NATIONAL OPEN UNIVERSITY OF NIGERIA

SCHOOL OF ART AND SOCIAL SCIENCE

COURSE CODE: PCR 822

COURSE TITLE: INTERNATIONAL LAW AND PEACE

COURSE GUIDE

PCR 822
INTERNATIONAL LAW AND PEACE

Course Team O.A. Ilesanmi (Course Writer) NIIA, Lagos
Prof. O.Agbu (Course Editor)

NATIONAL OPEN UNIVERSITY OF NIGERIA

National Open University of Nigeria
Headquarters
14/16 Ahmadu Bello Way
Victoria Island, Lagos

Abuja Office
5 Dar es Salaam Street
Off Aminu Kano Crescent
Wuse II, Abuja

e-mail: centralinfo@nou.edu.ng
URL: www.nou.edu.ng

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INTRODUCTION

This course, International Law and Peace, has been specially designed for graduate students to gain in-depth understanding of the core issues concerning international law and peace in the international arena. It will expose students to the role of international law in engendering global peace, as well as the international instruments and legal frameworks employed to achieve this. A key aspect of the course is the examination of the concepts of international law and peace with its various dimensions, structure and functions of international organisations, different theories of war and peace, and the maintenance of global peace and security.

This Course Guide provides you with all the necessary information and guidance including reference materials, which are germane to a proper understanding of the course as well as adequate knowledge of the subject matter. It also provides guidance on successful answering of the tutor-marked assignment and tips on how to generally succeed in your programme.

WHAT YOU WILL LEARN IN THIS COURSE

This course, International Law and Peace, is designed to provide students with a bird's eye view of important and significant areas in the study of international law and international relations. The different units encapsulated in the four modules i.e. Fundamentals of International Law; Contending Theories of War and Peace; Laws of Armed Conflict and Maintenance of Global Peace and Security will provide students with the necessary details on important issues in world politics.

STUDY UNITS

PCR 822 is a 3-credit unit course for graduate level students. There are 4 Modules in this course. While some modules have 4 units, others have more, depending on the scope and different grounds to be covered in each unit. The modules are designed to cover the different dimensions of the course. The four modules in the course are as follows

Module 1 Fundamentals of International Law

Unit 1 Understanding International Law and Peace
Unit 2 Nature and Scope of Conflict of Laws
Unit 3 Origins and Nature of International Law
Unit 4 Sources of International Law
Unit 5 Criticisms and Debate about Reality, Reliability and Effectiveness of International Law

Module 2 Contending Theories of War and Peace

Unit 1 Definition/Concept of War
Unit 2 Theories of War
Unit 3 Definition/Concept of Peace
Unit 4 Theories of Peace
Unit 5 Pacific Settlement of Disputes

Module 3 Law of Armed Conflict

Unit 1 Concept/Principles of Laws of Armed Conflict
Unit 2 Problems of Laws of Armed Conflicts
Unit 3 War Crimes and War Guilt
Unit 4 People of War, Status of Civilians, Journalists, Spies, Prisoners of War/Combatants
Unit 5 International Law and Terrorism

Module 4 Maintenance of Global Peace and Security

Unit 1 International Organisations and World Peace
Unit 2 Structure and Functioning of International Organisations
Unit 3 International Organisations and Contemporary World Order
Unit 4 Examination of relevant International Instruments viz:

- International Court of Justice
- Geneva Conventions and Protocols
- United Nations Charter

TEXTBOOKS AND REFERENCES

At the end of each unit is a list of relevant books and materials you will need to consult to further deepen your knowledge on the topics already treated in the unit. Due to the limitations of time and space, it will not be possible to cover each topic in-depth manner. It is therefore imperative that as a graduate student, you carry out more research and study on the course, in order to gain a richer and more robust understanding of the topics treated. Notwithstanding, I have tried to provide you with the necessary information on the course.

ASSESSMENT

Two types of assessment are involved in this course; the Self-Assessment Exercises (SAEs), and the Tutor-Marked Assignment (TMA).Your answers to the SAEs are not meant to be submitted, but the TMAs are to be answered and submitted for marking. The TMA will form 30% of the total score for the course.

EXAMINATION AND GRADING

The final examination will be a test of three hours. All areas of the course will be examined. It is very important for students to as much as possible cover the entire module before examination. The final examination will attract 70% of the total course grade. The examination will consist of questions, based on all the topics covered.

WHAT YOU WILL NEED FOR THE COURSE

The course, International Law and Peace, is very interesting and insightful. Apart from reading the recommended text on International law, students will also need to develop the habit of being current on issues of international politics. This can be done through access to newspapers, international news stations, for example, Aljazeera, CNN, magazines and even the internet. This should be done with a view to keeping you abreast of contemporary international issues and analyse them. The library is also of utmost importance for a serious student, where both local and international journals, as well as relevant books can be adequately consulted.

Finally, dedicating adequate time for your study cannot be over-emphasised as imperative to a successful outing in the course.

FACILITATORS/TUTORS AND TUTORIALS

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

Do not hesitate to contact your tutor if you need help. Contact your tutor if:

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

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

CONCLUSION

This course is both theoretical and analytical in nature. And students will need to develop an analytical mind to be able to consider issues inherent in the course.

SUMMARY

This Course Guide has been designed to furnish you with the information you need for a successful experience in the course. Finally, a student's successful performance in the course depends on the level of seriousness exhibited by the student.

Wishing you success in your endeavour.

MAIN COURSE

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MODULE 1 FUNDAMENTALS OF INTERNATIONAL LAW

UNIT 1 UNDERSTANDING INTERNATIONAL LAW AND PEACE

CONTENTS

1.0 INTRODUCTION

International law has evolved as a result of man's quest to achieve peace and order in the global environment. From earliest times till now, mankind has sought ways of entrenching peace in the international community. This unit seeks to expose students to the basic concepts, definition and understanding of international law and peace as a foundation to other units.

2.0 OBJECTIVES

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

- define international law and peace
- explain the broad framework of the concept of international law
- discuss peace in a global context

3.0 MAIN CONTENT

3.1 What is International Law?

International law has been described as mankind's recipe for an anarchical world. Although no single definition exist for the term, International Law refers to the laws which inter alia, lay down rules concerning the territorial rights of States(relating to land, sea and space), the international protection of the environment, international trade and commercial relations, the use of force by states, human rights and humanitarian law (Ladan, 2007).

International law can be described as the discipline that concerns itself with order in the international environment. It seeks ways and mechanisms of entrenching peaceful co-existence of nations globally. International law represents the essence of the progress of civilisation towards a world ruled by laws rather than a world ruled by force. It took thousands of years of effort, hundreds of wars and sacrifice of millions of lives to achieve this (Weeramanty, C. and Burroughs, J. 2005).

Stark J.G (1977) defines international law as that body of laws which is composed for its greater part of the principles and rules of conduct, which States feel themselves bound to observe, and therefore do commonly observe in their relations with each other and which includes:

> the rules of law relating to the functions of International Institution and organisations, their relations with each other, and their relation with states and individuals; and certain rules of law relating to state and non-state entities so far as the rights and duties of such individuals and non state entities are of concern to the international community.

