempt these exercises to measure what you have learnt so far. This should not take you more than 12 minutes.

1.Examine the concept of diplomatic tools

2. Explain the term appeasement as applied in diplomatic practice.

3. Discuss the impact of détente if applied in the current Russian versus Ukraine war of 2022.

3.6 Types of Diplomatic Personnel

The personnel attached in many foreign missions for effective and efficient service delivery to their respective states on appointment ranges as here-under:

Attache: This is a technical expert/specialist attached to a diplomatic mission to perform representational and reporting activities related to his special field. Attaches specialize in political, military, economic, agricultural, informational, labour, civil aviation, petroleum and cultural field. The significance of attaché is that the data and interpretation acquired through the technical expertise of diplomatic attaché constitute on essential part of the raw material for the formation of foreign policy. Although the use of technical specialists like attaché departs from the diplomatic tradition of employing generalist capable of dealing with

broad political and economic issues technological developments require increasingly specialized knowledge.

The expanded use of attaché from diverse fields often creates a problem of distinguishing between the collections of technical data and espionage. Many attaches have been accused of spying and have been expelled by the host country followed typically by the sending state's retaliatory expulsion of an attaché of equal standing.

Consul: A consul is a public agent sent abroad to promote commercial and industrial interest of their state and its citizens and to offer protection to fellow nationals living or traveling in the second state. Consuls do not have diplomatic status but by law, treaty and usage may enjoy privileges and immunities not accorded to other aliens. Consular duties include services related to shipping and navigations, citizenship, passports and visas, protecting nationals accused of crimes and opening new markets. Consulates are established in one or more of the major cities of other states, the choice depending on the volume of business.

Consular activities are the same or similar to those performed by the local sovereigns and no country is legally obliged to permit foreign consuls to operate within its jurisdiction. The consul's role is usually defined bilaterally but may be augmented by use of the most forward nation, a clause in consular or commercial treaties, which is aimed at avoiding discriminatory treatment. The flow of international trade, travel, commerce and shipping is substantially dependent upon the exchange of consular mission.

Diplomat: This is an accredited agent of a head of state who serves as the primary medium for the conduct of international relations. Diplomatic titles and order of rank were established by the Congress of Vienna (1815) and Aix-la-Chapelle (1818) and includes:

1. Ambassador extra ordinary and plenipotentiary, papal legate and numcio
2. Envoy extraordinary, minister plenipotentiary, and papal inter-numcio
3. Minister resident
4. Charge d' affairs and charge d' affairs and interim

Although ambassador is the highest rank a diplomat can hold, both ambassadors and ministers may serve as chiefs of missions, are accredited to the head of the state to which they are sent and are responsible for the conduct of their official families and staffs. The official quarters occupied by a mission are designated an embassy when

headed by a minister. Virtually, all diplomatic missions are now embassies headed by ambassadors

A charge d' affairs accredited to the minister of foreign affairs is the diplomat placed in charge of a mission before an ambassador or minister has been appointed or from chief of mission has been withdrawn. The senior diplomatic officer temporarily responsible for a mission because of the absence, disability or death of the ambassador or minister is designated charge d' affairs ad interim.

In the practice of United States, the title diplomatic agent is used for a representative accredited to the foreign minister of a dependent state. Diplomats takes precedence from the date of their arrival at a particular capital. The senior ambassador is the Dean or "Doyen" of the diplomatic corps at that capital and on occasion represents the corps with the foreign offices.

The significance of the diplomats is that they provide the personal link between the government for dealing with a great number of mutual concerns. They serve as eyes and ears for their country by observing and reporting economic, political, military, socio and cultural developments. They represent their country both formally and informally as the official agent of communication and on their personal conduct as an example of the people of their country.

While endeavouring to remain persona grata (acceptable to the host government) diplomats must stand ready at all times to protect and advance the interest of their country and its citizens. The basic function of the diplomat, however, is one of continual negotiation in the search for accommodation and agreement.

Self-Assessment Exercise (SAEs) 4

a. Discuss the functions of "attaché" in a foreign mission.
b. Who is a diplomat?
c. Discuss the concept of "consule".

3.7 Summary

This unit has introduced the meaning, variants of diplomacy ranging from conference, conversation, faith accompli, economic, dollar, beggar thy neigbour diplomacy among others. It has also examined diplomatic tools and personnel. With this discussion you have been kept abreast with issues of diplomacy in the present global context.

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3.9 Possible answers to Self-Assessment Exercise (SAEs) 1

1.According to Sir Harold Nicolson some of the ideal qualities of diplomats, a man of taste, patient, imperturbable and tolerant of the ignorance and foolishness of his home government.

2.Martin Wright described diplomacy "as instead of being a mere game of intrigue and subtlety might actually be creative art". Practitioners in the game are secret agents, political adventures and adroit manipulators in the international Political gaming.