International law can be subdivided into two major areas:

1. Public International Law(that deals with the conduct of state in the international arena, and
2. Private international law also called Conflict of laws (that deals with legal disputes having a foreign element within a domestic system).

3.2 International Law and Peace

Peace is generally referred to as the absence of war, but has often been argued to mean more than just the absence of war. Howard (1971) defines it as the maintenance of an orderly and just society. The concept of peace is relatively newer than those of conflicts, violence and wars. Although a lot of work has been carried out in this area, the concept is

gradually gaining currency. As is common to most social science concepts, there is no single accepted definition of peace. The term peace has been defined in various ways by different scholars varying from the absence of wars to the "attainment of justice and solid stability and "economic wellbeing and basic freedom.

Another scholar defines it as a political condition that ensures justice and social stability through formal and informal institutions, practices and norms (Miller and King, 2003).It has also been defined as an existential state, where individuals are not only free from bombs raining down on their heads and an absence of planes flying into buildings, but where every person enjoys the basic human rights of security, prosperity, a good and free education, plentiful food, accessible healthcare, clean water, and all other social provisioning, clean planet free from catastrophic global climate change and overwhelming pollution.

International Law has been an extremely important tool used for abolishing wars as well as entrenching peace globally. Peace to large extent has eluded nations of the world especially in the ancient times, and this quest for peace is almost as old as mankind. Desire by States for world peace has therefore led to the emergence of a plethora of instruments including treaties and customary international laws used to guide the conduct and interaction of states in the international scene. The 1648 Treaty of Westphalia which ushered in the modern state structure of political entities can be termed the first attempt at securing planetary peace by mankind (Agwu, 2007). The plethora of wars catalyzing into the two world wars, made the search for peace more intense. Several efforts at entrenching peace in the global order ranging from the Congress of Vienna in 1815 and the 1899 Peace Conference at The Hague still did not end the wars.

The 1899 Hague Conference sought to advance an alternative way to settlement of disputes against the grain that war was the natural means of resolving international disputes. The Treaty of Versailles in 1919 later established the Permanent Court of International Justice which had jurisdiction to settle disputes for States accepting its jurisdiction. Wars however continued to break out as States refused to give up their sovereignty and submit disputes to Supra-national organisations like the International Court of Justice or the United Nations; the 2nd World War was a humanitarian catastrophe with the loss of thousands of lives. The creation of the United Nations and the International Court of Justice outlawed wars and enthroned the notion of peaceful settlement of disputes as entrenched in Chapter IV of the UN Charter.

Chapter VII of the UN Charter also deals with peace through its enforcement action with respect to threats to peace, breach of peace and acts of aggression. The charter has been in existence for over 60 years and almost every state in the world is a member to which its resolution is binding.

4.0 CONCLUSION

International law is man's answer to reducing or completely eradicating violence and wars, as well as entrenching global peace. It consists of the international instruments and treaties to guide the conduct of states with a view to maintaining order and stability.

5.0 SUMMARY

In this unit, effort has been made to provide definitions and explanation of international law and peace. We have also examined how man's quest for peace ultimately gave rise to international law.

6.0 TUTOR-MARKED ASSIGNMENT

Briefly explain what you understand by international law and state its functions.

7.0 REFERENCES/FURTHER READING

Howard, M. (1971). "Problems of a Disarmed World." In: *Studies on War and Peace*. New York: Viking Press.

Ladan, M.T. (2007). *Materials and Cases on Public International Law*. Zaria: Ahmadu Bello University Press.

Shaw, M. N. (1997). *International Law.* UK: Cambridge University Press. (4th ed.).

Stark, J.G. (1977). *An Introduction to International Law.* London: Butterworth &Co Publishers Ltd.

UNIT 2 NATURE AND SCOPE OF CONFLICT OF LAWS

CONTENTS

1.0 INTRODUCTION

Private international law, also called conflict of laws is the arm of international law that deals with legal disputes occurring in domestic legal systems but having a foreign element. It is important to examine this with a view to understanding its basic features and its dynamics.

2.0 OBJECTIVES

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

- differentiate between public international law and private international law
- explain the nature and scope of conflict of laws.

3.0 MAIN CONTENT

3.1 Definition and Conceptual Clarification

International law is sometimes referred to as 'public international law' to distinguish it from private international law. Whereas the former governs, amongst others, the relations of states and other subjects of international law, the latter consists of the rules developed by states as part of their domestic law, to resolve the problems between private persons, a foreign element, and the issue of a court's jurisdiction and over the choice of the applicable law.

In other words, public international law arises from the juxtaposition of states; and private international law, from the juxtaposition of legal systems (Jennings & Watts, 1992). Conflict of laws refers to a set of rules that determine which legal system and jurisdiction to apply to a given dispute. It is a body of rules of the domestic laws of a State which applies when a legal issue contains a foreign element and it has to be decided whether a domestic court should apply foreign law or cede jurisdiction to a foreign court (Aust, 2005). These rules apply when a legal dispute has a "foreign" element such as a contract agreed to by parties located in different countries. For example, if two Englishmen make a contract in France to sell goods situated in Paris, an English court would apply French law as regards the validity of that contract.

Private international law is the body of conventions, model laws, national laws, legal guides, and other documents and instruments that regulate private relationships across national borders. It has also been defined as "law directed to resolving controversies between private persons, natural as well as juridical, primarily in domestic litigation arising out of situations having a significant relation to more than one state".

3.2 Nature and Scope of Conflict of Laws

There are three basic questions that must be answered in settling disputes within the scope of conflict of laws notwithstanding the legal system. These are:

Jurisdiction – whether the forum court has the power to resolve the dispute at hand. What is the source of the court's jurisdiction to determine the case notwithstanding its foreign elements?

Choice of law – the law which is being applied to resolve the dispute, that is, what law applies and what are the rules that determine this.

Foreign judgments – the ability to recognise and enforce a judgment from an external forum, within the jurisdiction of the adjudicating forum. If a party seeks recognition or enforcement of a foreign judgment, when and how will this be done?

4.0 CONCLUSION

Conflict of Laws, otherwise referred to as Private international law is an important part of international law because it is concerned with cases having a foreign element occurring within a domestic legal system. These are largely common occurrences in today's' globalised world.

5.0 SUMMARY

This unit examined private international law as different from international law, definitions, its nature and the concepts.

6.0 TUTOR- MARKED ASSIGNMENT

Briefly discuss the difference between public international law and private international law.

7.0 REFERENCES/FURTHER READING

Aust, A. (2005). *Handbook of International Law*. UK: Cambridge University Press.

Ladan, M.T (2007). *Materials and Cases on Public International Law*. Zaria: Ahmadu Bello University Press Ltd.

Jennings R &Watts, A. (1992). *Oppenheim's International Law* (Eds). (9th ed.). Volume 1.

Shaw, N. (2007). *International Law*. (4th ed.). Cambridge: Cambridge University Press.

Stark, J.G. (1977). *An Introduction to International Law*. London: Butterworth &Co Publishers Ltd.

UNIT 3 ORIGINS AND NATURE OF INTERNATIONAL LAW

CONTENTS

1.0 INTRODUCTION

There is a beginning to everything that exists, it is therefore necessary to examine how international law evolved in order to have a better understanding of the remaining units.

2.0 OBJECTIVE

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

- describe how international law evolved over the years to the present time.

3.0 MAIN CONTENTS

3.1 Evolution and Development of International law

International law can historically be traced to ancient Egypt, China and India. Originally referred to as the Law of Nations, international law has evolved over thousands of years to arrive at where it is presently. As early as 15th century B.C, states of the Middle East (Egypt, Babylon and Assyrian empires) were maintaining contacts with each other, while ancient China was according immunity to diplomats and sending envoys to foreign lands.

The dominant approach of ancient civilization at that time was however culturally and geographically restricted, due to the notion of an international community of states' co-existing without a defined framework. The scope of international law was limited and all that existed at that time pointed to a form of international law where certain ideals such as the sanctity of treaties existed as important elements of the international society. The notion of a universal community with its ideal world order was however lacking. (Shaw, 2007). Modern day international law as we have today, developed from Medieval Europe with the signing of the Peace of Westphalia in 1648 and the emergence of modern nation states. The event not only marked the end of the Thirty Years Wars but also the end of feudalism (Aust, 2005). With the emergence of states, also came the emergence of rules guiding conduct among them. The evolution of an international community of separate sovereign states marked the beginning of what is known as international law. The early theorists of international law were deeply involved with Natural Law and used them as a basis for their philosophy.

3.2 Nature of International Law

While law is the fundamental bedrock upon which all societies are built, and an instrument with which societies are organised and managed,

International law on the other hand is the law guiding the conduct of international relations among states. Though similar to the law that exists within a given country in the sense that both aim at achieving an organised and stable polity, international law has peculiar features which has led to the debate about whether it is actually law or not.

International law lends itself to the following feature:

Firstly, international law unlike domestic law (which has individuals as its subjects) has states as its principal subjects.

Secondly, international law lacks the basic features of domestic law which are; a recognised body to create or legislate laws, a hierarchy of courts with competent jurisdiction to settle disputes over such laws, and an accepted system of enforcing such laws (Shaw, 1997).There is no unified system of sanctions in international law in the sense there is in municipal law.

While the legal structure within states is hierarchical and authority vertical with the sovereign person or unit of authority on top, the international system is horizontal consisting of over 180 independent states, all equal and sovereign.

In domestic systems, the law is above the individual, without a choice to obey or not. In international law, states themselves create the laws through international agreements and have the choice whether or not to obey.

3.3 International Law and Municipal Law

It is important that we examine the difference between international law and municipal law in the course of our study. While international law refers to the laws governing the conduct of states in the international arena, municipal law refers to the laws operating within a state. It deals primarily with the relations between individuals in the state and individuals and the state. The difference between international and municipal law is of both practical and theoretical interest. Two basic theories exist as an explanatory framework for them. One of such is:

Dualism;- The Dualist school postulates that international law and municipal law are not only different in character, nature and sphere of function, but they also exist as equal and independent branches of law. The Positivist schools who are the proponents of dualism stress the overwhelming importance of the State, and regard international law as founded upon the consent of the states. Dualists assert that for

international law to apply within municipal courts of a state, it must first be incorporated into the domestic law of states.

According to Tnepal, one of the leading exponents of dualism, the two fundamental differences between the two systems include the following:

The subjects of state laws are individuals, while those of international law are states, and other non-state actors including international institutions.

Their juridical origins are different; the source of municipal law is the will of the state itself, while the source of international law is the common will of states.

Monism:- The Monist School consists of different postulations by scholars on the relationship between international law and municipal law. They however all agree to a unitary view of law. The naturalist like Lauteracht sees the primary function of all laws as concerned with the wellbeing of individuals, advocating the supremacy of international law as the best method for achieving it.

4.0 CONCLUSION

This unit has examined the growth and development of international law as well as its nature in a bid to expose you to how international law developed as a law guiding the conduct of states in the international arena.

5.0 SUMMARY

A basic understanding of the growth and development of international law is essential for a proper understanding of what international law is about. This unit also examined the peculiar nature of international law and its relationship with municipal law.

6.0 TUTOR- MARKED ASSIGNMENT

i. Discuss the basic differences between international law and municipal law.
ii. Explain the Dualist Approach in International law.

7.0 REFERENCES/FURTHER READING

Aust, A.(2005). *Handbook of International Law*.UK: Cambridge: Cambridge University Press.

Ladan, M.T. (2007).*Materials and Cases on Public International Law*. Zaria: Ahmadu Bello University Press Ltd.

Shaw, N. (2007). *International Law* (4th ed.). Cambridge: Cambridge University Press.

Stark, J.G. (1977). *An Introduction to International Law.* London*:* Butterworth &Co. Publishers Ltd.

UNIT 4 SOURCES OF INTERNATIONAL LAW

CONTENTS

1.0 INTRODUCTION

Traditionally, the sources of international law are listed in Article 38 of the Statute of the International Court of Justice. Article 38(1) provides that: "The Court, whose function it is to decide in accordance with international law such disputes as are submitted to it, shall apply:

- International Conventions, whether general or particular, establishing rules expressly recognised by the contesting states.
- International Custom as evidence of a general practice accepted as law.
- The general principles of law recognised by civilised nations.

A good knowledge of the different sources of laws is expedient for students of international law.

2.0 OBJECTIVE

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

- discuss the different sources that make up international law.

3.0 MAIN CONTENT

3.1 International Conventions/Treaties

This refers to an international agreement between States and subjects of international law. It can be general or particular, establishing rules expressly recognised by the contracting states. According to Ladan (2007), treaties are becoming the most important sources of law. Examples of such include the 1961 Vienna Convention on Law of Diplomatic Relations and 1982 Law of the Sea Convention.

3.2 Customary International Law/Custom

International customs, as general practices accepted as law come into being when subjects of international law follow a particular, constant and uniform practice with the conviction that they are legally bound to act in that way (Akinboye and Ottoh, 2005).In international law, a rule of custom evolves from the practice of states, and this can take a short or considerable length of time. There must however be evidence of substantial uniformity of practice by a substantial number of states (Aust, 2005).

State practice can be expressed in various ways, for instance through governmental actions in relation to other states, legislation, diplomatic notes, ministerial and other official statements, government manuals (as on the law of armed conflict) and certain unanimous or consensus resolutions of the UN General Assembly. The first of such resolution probably being Resolution 95(1) of 11 December 1946 which affirmed unanimously the principles of international law recognised by the

Nuremberg International Military Tribunal and its judgment (Aust, 2006).

In addition to State practice, for a practice to become a new rule, there also has to be a general recognition by States that the practice is settled enough to amount to an obligation binding on them; this is known as *Opinio Juris* (this refers to the general belief that a non-treaty rule is legally binding on states).For instance, in Nicaragua vs. US (Merits), ICJ Reports (1986), p.14; paras. 183-94; 76 ILR 1 as cited in (Aust, 2006), the International Court of Justice found that the acceptance by states of the Friendly Relations Declaration of the General Assembly constituted *Opinio Juris*.