3.Francis De Callieres avers that the first quality of a diplomats is the need to be skilled in negotiation and the second is sociability. The work of a diplomat involves calm and caution. He is not to commit himself, that even in routine conversation with officials from another country, he would often pretend to know nothing about a subject even if he was well briefed on it simply to give himself more thinking time.

Possible answers Self-Assessment Exercise (SAEs) 2

1.Economic diplomacy is a policy drive to achieve and protect the economic and political objectives of a country; and to attract foreign direct investment among other national interest.

2.Persuasive/ beggar thy neigbour diplomacy is a beggarly, verbal, explanatory, preventive and pacific approach in orientation. It seeks to condemn; make promises and threats; promote government-to-government dialogue. President Olusegun Obasanjo applied it between 1999-2007 to lure Nigeria out of the heavy debt burden from Paris Club and other international financial institutions.

3. Machiavellian diplomacy is the use of diplomacy in the pursuit of national objectives by crafty, conspiratorial and deceitful tactics motivated solely by narrow self- interest. The term is derived from the name of Nicolos Machiavelli (1469 – 1529) the frontline diplomat and scholar who, in his celebrated book titled "The Prince" advocated unscrupulous tacks to win and hold political power.

Possible answers Self-Assessment Exercise (SAEs) 3

1 .Diplomatic tools are words employed in the act of diplomacy which is backed by the power of the country which are represented by foreign service officers.

2 .Appeasement means surrender of a vital interest for a minor quid pro quo or for no reciprocal concession at all. Such an agreement could result from weakness or confusion over which of a nation's interest are vital and which are secondary. Appeasement is associated historically with the Munich conference of 1938, where the British Prime Minister Neville Chamberlain and French Premier Edouard Daladier accepted Adolf Hitter's demand for the Sudetenland in Czechoslovakia in return for the empty promise of peace.

3. Détente is a diplomatic term indicating a situation of lessened strain or tension in the relations between two or more countries. A period of détente may be established by formal treaty or may evolve out of changes in national strategies and tactics over several years. The concept of détente describes an improved environment that may in time contribute to the amelioration of fundamental point of conflicts between states. Hence, détente, if applied in the ongoing Russia versus Ukraine war can lead to an end to the war through negotiation, treaty and mediation by third parties like United Nations, North Atlantic Organization.

Possible Answers to Self-Assessment Exercise (SAEs) 4

1. Attaché is a technical expert/specialist attached to a diplomatic mission to perform representational and reporting activities related to his specialized field. Attaches specialize in political, military, economic, agricultural, informational, labour, civil aviation, petroleum and cultural field. The significance of attaché is that the ideas, data and interpretation acquired through the technical expertise of diplomatic attaché constitute on essential part of the raw material for the formation of foreign policy.

2 A diplomat is an accredited agent of a head of state who serves as the primary medium for the conduct of international relations. Diplomatic titles and order of rank were established by the Congress of Vienna (1815) and Aix-la-Chapelle (1818) and includes:

a. Ambassador extra ordinary and plenipotentiary, papal legate and numcio
b. Envoy extraordinary, minister plenipotentiary, and papal inter-numcio
c. Minister resident
d. Charge d' affairs and charge d' affairs and interim.

A consul is a public agent sent abroad to promote commercial and industrial interest of their state and its citizens and to offer protection to fellow nationals living or traveling in the second state. Consuls do not have diplomatic status but by law, treaty and usage may enjoy privileges and immunities not accorded to other aliens. Consular duties include services related to shipping and navigations, citizenship, passports and visas, protecting nationals accused of crimes and opening new markets. Consulates are established in one or more of the major cities of other states, the choice depending on the volume of business.

MODULE 4 THE PRACTICE OF DIPLOMACY

Unit 1 Objectives of Diplomatic Mission

Unit structure

Unit 1 Objectives of Diplomatic Mission

4.1 Introduction
4.2 Learning Outcomes
4.3 Objectives of Diplomatic Mission
4.4 Diplomatic Exchange of Personnel
4.5 Meaning of Sovereignty
4.6 Acquisition of Territory/ Processes of acquisition of territory
4.7 Diplomatic Immunity and Privileges
4.8 Possible Answers to Self-Assessment Exercises (SAEs)
4.9 References/Further Readings/Web Sources

4.1 Introduction

This unit is vital as it provides background knowledge on the objectives of diplomatic personnel, issues involved in diplomatic exchange of personnel. It demonstrates the acceptability of aliens globally which signifies the essence of international law and diplomacy in the contemporary global society. The main section of this unit will acquaint you with need for the reciprocity of actors in international law and international diplomacy through the respect for sovereignty of nation states as well the process diplomatic immunities and privileges.