3.3 General Principles of Law Recognised by Civilised Nations

International law is still developing, and from time to time borrows concepts that can be utilised in the conduct of relations among state from domestic law. It has been criticised as incorporating not only natural law but as a mere representation of the application of laws of the capitalist bourgeois legal system (Akinboye and Ottoh, 2005). Examples include Good faith and Estoppel.

3.4 Judicial Decisions

The cumulative effect of decisions and judgment of courts and tribunals both in the domestic and international sphere amount to a subsidiary source of international law (Aust, 2005). These are regarded as authoritative evidences of the state of the law. This is because judgments usually result from careful consideration of particular facts and legal arguments, and carry persuasive authority. It is therefore a source of international law.

3.5 Teachings of the Most Highly Qualified Publicists

The scholarly writings of publicists play important roles on the rules of international law, although it can be said that their views were more influential in the formative years of international law than it is now.

3.6 Jus Cogens

This is a peremptory or absolute rule of general international law for which no derogation is permitted. According to Article 53 of the Vienna Convention on the Law of Treaties (1969) it is a: “a norm accepted and recognised by the international community of states as a whole from which no derogation is permitted and which can be

modified only by a subsequent norm of international law having the same character".

Although there is no agreed criteria for determining a *Jus Cogens,* the only likely and generally accepted example of it are the prohibition on the Use of force contained in the UN charter, and on genocide, slavery and torture (Aust, 2005).

4.0 SUMMARY

In this unit, we examined the sources of International law to include International Conventions/Treaties, Customary International Law etc.

5.0 CONCLUSION

In this unit, we examined the sources of International law to include International Conventions/Treaties, Customary International Law etc. Traditionally, the sources of international law are listed in Article 38 of the Statute of the International Court of Justice. Article 38(1) provides that: "The Court, whose function it is to decide in accordance with international law such disputes as are submitted to it, shall apply:

- International Conventions, whether general or particular, establishing rules expressly recognised by the contesting states.
- International Custom as evidence of a general practice accepted as law.
- The general principles of law recognised by civilised nations.

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6.0 TUTOR-MARKED ASSIGNMENT

What are the sources of international law?

7.0 REFERENCES/FURTHER READING

Armstrong, D. F. & Lambert, H. (2007). *International Law and International Relations.* UK: Cambridge University Press.

Akinboye S. & Ottoh, F. (2005). .*A Systematic Approach to International Relations*. Nigeria: Concept Publications Ltd.

Aust, A.(2005).*Handbook of International Law*. UK: Cambridge University Press.

Stark, J.G. (1977). *An Introduction to International Law*, London: Butterworth &Co Publishers Ltd.

Shaw, N. (2007). *International Law*. UK: Cambridge University Press.

Goldstein, J. (2005). *International Relations.* Pearson Education Inc and Dorling Kindersley Publishing Inc.

UNIT 5 CRITICISMS AND DEBATE ABOUT REALITY, RELIABILITY AND EFFECTIVENESS OF INTERNATIONAL LAW

CONTENTS

1.0 INTRODUCTION

Various schools of thoughts exist on whether international law is actually law in the true sense of it. The reality, reliability of international law, and its effectiveness as an instrument to govern the conduct of states in the international arena, is one question that re-occurs frequently in the scholarship international law. This unit will consider such arguments with a view to providing students with a better understanding of the relevant issues.

2.0 OBJECTIVES

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

- identify the different arguments and criticism against the nature of international law.

- explain the logic behind the different arguments and criticisms against the nature of international law.

3.0 MAIN CONTENTS

Is International Law Really Law?

Different Schools of thoughts exists in the long drawn debates if international law is law in the true sense of it. Some scholars have argued that international law is not law because it lacks the basic features and characteristic of law as it exists within municipal law. One of the leading scholars of the school of thought that argue that International law is not law but a code of rules of moral conduct was the legal Jurist –John Austin in his "Legal Theory of Law".

According to him, law is a body of rules for human conduct enforced by a sovereign and superior political authority on members of an independent political society from whom he receives habitual obedience; and sanctions are the consequence to a breach of such laws, (Laden, 2007). Austin asserted that since these do not exist in the international community, and rules were not binding in the international arena, international law cannot be said to be "Law" but moral codes of conducts for States.

Distinction between Municipal Law and International Law

S/N	MUNICIPAL LAW	INTERNATIONAL LAW
1.	Superior Political Authority	Equal Sovereign States
2.	Force of Coercion Exists	Lack of Coercive Power
3.	Hierarchy of Courts	No System of Courts
4.	Rules are legally binding	Rules are not legally binding States are free to accept jurisdiction or refuse. Also ICJ and UN Resolutions are not legally binding
5.	Existence of Legislative Mechanism	No legislative framework, laws are made by States

It should be noted that Austin based his analysis of International Law status as not a true law on the defining characteristics of domestic legal systems. His analysis has been criticised as being flawed and unrealistic, confusing the true nature of law within a state and in the international community.

He has been criticised as being simplistic. Even though there are no international legislatives to erect laws in the International community, various international treaties and conventions are in existence (though lacking during his time), which serves as international legislations. Also, the General Assembly and Security Council of the United Nations pass resolutions, though not binding on states. Also, although there is no system of courts in international law, there is the International Court of Justice at the Hague. It is however open to states that have appended signatures and ratified parties to its statutes and consent by these states to the court's jurisdiction must be established. Finally, although there is no executive arm to execute the law, the UN Security Council was to have such roles. However the veto power by the five permanent members: Russia, United States, Britain, France and China, have largely constrained its ability to act.

SELF-ASSESSMENT EXERCISE

Explain the reasons why international law should be regarded as law.

3.2 Debate about Reality, Reliability and Effectiveness of International Law

A frequently asked question by student of international law is its legality and effectiveness. Although John Austin's conception and definition of international law based on his comparison with municipal law has been largely criticised, there is still the need to examine how effective international law is as an instrument in achieving peaceful conduct and relations between States. What are the lapses and deficiencies that are inherent in the law? To analyse this, we shall examine the various debates on the reality, reliability and effectiveness of international law.

The question of reliability and effectiveness of international law is to ascertain whether it can actually govern the conduct of States, or whether it is a disguised tool for the exercise of hegemony by "powerful" states; to be invoked or disregarded at will; in line with their national interest. It is imperative to note that the use and effectiveness of international law in today's world is dependent on the extent to which States use political will and political consensus in issues of adherence and compliance to such laws.

International law developed as a result of man's quest to engender peace and eliminate wars and violence from world politics. The two World Wars experienced in the 20th century greatly led to the devastation of countries and loss of millions of people. Consequently, the "Use of force" in Article 24 of the UN Charter is the sole preserve of the

Security Council (for the maintenance of international peace and security) exception being only for self defense by states. However, despite the existence of this provision, states have continued to use force (not for self defense) and without UNSC authorisation. A typical example is the US unilateral invasion of Iraq in 2003. The US under the Bush administration decided to disregard international law by invading Iraq without United Nations Security Council approval. The action would be unlikely for a small and less powerful state.
The absence of effective mechanisms for enforcing the laws also limits the effectiveness of international law. When such laws are disregarded by "powerful states" they tend to get away with it. On the other hand, the North Atlantic Treaty organisation's (NATO) actions in Libya (2011) can be said to be within the ambit of international law as they were upholding UNSC resolutions on the use of force. This among several others, portrays the effectiveness and compliance rate of states for international law.

Another factor affecting the effectiveness of International law is its lacks of a system of courts. Even though there is the International Court of Justice at The Hague, it is only open to states that are parties to the ICJ Statutes and consent by states to the Court's jurisdiction must be established. The judgments by the ICJ also do not have any enforcement mechanisms and does not enforce compliance of its decisions. These and other gaps and lacuna that exist in international law and which States usually take advantage of, have led to criticisms of its effectiveness and reliability in governing the conduct of States in the international arena.

4.0 CONCLUSION

This unit examined different issues that are fundamental to understanding international law in world politics.

5.0 SUMMARY

International law is to govern the conduct of states in the international arena. This unit examined the sources of international law, origins and nature as well as the various arguments for and against its effectiveness as law.

6.0 TUTOR-MARKED ASSIGNMENT

i. Assess the capacity of international law in governing the conduct of States in the International arena.
ii. Describe the various sources of international law.

iii. What do you understand by Conflict of Laws?

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MODULE 2 CONTENDING THEORIES OF WAR AND PEACE

UNIT 1 DEFINITIONS/CONCEPT OF WAR

CONTENTS

1.0 INTRODUCTION

War is as old as humanity. Wars have been fought from the earliest days till present, and still remains a key aspect of human existence and interaction. The devastating effects are however better imagined. Millions of lives and properties have been destroyed; societies and nations have been utterly destroyed. Over the years the world has sought and continues to seek ways of eradicating and reducing the devastating effects of war on people and society.

2.0 OBJECTIVE

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

- explain the meaning of the term war.

3.0 MAIN CONTENT

3.1 Definition of War

War is one of mankind's oldest social (and anti-social) activities (Akinboye and Ottoh, 2005), and is as old as humanity (Cioffi-Revilla, 1996). It has also been referred to as an organised, armed, and often, a prolonged conflict that is carried on between states, nations or parties typified by extreme social disruption, and usually high mortality.

Some Definitions of War

S/N	Theorist	Definitions of War

1.	Carl Von Clausewitz	War Is 'The continuation of politics by other means'.
2.	Michael Gelven	*'It is an actual, widespread and deliberate armed conflict between political communities, motivated by a sharp disagreement over governance'.*
3.	Carl Von Clausewitz	'War is nothing but a duel on an extensive scale… an act of violence intended to compel our opponent to fulfill our will, directed by political motives and morality'.
4.	Jack Levy	'A constant persistent, pervasive and recurring pattern of violent conflict between peoples since the beginning of recorded history'.

War is a state of armed conflict taking place (inter-state) between different countries, or (intra-state) different groups within a country. Historically, war has destroyed the lives of hundreds of millions of people, largely devastating once thriving societies and nations. It is indeed an ill wind that blows no one any good. It is a brutal and ugly enterprise, and one activity that have remained at the core of human history and social change. Paradoxical and inexplicable as it may be, the fact is that war and its threat remain forces the world must contend with. The recent events in the world; 9/11 attack in the US, the counter-attack on Afghanistan, the overthrow of Iraq's Saddam Hussein, the Darfur crisis in Sudan, the bombings in Madrid and London, or the on-going "war on terror" adequately explain this development.

3.2 Level of Analysis Framework in Explaining Causes of War

In order to assess the causes of wars, broad generalisations have been elusive, and wars cannot be said to be caused by a single factor. Although, there are in existence a myriad of theories and approaches to studying the causes of wars as well as different methodology in discovering this, only few have universal validity. This enormous diversity of theoretical, methodological, and epistemological perspectives on the study of war complicates the task of providing a concise assessment of the field (Levy 1989b).

The levels of analysis framework has been used in organising these theories of war with a view to understanding the causes of war as

resulting from forces and processes operating on all the levels (Goldstein, 2005).

Kenneth Waltz (1959) in his classic: *Man, the State and War* suggested three images of war as explanatory frameworks for the causes of war namely: The Individual, the Nation/State and the International system.

The Individual Level of Analysis

This analytical framework closely links the use of war and other violent means of leverage in the world to the rational decisions of the national leader of states. Focus here is on the individual political leaders and their belief system, psychological processes, emotional state and personality. In other words a national leader's disposition for or against war to a large extent determines whether a nation goes to war or not. For instance considering two US presidents; one can say while George W. Bush was predisposed towards war, Bill Clinton, his predecessor was not.

The National Level of Analysis

The domestic level of analysis focuses on the characteristics of states or societies that predispose them towards war or against it. It includes factors such as types of political system (authoritarian or democratic, and variations of each), structure of the economy, the nature of the policy making process, role of public opinion and interest groups, ethnicity and nationalism, and political culture and ideology.

The International System Level

The level links the causes of war to the anarchical structure of the international system, the distribution of military and economic power among the leading states of the world, patterns of military and economic power, international trade, and other factors that constitute the external environment common to all states.

Levy (2011), in *Theories and Causes of War*, used the decision making level of analysis framework to explain the causes of war, categorising different theories of war in these compartments.

System Level Theories

Here he explains in line with realist theories of causes of war, that sovereign states act rationally to advance their security, power and wealth in an anarchic international system defined by the absence of a legitimate authority to regulate disputes and enforce agreements.

Theories within this category includes balance of power theory, power transition theory e.t.c

Dyadic-Level Theories

He argues here that the history of the interaction between pairs of states have an enormous impact on their behavior and on the likelihood of war between them. The Bargaining Model of War which is a key theory in this level asserts that war is an inefficient means of resolving conflicts of interest because it destroys resources that might otherwise be distributed among adversaries.

State and Society Level Theories

This argument tries to explain wars as the product of causal factors internal to states. Theories within this category include: Democratic Peace theory, and Capitalist Peace theory.

Individual Level Theories

The individual level theories trace decisions for war and peace to the belief system of key decision makers, their personalities, and the psychological processes through which they acquire information and make decisions.

4.0 CONCLUSION

Providing a precise definition for the term war has been very elusive. Scholars have come up, with varying definitions but all having at its core, the use of violence by opposing parties to achieve ends. Equally elusive is the broad generalisation of the causes of wars, there are multiple theories and factors that lead to war. While some scholars focus on the predisposing factors that may cause wars (conditions that must exist for a war to occur), others look at the causal factors traceable to specific wars.

5.0 SUMMARY

In this unit, effort has been made to examine various definitions of war by different scholars. We have also examined theories of war using the Level of Analysis Framework to organise the different causes and theories of war.

6.0 TUTOR –MARKED ASSIGNMENT

Explain the causes/theories of war using the Kenneth Waltz level of Analysis framework.