4.2 Learning Outcomes

By the end of this unit, you will be able to:

- understand the objectives of diplomatic mission
- understand the need for diplomatic exchange
- understand the meaning of sovereignty
- understand the basis of acquisition of territory and its processes
- understand diplomatic immunity and privileges in international law

4.3 Objectives of Diplomatic Mission

Nations engage diplomats who represent their governments in fulfilling a number of professional tasks. These functions are best performed if they possess or are trained to develop skills necessary for the ever-challenging roles expected of them as political or carrier diplomats. The 1961 Vienna Convention on Diplomatic Relations codifies centuries of practice and standards applied to relations between states. "Once diplomatic relations are established between two nation-states, they can decide to exchange diplomatic missions or embassies led by a Head of Mission or an Ambassador; vis-à-vis each other, they become both a 'sending State' and a 'receiving State'. One important article of the Convention describes the functions of diplomats to be exercised within the diplomatic mission. There are five recognized ones, which call for some specific skills required from the diplomats" (Finaud, 2019) viz:

1. Representing the sending State in the receiving State": The task of official representation means that the Ambassador is the personal envoy of his/her Head of State to the Head of State of the host country. Similarly, diplomats working in the host country under the leadership of the Head of Mission are considered as representatives of their governments at all times. This means that they cannot interfere in the host country's domestic affairs (for instance by making public political statements); they cannot carry out commercial activities; they have a duty of discretion. In order to be protected from local pressures, they enjoy inviolability (of the diplomat, his/her premises and vehicle), immunity of jurisdiction, and tax exemption. However, this does not mean impunity in case they break the local law: they can be recalled by their governments and prosecuted in their home countries or they can be declared 'personae non gratae' and expelled. In sum, the skills required here are restraint, integrity, dignity, professionalism.

2. Protecting in the receiving State the interests of the sending State and of its nationals, within the limits permitted by international law": This denotes that the main purpose of the diplomats' activity is to promote national interests whether diplomatic, economic, commercial, cultural, etc. This includes catering to the needs of one's nationals living or travelling in the host country, which is also the main activity of the Consulate or Consular section of the Embassy. Diplomats working to serve their countries should therefore display qualities of patriotism, loyalty, national pride, and a good knowledge of their national policies.
3. Negotiating with the Government of the receiving State": Negotiation is an essential part of diplomatic activity. In a bilateral context, between two governments, irrespective of the

scope of the negotiation (from a protocol arrangement for an official visit to a wide-ranging trade agreement), negotiation skills require: good knowledge of the topic (or reliance on experts); flexibility and readiness for compromise (at the proper moment and not without compensation); and a sense of win-win outcome. In a multilateral context, with potentially multiple partners and adversaries, negotiation is more complex but requires the same skills, and, in addition, a sense of initiative and coalition building. Recall wise words of Hans Blix, the former Director-General of the International Atomic Energy Agency (IAEA): "*It is underestimated how important dignity is between people and how important it is not to humiliate*" (Blix, 2019).

4. Ascertaining by all lawful means conditions and developments in the receiving State, and reporting thereon to the Government of the sending State". This is the traditional and standard work of diplomats: observing (via lawful means, i.e., excluding espionage) and reporting. This calls for skills that can be acquired and developed on the job: prior knowledge of the situation and willingness to understand it better; good contacts and interaction with all sectors of society, from officials to civil society; agility in writing timely, clear, and concise reports to the right echelon, with the added value of analysis compared to information available from other sources (mainly media, including social media).

5. Promoting friendly relations between the sending State and the receiving State, and developing their economic, cultural and scientific relations". Lastly, the tasks of diplomats include the promotion of good relations between their countries in all spheres. This requires active contacts with all sectors of the local population, not only the officials and the elites. Diplomats are expected to entertain guests on a regular basis, hence the need for them to have good knowledge of both universal and local protocol rules and a good practice of cross-cultural communication.

4.4 Diplomatic Exchange of Personal

This includes a wide range of activities that bring individuals together from different countries into direct contact for an established purpose over a set length of time. It has been rated by practitioners as the only guarantee for cordial inter-state /foreign service relations. The methods of diplomatique exchange among nations takes the following:

Agreement: This is the formal indication by one country of the acceptability of a diplomat to be sent to it by another. The agreement by the intended receiving state is a response to inquiries initiated by the sending state prior to the formal nomination of the diplomat under consideration.

The procedure followed by the two state is called agreement. The agreement is a useful diplomatic device to facilitate good relations between countries. Since any state can receive/reject a particular individual advance enquiries as to whether the person is persona grata (acceptable) to avoids embarrassments to either state.

In the practice of United States for example the secretary of state seeks the agreement from the head of the foreign government. When it is received, the secretary notifies the president, which then submits the name of the nominee for the post for confirmation by the senate.

Exequatur: This is a formal act by which a receiving country recognizes the official status of a newly appointed consular officer and authorizes him or her to engage on those activities appropriate to the office. In those countries that issue no formal exequatur or similar document, the Consul enters upon his or her duties when the receiving government publicly recognizes his or her status by announcement in the official gazette or some other formal act.

States, although not required by international law to receive foreign consuls issue exequaturs, which authorize the consul to exercise jurisdiction within the territory of the receiving state with all the privileges and immunities customarily granted to such officers. The revocation of the exequatur by the receiving government terminates the consular mission for the individual upon whom it was bestowed.