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UNIT 2 THEORIES OF WAR

CONTENTS

1.0 INTRODUCTION

One of the fundamental reasons for the development of international law is for the total eradication and/or reduction of war in international politics. The study of the causes, effects and consequences of wars, is a key aspect of international relations, and conduct of states in the international arena. Since earliest times, scholars from various disciplines have studied war in a bid to gain a better understanding of it as well as seeking an end to the phenomenon. Consequently several theories have been espoused by scholars to explain these causes of war.

2.0 OBJECTIVES

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

- explain some theories of war
- identify the different motivations for war.

3.0 MAIN CONTENT

3.1 Realist Theories of War

The study of war has been dominated by the Realist approach in international relations, and although there are various Realist theories on war; they all possess the realist assumptions of the international system as anarchical in nature with sovereign states as key actors acting rationally to advance their interests: security, power and wealth.

From the Realist perspective, war has a number of different but also interrelated causes. These include a flawed and aggressive human nature in states, the internal organisation of states and the anarchic nature of the international system, creating a race for power, survival and security. Some of the Realist's theories of war include:

3.1.1 Balance of Power Theory

Balance of Power theory posits the avoidance of hegemony as the primary goal of states and the maintenance of equilibrium of power in the system as the primary objective. The theory predicts that states, and particularly great powers, will balance against those states that constitute the primary threats to their interests and particularly against any state that threatens to secure a hegemonic position. It has been argued that war is more likely when antagonistic poles have relative power equality, creating a situation in which every power can perceive the potential for successful use of force (Geller, 1993).In balance of power theory, serious threats of hegemony are a sufficient condition for the formation of a blocking coalition, which leads either to the withdrawal of the threatening power or to a hegemonic war. The fundamental argument of this theory is that when two antagonists are equal in power, they are deterred from war by the fear of being defeated or by the mauling they will take even if they are victorious. This argument has also been faulted by some scholars who claim that balance of power or equality of power leads to lesser conflict.

3.1.2 Power Transition Theory

The Power Transition theory, is a form of hegemonic theory that shares Realist assumptions but emphasises the existence of order within a hierarchical system (Organski and Kugler, 1980, cited in Goldstein , 2005).This power transition theory divides the world into a hierarchy and explains major wars as part of a cycle of hegemony being destabilised by a great power, which does not support the hegemony' control. Hegemons commonly arise and use their strength to create a set of political and economic structures and norms of behaviour that enhance the stability of the system while advancing their own security.

The theory holds that the largest wars result from challenges to the top position in the status of the top hierarchy, when a rising power is surpassing (or threatening to surpass) the most powerful state (Goldstein J, 2005).Accordingly, if the challenger does not start a war to displace the top power, the latter may provoke a "preventive" war to stop the rise of the challenger before it becomes too great a threat (cited in Goldstein, 2005).

3.1.3 The Bargaining Theory of War

The bargaining model of war sees war as politics all the way down. It views international politics as disputes over scarce goods, such as the placement of a border, the composition of a national government, or control over natural resources. States use both war and words as bargaining tools to help them achieve optimal allocations of goods. Critically, the bargaining model does not see war as the breakdown of diplomacy but rather as a continuation of bargaining, as negotiations occur during war, and war ends when a deal is struck. (Reiter, 2003).

3.1.4 Arms Race Theory

This theory argues that a continuous and increasing build up of arms, defense and military forces by competing states or coalition of states based on mutual fear will eventually end in war. An arm race is a reciprocal process in which two or more states build up military capabilities in response to each other. The mutual escalation of threats heightens nerves, increases distrust and reduces cooperation between them. This situation creates a fertile ground for war to erupt. Samuel Huntington explored this theory by defining arms race as a "progressive competitive peace-time increase in armaments by two states or a coalition of states, resulting from conflicting purposes or mutual fears" (cited in Morgan,1984).

3.1.5 Rationalist Theory

Rationalist theories of war assume that both sides to a potential war are rational i.e. each side wants to get the best possible outcome for itself for the least possible loss of life and property to its own side. Given this assumption, if both countries knew in advance how the war would turn out, it would be better for both of them to just accept the post-war outcome without having to actually pay the costs of fighting the war.

This is based on the notion, generally agreed to by almost all scholars of war says Carl von Clausewitz, that wars are reciprocal and that all wars require a decision to attack and also a decision to resist attack.

Rationalist theory offers three reasons why some countries cannot find a bargain and instead resort to war: issue indivisibility, information asymmetry with incentive to deceive, and the inability to make credible commitment. Rationalist theories are usually explicated with game theory.

4.0 CONCLUSION

In this unit, we discussed some of the some realist theories of war with a view to gaining a deeper understanding for the causes and motivations for war.

5.0 SUMMARY

While discussing theories of war, we examined the Balance of Power Theory, Power Transition Theory, Bargaining Theory, Arms Race Theory and Rationalist Theory.

6.0 TUTOR-MARKED ASSIGNMENT

i. Briefly use any two theories of war to explain any war (past or present) in the world.
ii. Discuss the Balance of Power theory and its limitations.

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UNIT 3 DEFINITION/CONCEPT OF PEACE

CONTENTS

1.0 INTRODUCTION

Peace is one concept that has recently received a lot of attention in academic scholarship. Generally defined as "an absence of war", the term peace has several meanings and nuances which seem to change through generations. An attempt is made in this unit to understand the concept of peace and its varying dimensions.

2.0 OBJECTIVES

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

- define the term "peace
- explain the different stages in the evolution of the concept.

3.0 MAIN CONTENT

3.1 Evolution of Concept of Peace from Single factored to Multi factored Definition

The term "peace" has a plethora of definitions by different scholars. It has also evolved from being defined merely as the absence of war to a more comprehensive definition. The following illustrates the changes in the concept of peace over the years. The idea that peace can be defined in terms of the single factor, "absence of war," has been replaced by multifactor theories that include a number of other requirements, such as no structural violence or peace with the environment. Although the absence of war remains a necessary condition for all peace definitions, it is no longer a sufficient one in most formulations of peace. At the same time, there has been a shift from including just the state level of analysis in absence of war definitions, to peace theories that include multiple

levels of analysis from the individual to the environmental. Multifactor, multilevel concepts of peace are, as a consequence, considerably more complex than simple, absence of war theories.

According to Linda Groff, L and Smoker P (1996), six broad categories of peace thinking and definitions have emerged historically within Western peace research--especially over the past fifty years (since the end of World War 11). These six categories roughly correspond to the evolution of peace thinking in Western peace research that has seen peace research move from the traditional idea of peace as merely an absence of war towards a more holistic view.