Letter of Credence: This is a formal document by which the head of the sending state introduces the diplomatic representative to the head of the receiving state. The letter of credence attests to the diplomat's representative character, expresses confidence in his or her ability, outline the mission and the extent of his or her powers and requests that full faith and credit be given to activities under taken by the representative on behalf of his or her government. The letter of credence is usually presented to the Chief of State in a formal audience.

The letter of credence certifies the diplomats' credentials. Through this document the sending country indicates its desire for normal diplomatic relations between the two states. Acceptance of the letter of credence by the receiving chief of staff indicates that the diplomat is duly accredited and may enter upon his or her official duties.

Persona Grata: This means an expression used to indicate that a particular individual would be or continues to be acceptable as an official representative of a foreign state. The concept of persona grata implies that a state may also declare a diplomatic representative of another state to be unacceptable (persona non grata).
The discretionary authority of a government to determine if a diplomat is persona grata occurs first at the appointment stage through the process of aggregation which enables the receiving country to express its willingness or unwillingness to receive the particular representative. After a diplomat has been received, the individual may be declared persona non grata if he or she violates local law, international law or the cannons of proper diplomatic behaviour. The receiving state may then request the sending state to recall its diplomat or more drastically may expel him or her from the country.

Self-Assessment Exercises (SAEs) 1

a. Examine the concept of diplomatic exchange
b. Examine the concept of Exequatur
c. Examine the impact of letter of credence in today's inter -state relations.

4.5 The Concept of Sovereignty

The word sovereignty has caused a lot of intellectual confusion and international fearlessness. This is because following the Westphalian treaty of 1648, the theory began an attempt to analyze the internal structure of a state. Political philosophers target that there must be within each state some entity which possessed supreme legislative power or supreme political power. Arising from above assumption, it is easy to argue as a corollary to this theory, that the sovereign possessing supreme power was not himself bound by the laws which he made.

Then, by a shift of meaning, the word can be used to describe not only the relationship of a superior to his inferior within a state but also the relationship of the ruler of the state itself towards other states. The fact that a ruler can do what he likes to his own subjects does not mean that he can either as a matter of law or as a matter of power politics do what he likes to other states.

In international law, what we mean by sovereignty is that it is independent, it has defined territory, population, government and other associated state identities. This is to say, it is not dependent of some other states. It does not mean in any way that it is above the law. Some are of the opinion that the word sovereignty be replaced by Independence.

In so far as sovereignty means anything in addition to independence; it is not a legal term with any fixed meaning but a wholly emotive term. Everyone knows that states are powerful, but the emphasis on sovereignty exaggerates their power and encourages them to abuse it all. Hence, it preserves the superstition that there is something in international cooperation that arises at violating the characteristic of a sovereign state.

Within the 20th century, the emergence of multi-national corporation, international organization and supranational organization (i.e) European Economic Community (Common market) the emphasis on sovereignty seems to be on the decline. However, in 1923, the Permanent Court of International Justice said "the court declines to see, in the conclusion of any treaty by which a state undertakes to perform or refrain from performing a particular act on abandonment of its sovereignty... The right of entering into international engagement is an attribute of state sovereignty. This to a large extent makes the concept loose it values since states in their economic bid gave away.

Self-Assessment Exercises (SAEs) 2

1. Examine the concept of sovereignty
2. Discuss the essence of occupation as a process of acquisition of territory.
3. Outline modes of acquisition of territory you have studied.

4.6 Acquisition of Territory and Process of Acquisition

Acquisition of territory is an abbreviated way of describing acquisition of sovereignty. Sovereignty, that much absurd word, is here used in a specialized use as sovereignty over territory meaning "the right to exercise class. Therein, to the exclusion of any other state, the function of a state. Other states in the other hand may be treaty or local custom, acquire minor rights over the territory, such as the right of way across it. Even the right of a state to transfer its territory to another state may be limited by a treaty. For instance, by the state treaty of pass, Austria agreed not to enter into practical or economic union with Germany. Again, under the treaty of Utrecht of 1713, Great Britain agreed to offer Gibraltar to Spain before attempting to transfer sovereignty over Gibraltar to any other state.

Processes / Modes of Acquisition of Territory.

The traditional view is that there is distinct process by which sovereignty can be acquired over territory. The Classification of these modes was originally borrowed from the Roman law rules about the acquisition of property which is not surprising since sovereignty over territory bears some resemblance to ownership of property in the 16th and 17th centuries when modern international law began to develop. By this period, the then current theories of absolute monarchy tended to regard a state's territory as the private estate of the prince.

There are several ways in which the use of private law concepts produces a distorted view of modern international law. In particular, it presupposes that transfer of territory takes place between already existing states, just as transfer of property takes place between individuals. Presently, their most frequent form of transfer of territory occurs when a colony becomes independents, since territory is an essential ingredient of statehood, the birth of the state and the transfer of territory are inseparable. Hence, a state is his territory. The emergency of new states therefore calls for a review of the modes of acquisition of territories since they cannot fit into the old model.