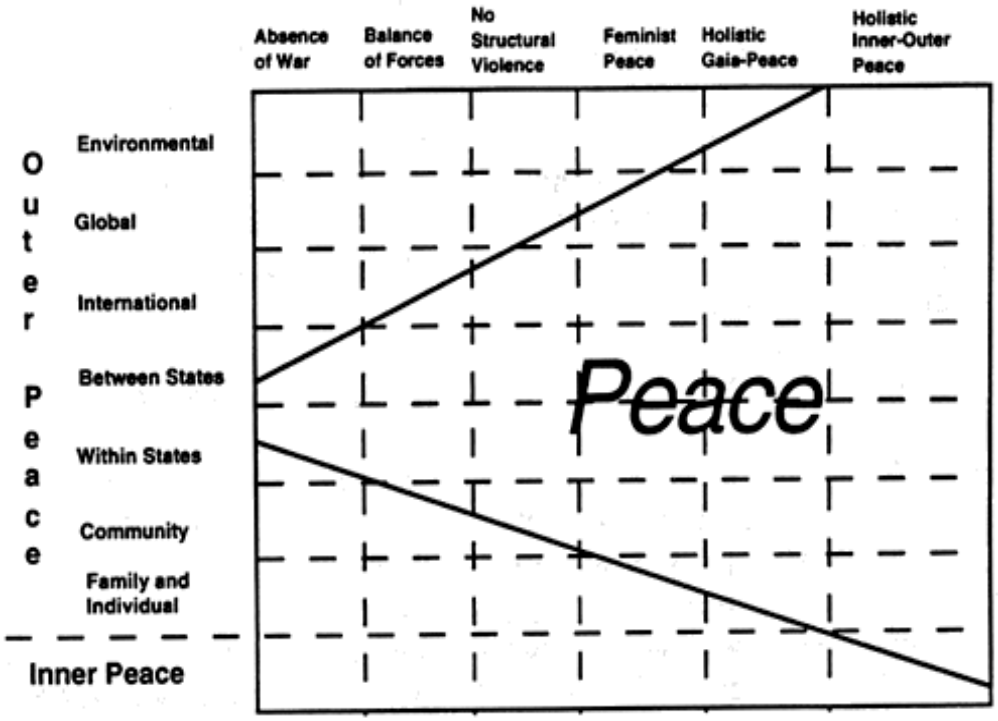

Figure 2: Six Concepts in the Evolution of Peace

Source: http://www.gmu.edu/programs/icar/pcs/smoker.htm

These stages in the evolution of the peace concept include the following**:**

(a) Peace as Absence of War

Figure 2 summarises six perspectives on peace in terms of the levels of analysis and theoretical focus that each includes. The first perspective, peace as the absence of war, is applied to violent conflict between and within states war and civil war. This view of peace is still widely held among general populations and politicians. Furthermore, all six

definitions of peace discussed here require absence of war as a necessary precondition for peace**.**

(b) Peace as Balance of Force in the International System

Wright (1941) further developed the absence of war definition to suggest that peace was a dynamic balance involving political, social, cultural and technological factors, and that war occurred when this balance broke down. Wright argued that this balance of forces occurred in the international system, defined in terms of the overall pattern of relationships between states and International Governmental Organisations (IGOs)as well as between and within states. Wright also discussed the role of domestic public opinion within a state which involves the community level of analysis. His model assumed that any significant change in one of the factors involved in the peace balance would require corresponding changes in other factors to restore the balance.

(c) Peace as Negative Peace (No War) and Positive Peace (No Structural Violence*)*

Galtung (1969) further modified Wright's view, using the categories "negative peace" and "positive peace" that Wright had first put forward. Galtung developed a third position and argued that negative peace was the absence of war and that positive peace was the absence of "structural violence", a concept defined in terms of the numbers of avoidable deaths caused simply by the way social, economic and other structures were organised. Peace under this rubric involves both positive peace and negative peace being present. Galtung's model (in addition to the community, within states, between states, and international levels of analysis) includes the global level of analysis, such as the global economy which is influenced by non-state actors, such as IGOs and Multi-National Corporations (MNCs).

(d) Feminist Peace: Macro and Micro Levels of Peace

Feminist peace researchers developed a fourth perspective to defining peace in the 70s and 80s, by extending negative peace and positive peace to include violence and structural violence down to the individual level (Brock-Utne, 1989). The new definition of peace then included the abolition of macro level organised violence, such as war, but also doing away with micro level unorganised violence, such as rape in war or in the home. In addition, the concept of structural violence was similarly expanded to include personal, micro and macro-level structures that harm or discriminate against particular individuals or groups. This feminist peace model came to include all types of violence, broadly

defined against people, from the individual to the global level, arguing that this is a necessary condition for a peaceful planet.

(e) Holistic Gaia-Peace: Peace with the Environment

The Gaia-peace theory which is holistic peace thinking emerged in the 1990s, placing a very high value on the relationship of humans to bio-environmental systems-the environmental level of analysis. Similar to the feminist model, which focuses on peace between people applies across all levels of analyses--from the family and individual level to the global level. Here, Peace with the environment is seen as central for this type of holistic peace theory, where human beings are seen as one of many species inhabiting the earth, and the fate of the planet is seen as the most important goal. This type of holistic peace thinking does not have a spiritual dimension, peace being defined in terms of all forms of physical violence against people and the environment.

(f) Holistic Inner and Outer Peace

This sixth view of peace sees inner, esoteric (spiritual) aspects of peace as essential. Spiritually based, peace theory stresses the centrality of inner peace, believing that all aspects of outer peace, from the individual to the environmental levels, must be based on inner peace. In addition to the relationships of human beings with each other and the world, including the environment, a spiritual dimension is added to Gaia-peace theory.

4.0 CONCLUSION

Defining the concept of peace has evolved from being regarded as the absence of war to more encompassing definitions. It is therefore important that these different definitions and perspectives of peace be considered in our analysis of the concept.

5.0 SUMMARY

In this unit, we have attempted to examine several definitions and meanings of the concept of peace tracing it through its evolution from being defined as merely an absence of war to more definitions.

6.0 TUTOR-MARKED ASSIGNMENT

Briefly describe the different definitions of peace highlighted above.

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UNIT 4 THEORIES OF PEACE

CONTENTS

1.0 INTRODUCTION

Peace is one concept that has been viewed from different perspectives by a wide variety of scholars. These perspectives however, bear a similarity; it being mankind's innate desire and wish. Terms like 'Peace at any price', 'The most disadvantageous peace is better than the most just war,' all point to man's dire need for peace. The wars that have devastated the world and continue to cause untold hardship and death to millions of people have led to mankind's quest for a peace and creating a peaceful world for all to thrive and live in.

Peace can be linked to that which is good, desirable and needful for mankind. The commonest definition of peace is – absence of violence. It is also referred to as concord, or harmony and tranquility. It is viewed as peace of mind or serenity, especially in the East. It is defined as a state of law or civil government, a state of justice or goodness, a balance or equilibrium of power (http://www.hawaii.edu/powerkills/tjp.chap2.htm). Several theories have been propounded on the concept of peace. Some of them will be discussed in this unit.

2.0 OBJECTIVE

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

- explicate different theories of peace.