Another point to note about modes of acquisition is that they are really only relevant when title to territory is uncertain. For instance, Devon has been part of the United Kingdom for so long that all states recognize it as part of the U.K, and no one bothers to ask how the U.K first acquired it. The modes include: Cession, Occupation, Prescription, Operations of Nature, Adjudication, conquest, Acquiescence, Recognition and Estoppel.

Cession: Cession is the transfer of territory, usually by treaty from one state to another. If there were defects in the leading states' title, the title of the state to which the territory is ceded will be vitiated by the same defects.

This is expressed by the Latin Maxim Nemo dat quod non habet. For example, in the island of Palmas case (1928, UNRINA II 829), Spain ceded the Philippines Island to the U.S.A by the treaty of Paris, 1898; the treaty in question described the island of Palmas as forming part of the Philippines. But when U.S.A went to take possession of the Island of Palmas, they found it under Dutch Control. In the arbitration struggle between U.S.A and Netherlands, the U.S.A claimed that the Island had belonged to Spain before 1898 and that U.S.A had acquired the island from Spain by Cession.

The Arbitrator, Max Huber, held that, even if Spain had originally had sovereignty over the island (a point which he left open) the Netherlands had administered it since the early 18th century, thereby supplanting

Spain as the sovereign over the Island. Since Spain had no title to the island in 1898, the U.S.A could not acquire title from Spain. In other words, granting independence to a colony may be regarded as a sort of quasi- Cession, when the grant constitutes a single act and not a gradual process.

Occupation: Occupation is the acquisition of terra nucleus (i.e) territory which immediately before acquisition, belonged to no state. The territory may never have belonged to any state or it may have been abandoned by the previous sovereign. In this case, abandonment requires not only failure to exercise authority over the territory, but also an intention to abandon the territory. This corresponds roughly to the distinction in some states municipal law between loosing property and throwing it away. Today, there are few parts of the world which are terra nucleus, but many modern-day disputes over territory have their roots in previous centuries, when territory was frequently acquired by occupation. Territory is occupied when it is placed under effective control. The requirement of effective control has become increasingly stricter in international law, as unoccupied territory has become increasingly scarcer or non - existent.

In the 16th century, when there existed vast areas of unoccupied land, effective control was interpreted very liberally, since mere discovery gives a state an undisputed title i.e an option to occupy the land, within a reasonable time and during that period, other states were not allowed to occupy the territory. However, in modern times, effective control is used a relative concept, it varies according to the nature of the territory concerned. It is, for instance much easier to establish effective control over barren and uninhabited territories than over territory which is inhabited by savage tribes; troops would probably have to be stationed in the territory in the latter case, but not in the former case. Effective control is also relative in another sense, which was stressed by PCIJ in the Eastern Green land case (1933 PCIJ Series NIB, no 53 :46).

Another circumstances which must be taken into account is the extent to which sovereignty is claimed by some other power. In most of the cases involving claims to territorial sovereignty which have come before an international tribunal, there had been two competing claims to sovereignty and the tribunal has had to decide which of the two is stronger. In many cases, the tribunal has been satisfied with very little in the way of actual exercise of sovereign rights, provided that the other state could not make out a superior claim. This is particularly true in the claims to sovereignty over areas in mainly populated in unsettled countries.

Sometimes states may agree not to make claims to particular territory, so that the territory in effect remains terra nucleus. Example can be found in Article 2 of the Outer Space treaty of 1967 and the Antarctica treaty of 1959(see, American journal of international law, 1960 :476.) Before 1959, several states laid claims of ownership of various areas of Antarctica, but the area claimed by the other. The treaty provides for freedom of movement and scientific exploration throughout Antarctica.

Acquiescence, Recognition and Estoppel.

Acquiescene, recognition and estoppel play a very important role in the acquisition of territory, although they are not, strictly speaking, modes of acquisition. Where each of the rival claimants can show that it has exercised a certain degree of control over the disputed territory, an international tribunal is likely to decide a case in favour of the state which can prove that its title has been recognized by other claimants. Such recognition may take the form of an express statement or it may be inferred from acquiescence, i.e, Failure to protest against the exercise of control by one's opponents.

However, in every case, recognition or acquiescence by one state has little or no effect unless it is accompanied by some measures of control over the territory by the other state. Failure to protest against a purely verbal assertion or title unsupported by any degree of control does not constitute acquiescence. It is sometimes maintained that acquiescence and recognition give rise to estoppel. Estoppel is a technical rule of the English law of evidence, it entails that when one party makes a statement of fact and another party takes some action in reliance on that statement, the courts will not allow the first party to rent the truth of his statement if the party who acted in reliance on the statement being proved to be false. Transposed into the context of international disputes over territory, this rule would mean that a state which had recognized another state's title to particular territory would be estoppeled from denying the other states title if the other state had taken some action in reliance on the recognition eg, by constructing roads in the territory concerned because the states constructing the roads would have been wasting its money if its title turned out to be bad. The attitude of international law towards estoppel is not always consistent.

Sometimes international law insists on the English requirements of reliance and detriment at other times it does not. Again, estoppel in international law sometimes has the effect of making it impossible for a party to contradict his previous statement, as in English law; in other cases, it is merely evidential (i.e), its effect is simply to make it difficult for a party to contradict his previous statement.

We have already seen that acquiescence and recognition play a crucial role in cases of prescription. But they are equally relevant to other modes of acquisition. For instance, in the Eastern Green land case, Norway claimed to have acquired Greenland by occupation- a claim which pre-supposed that Eastern Greenland had been terra nulius before Norwegian claim was made. Norway lost because Denmark had exercised more control over Eastern Greenland. Then Norway had done, and because Norway by her actions had recognized Denmark title to the whole of Greenland (see 1933, PCIJ Series)

Acquiescence and Recognition

Since states are no longer allowed to acquire territory by conquest but the invalidity of such acquisition of territory can be cured by recognition. But recognition is subject to special rules in the context. For a start, it is probably ineffective unless it is dejure. Moreover, it probably must take the form of an express statement and cannot be inferred from mere acquiescence, and it must be given by third states, not by the victim of the conquest (recognition by the victim is insufficient, because he will probably not be a free agent).

Prescription

Like occupation, prescription is based on effective control over territory. The difference is that prescription is the acquisition of territory which belonged to another state whereas occupation is acquisition of terra nullus. Consequently, the effective control necessary to establish title by prescription must last for a longer period of time than the effective control which is necessary in cases of Occupation; loss if title by the former sovereign is not readily presumed.

In English law, the "Sqautter" acquires title to land after twelve years, in international law there is no fixed period but the time needed is certainly much more than twelve years. Effective control by the acquiring state must be accompanied by acquiescence in the part of the loosing state. Protests, particularly if they are rigorous and repeated, prevent acquisition of the title by prescription. This explains why in the Island of Palmas case, the arbitrator emphasized the absence of Spanish protests against Dutch all on the island.

Although occupation and prescription can be distinguished from one another in theory, the difference is usually blurred in real life because often, one of the very points in dispute is whether the territory was terra nulleus, or whether it was subject to the sovereignty of the first state before the second state arrived on the scene. For instance, the judgement of Island of Palmas does not make clear whether the island was under

Spanish sovereignty before the Dutch began to exercise control. Many of the cases which textbooks classify as cases of occupation could be regarded as cases of prescription and vice versa. When faced with competing claims, international tribunals often decide in favour of the state which can prove the greater degree of effective control over the disputed territory, without basing their judgement on any specific mode of acquisition. For instance, on the Greenland case, PCIJ gave judgement for Denmark because Denmark had exercised greater control than Norway over Eastern Greenland, but the court did not specify the mode whereby Denmark had acquired sovereignty.

Acquisition of Independence by a colony through a gradual process of institution development (as happened in the case of Australia, Canada and New Zealand) can be regarded as a sort of quasi- prescription.

Operation of Nature

A state can acquire territory through operation of nature, e.g, when rivers silt up, or when volcanic islands emerge in a state's internal waters or territorial sea. Such events are rare and unimportant, and there is little point in discussing the detailed rules.

Adjudication

Adjudication is sometimes listed as a mode of acquisition but its status is doubtful. In theory, a tribunal's normal task is to declare the rights which the parties already have not to create new rights. In theory, therefore, adjudication does not give a state any territory which it did not already own. On the other hand, it sometimes happens that states set up a boundary commission to mark out an agreed boundary (e.g to prevent a farm being cut into two). However, this power of the boundary commission is derived from the treaty setting it up and the transfer of territory may therefore be regarded as a sort of indirect cession.

Conquest

Normally, a state defeated in a way used to cede territory to the Victor by treaty but conquest alone, without a treaty could also confer title on the victor under the traditional law. The Victor had to overrun the whole of the enemy's territory and all the resistance by the enemy state and its allies had to have ceased; thus, the German annexation of Poland during the second world war was invalid because Poland allies continued the struggle against Germany. Occasionally, states acquired only part of another state's territory by conquest. For instance, Romania acquired Bessarbia from Russia in this way in 1918 but was forced to cede it back to Russia in 1939. However, it is often difficult to prove that resistance by the defeated state has ceased.

In addition, the conqueror only acquired territory if he intended to do so; in 1945, the allies expressed, disclaimed the intention of annexing Germany although they had occupied all of German's territory and defeated all her allies. In the 19th century, it was inevitable that international law should allow states to acquire territory by conquest, because at that time customary international law imposed no limit on the rights of states to go to war.

During the twentieth century, there has been a growing movement culminating in the United Nations Charter, to restrict the right of states to go to war; as a general rule, the use of force is now illegal with certain exception such as self - defense. One could imagine the effect of revolutionary change in the law upon the acquisition of territory by conquest. The argument is that a treaty imposed by an aggressor is now void. Since an aggressor state cannot acquire a territory by conquering another state and forcing it to sign a treaty of Cession, it must allow a fortiori that an aggressor cannot acquire by conquest alone.

From the foregoing, it seems that international community is not determined to prevent aggressors from enjoying the fruits of their crime, the idea that an aggressor cannot acquire a good title to territory is liable to produce a serious discrepancy between the law and the facts. Ideally, the facts should be brought into line with the law but if states are not prepared to take action to alter the facts, the only option is to bring the law into line with the facts, by means of recognition. An aggressor's title is invalid, simply because it is based on aggression, but its defects are cured when it is recognized de jure by other states. In this exception, cases recognition has a constitutive effect.

The question worthy of answer is, "what about the innocent parties to a war"? Can they still acquire territory by conquest? The declaration of international law concerning freely relations and cooperation among states in accordance with the charter of the United Nations, passed by the General Assembly in 1970, suggest that they cannot.

The territory of a state shall not be the object of military occupation resulting from the use of force in contravention of the provision of the charter. The territory of a state shall not be the object of acquisition by another state resulting from the threat or use of force. With these declarations, there is a significant distinction between military occupation and acquisition of territory. Military occupation is unlawful only if results from the use of force in contravention of the charter, any threat or use of force, whether it is in contravention of the charter or not invalidates acquisition of territory.

4.7 Diplomatic Privileges and Immunities in International Law

International law which makes states firmly committed, requires that law enforcement authorities of every nation state in the international village extend certain privileges and immunities to members of foreign diplomatic missions and consular posts. Most of these privileges and immunities are not absolute, and law enforcement officers retain their fundamental responsibility to protect and police the orderly conduct of persons in the international arena where they are posted for diplomatic functions. Despite this responsibility of law officers, the concept of immunity subsists.

Diplomatic immunity is a principle of international law by which certain foreign government officials are not subject to the jurisdiction of local courts and other authorities for both their official and, to a large extent, their personal activities.

The principle of diplomatic immunity is one of the oldest elements of foreign relations. Ancient Greek and Roman governments, for example, accorded special status to envoys, and the basic concept has evolved and endured until the present. As a matter of international law, diplomatic immunity was primarily based on custom and international practice until quite recently. In the period since World War II, a number of international conventions (most noteworthy, the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations) have been concluded. These conventions have formalized the customary rules and made their application more uniform.

Notwithstanding the antiquity of the concept of diplomatic immunity, its purpose is often misunderstood by the citizens of this and other countries. Occasional abuses of diplomatic immunity, which are brought to public attention, have also served to prejudice public attitudes toward this practice. Dealing with the concept of immunity poses particular problems for law enforcement officers who, by virtue of their oath and training, are unaccustomed to granting special privileges or concessions to individuals who break the law (USA Department of Foreign Relations)

This raises a question of the proper meaning of immunity. Diplomatic immunity was developed to facilitate safe passage of diplomats and promote amicable foreign relations between the governments of different countries, especially during periods of difficulties and armed conflicts (Wikipedia,2022). Immunity Frequently (and erroneously) used is understood to mean pardon, total exoneration, or total release from the responsibility to comply with the law. In actuality, immunity is

simply a legal barrier which precludes states courts from exercising jurisdiction over cases against persons who enjoy it and in no way releases such persons from the duty, embodied in international law, to respect the laws and regulations of the host country.

Even those who properly understand the concept of immunity sometimes erroneously believe that it is senseless to waste valuable police time in the investigation and paperwork essential to building a legal case against a diplomat on the assumption that there is no possibility that a conviction will result. However, there are diplomatic remedies available to deal with such persons even when immunity bars prosecution and conviction.

Although diplomats are generally exempted from the criminal, civil and administrative jurisdiction of the host country, this exemption may be waived by the government of the diplomat's home country (Njoku, 2022). In most cases, this happens only when the official commits or witnesses a serious crime not related to their diplomatic role. Many countries are hesitant or refuse to waive immunity, and individuals cannot waive their own immunity (except in cases of defection) (Longley (2022). If a government waives immunity to allow the prosecution of one of its diplomats or their family members, the crime must be serious enough to make prosecution in the public interest. For example, in 2002, the Colombian government waived the diplomatic immunity of one of its diplomats in London so he could be prosecuted for manslaughter (Longley, ibid).

Further, the immunity of a diplomat from the jurisdiction of the host country does not exempt him/her from the jurisdiction of his/her home country. It is also within the discretion of the host country to declare any member of the diplomatic staff of a mission *persona non grata* (or unwanted person). This may be done at any time and there is no obligation to explain such a decision. In these situations, the home country, as a rule, would recall the person or terminate his/her function with the mission, and may take a further decision to retaliate against the action of the host state. This brings into discussion the variants of immunity.

Diplomatic Immunity may be “absolute” or “restrictive”. Absolute immunity offers complete immunity to diplomats from both criminal prosecution and civil lawsuits. Absolute immunity contrasts with restrictive immunity because under the “restrictive approach”, a diplomat or foreign state is only immune in relation to activities involving an exercise of sovereign power or actions carried out within its/his/her official capacity – especially where the case involves funds or property not related to diplomatic assignments. The diplomat may

therefore be sued and have its/his/her assets seized in a foreign court in commercial or private matters, and important distinctions must be drawn between commercial versus sovereign activities and assets (Norton, 2017).

Privileges and Immunities: This means exemptions of a diplomat from national and local, civil and criminal jurisdictions of the state to which he or she is accredited. Diplomatic privileges and immunities include freedom from arrest, trail, civil suit, subpoena and legal penalty. A diplomat dwelling office and achieves may not be entered, searched or appropriated and his or her privileges and immunities also apply to members of the official staff and household.

Consular officers do not have diplomatic status but because of their function, may by law, treaty and usage enjoy privileges not granted to other aliens. Privileges and immunities enjoyed by United Nations delegates and personnel are governed by an agreement concluded between the organization and the host country.

Diplomatic privileges and immunities are exceptions to the general rule of international law that each sovereign state is supreme within its own boundaries and has jurisdiction over all persons and things found within the territory. Without such exemptions government would be hampered in their foreign relations if their diplomatic agent could be prevented from enjoying full access to the host government or were prevented from returning home upon their completion of their tenure. In the interest of good relations between countries, the granting of privileges and immunities also imply a responsibility for the diplomat to obey the law and regulations of the host country. If the conduct of a diplomat is unacceptable his or her own government may be requested to recall the person or to waive his or her immunity so that he or she can be subjected to civil or criminal process. The receiving state may also declare a diplomat persona non grata and expel that individual from the country. Improper treatment of a diplomat may however, lead to a serious rupture in relations between two countries as in the Iranian/US hostage crisis of 1979-1981.

Self-Assessment Exercises (SAEs) 3

1. Examine the concept of immunity in diplomacy
2. Discuss issues relating to privileges and immunities of an accredited diplomat
3. Examine the difference between absolute" or "restrictive immunity

4.8 References/Further Readings/Web Sources

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4.8 Possible Answers to Self-Assessment Exercises (SAEs)1

a. Diplomatic exchange includes a wide range of activities that bring individuals together from different countries into direct contact for an established purpose over a set length of time. It has been rated by practitioners as the only guarantee for cordial inter-state /foreign service relations.

b. Exequatur is a formal act by which a receiving country recognizes the official status of a newly appointed consular officer and authorizes him or her to engage on those activities appropriate to the office. In those countries that issue no formal exequatur or similar document, the Consul enters upon his or her duties when the receiving government publicly recognizes his or her status by announcement in the official gazette or some other formal act.

c. Letter of Credence is a formal document by which the head of the sending state introduces the diplomatic representative to the head of the receiving state. The letter of credence attests to the diplomat's representative character, expresses confidence in his or her ability, outline the mission and the extent of his or her powers and requests that full faith and credit be given to activities under taken by the representative on behalf of his or her government.

Possible Answers to Self-Assessment Exercises (SAEs) 2

In international law, what we mean by sovereignty is that it is independent, it has defined territory, population, government and other associated state identities. This is to say, it is not dependent of some other states. It does not mean in any way that it is above the law. Some are of the opinion that the word sovereignty be replaced by Independence.

Occupation is the acquisition of terra nucleus (i.e) territory which immediately before acquisition, belonged to no state. The territory may never have belonged to any state or it may have been abandoned by the previous sovereign. In this case, abandonment requires not only failure to exercise authority over the territory, but also an intention to abandon the territory. This corresponds roughly to the distinction in some states municipal law between loosing property and throwing it away. Today, there are few parts of the world which are terra nucleus, but many modern-day disputes over territory have their roots in previous centuries, when territory was frequently acquired by occupation.

Modes of acquisition of territory includes conquest, adjudication, prescription, occupation, cession etc.

Possible Answers to Self-Assessment Exercises (SAEs)3

Immunity is simply a legal barrier which precludes states courts from exercising jurisdiction over cases against persons who enjoy it and in no way releases such persons from the duty, embodied in international law, to respect the laws and regulations of the host country.

Privileges and immunities denote exemptions of a diplomat from national and local, civil and criminal jurisdictions of the state to which he or she is accredited. Diplomatic privileges and immunities include freedom from arrest, trail, civil suit, subpoena and legal penalty. A diplomat dwelling office and achieves may not be entered, searched or appropriated and his or her privileges and immunities also apply to members of the official staff and household.

Absolute immunity offers complete immunity to diplomats from both criminal prosecution and civil lawsuits. Absolute immunity contrasts with restrictive immunity because under the “restrictive approach”, a diplomat or foreign state is only immune in relation to activities involving an exercise of sovereign power or actions carried out within its/his/her official capacity – especially where the case involves funds or property not related to diplomatic assignments.