3.0 MAIN CONTENT

3.1 Democratic Peace Theory

The basic tenet of this theory is that democracies do not go to war. Also known as democratic peace, the theory argues that countries that practice democracy as a form of government will not fight wars with other countries that are democratic. Although statistically the probability of war between any two states is considerably low, the absence of war among liberal democracies across a wide range of different historical, economic, and political factors suggests that there is a strong predisposition against the use of military violence between democratic states (http://www.e-ir.info/2012/02/18/the-democratic-peace-theory/). A major contradiction to the realist approach of balance of power and its anarchical interpretation of the relation between states in international arena, this theory gives support to the empirical claim by liberals of peace and stability among states.

Several scholars of international relations have sought to explain why this is so. Goldstein(2005), have argues that this is so perhaps because democracies usually do not have severe conflicts with each other because they are usually capitalist states that have strong interdependent trade relations or because citizen of democratic states do not view citizens of other democratic states as enemies therefore will not give their support to their government for war. Among proponents of the theory, several explanations have also been offered for it that:

a) democratic leaders must answer to the voters for war, and therefore have an incentive to seek alternatives;
b) such statesmen have practiced settling matters by discussion, not by arms, and do the same in foreign policy;
c) democracies view non-democracies or their people as threatening, and go to war with them over issues which would have been settled peacefully between democracies;
d) democracies tend to be wealthier than other countries, and the wealthy tend to avoid war, having more to lose (http://en.wikipedia.org/wiki/Democratic_peace_theory).

3.2 Pacifism

Pacifism is the theory that peaceful rather than violent or belligerent relations should govern human intercourse and that arbitration, surrender, or migration should be used to resolve disputes. Pacifists argue that all forms of violence, war, and/or killing is unconditionally wrong. It is a belief that violence, even in self-defense, is unwarranted

under any conditions and that negotiation is preferable to war as a means of solving disputes. In the 19th and 20th centuries, pacifism inspired widespread interest in general disarmament and in the creation of international organisations for the peaceful resolution of disputes, such as the League of Nations and the United Nations. The term "pacifism" was coined by the French peace campaigner Émile Arnaud (1864–1921) and adopted by other peace activists at the tenth Universal Peace Congress in Glasgow,Scotland in 1901(Robbins, 1976).

There are different types of the Pacifist Theory namely**;**

Absolute Pacifism: These are people that believe that under no circumstances should war be fought; this is because war is seen as a morally wrong. They do not believe in the use of force or aggression of any kind.

Conditional Pacifism: Although conditional pacifists argue against wars and violence in principle, they accept circumstances when war will be a better alternative. This is based on the utilitarianism principle.

Selective Pacifism: They believe that it is a matter of degree, and only oppose wars involving weapons of mass destruction— nuclear or biological.

Active Pacifism: They are involved in political activity to promote peace and argue against particular wars.

3.3 Just War Theory

This theory deals with the justification for how and why wars are fought. It specifies conditions for judging if it is just to go to war, and conditions for how the wars should be fought. The aim of the Just War Theory is not to encourage or justify wars but to prevent them by showing that fighting wars except in limited circumstances is wrong, as well as to motivate states to find other alternatives to resolving conflicts (http://www.bbc.co.uk/ethics/war/just/introduction.shtml). The theory has a long history starting from Bible times and has scholars like Saint Thomas Aquinas in the 13th century and Hugo Grotius (1583-1645) as its early exponents.

Three main facets of the Theory Include:

Jus Ad Bellum: Concerns the justification and ground for going to war in the first place.

Jus In Bellum: the ethical rules of conduct during war i.e ethical standards expected by soldiers in wartime.—Rules of Engagement

Jus Post Bellum: Seeks to regulate how wars are ended and ease the transition from war to peace.

4.0 CONCLUSION

Peace is an innate desire of mankind, and history is replete with the various methods and ways mankind has tried to engender a peaceful society.

5.0 SUMMARY

In this unit, we have tried to discuss some theories of peace. Theories of Democratic Peace, Pacifism and Just War theories were discussed to help us gain an in-depth understanding of these theories.

6.0 TUTOR- MARKED ASSIGNMENT

Use the Democratic Peace theory to examine any issue or event in world politics.

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UNIT 5 PACIFIC SETTLEMENT OF DISPUTES

CONTENTS

1.0 INTRODUCTION

The maintenance of peace and stability was a major objective in the development of international law. Although ethical considerations stimulated its development and informed its growth, international law has historically been regarded by the international community primarily as a means to ensure the establishment of world peace and security (Shaw, 1997).There are in existence various means of pacific settlement of disputes in the international community.

2.0 OBJECTIVE

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

- identify the various ways and methods through which International disputes are settled.

3.0 MAIN CONTENT

3.1 International Disputes

International disputes can be generally referred to as disputes arising between states, or states and other international actors; including individuals, corporate bodies and non-state actors. International law provides the principles and modalities governing the peaceful settlement of disputes between states. It refers to disagreements not only between states, but also other cases that have come within the ambit of international regulations. According to Merrills (1984), international disputes in its broadest sense exist whenever such disagreement involves governments, institutions, juristic persons (corporations), or private individuals. International disputes can be settled either by peaceful means or by the use of force. According to Article 33 of the United

Nations Charter, the various methods of peaceful resolution of conflicts include; negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies, or other peaceful means of their own choice.

According to Brownlie (2009), peaceful settlement is a phrase which covers a considerable variety of processes and outcomes, with the following as examples.

a) settlement according to law resulting from judicial decision or arbitration;
b) settlement involving negotiations between States and political compromise;
c) pre-ordained settlements, such as the reversion of Hong Kong to China, in accordance with the Joint Declaration on the Question of Hong Kong agreed in 1984;
d) multilateral settlements implemented with the lawful authority of the international community, including the Peace Treaties with Italy and Japan after World War II.

3.2 Methods of Dispute Settlement

a) **Negotiation**

By far, the most peaceful changes in the world come about through negotiation. Shaw, (1997) regards it as the simplest and most utilised method of peaceful settlement of disputes. It refers to two party or multi-party discussions which are aimed at altering the situations of interactions in the world. Such discussions between such parties and without the involvement of a third party are carried out with a view to reconciling divergent opinions, or at least understanding the different positions maintained. A recent example of a negotiated settlement was the NATO bombing campaign against Yugoslavia in May, 1999, when NATO aircraft bombed the Chinese Embassy in Belgrade, killing three Chinese nationals and wounding approximately 20 others. Both sides reached a consensus on the payment relating to deaths, injuries or losses suffered by the personnel on the Chinese side. After five rounds of talks, the United States and China, on 16 December 1999 also signed two agreements concerning compensation for damage to the diplomatic properties of both States.

(http://chinesejil.oxfordjournals.org/content/8/2/267.full#sec-).

Negotiation is usually a precursor to other forms of settlement as parties come together in mutual discussion to clarify issues and ultimately resolve disagreements.

In certain cases, state parties are obliged to enter into negotiations based on an existing bilateral or multilateral agreement. For example in the ***North Sea Continental Shelf*** **cases** (ICJ Report 1969, pp.3, 47), the Court held that:

> the parties are under an obligation to enter into negotiations with a view to arriving at an agreement, and not merely to go through a formal process of negotiation as a sort of prior condition…..they are under an obligation so to conduct themselves that the negotiations are meaningful, which will not be the case when either of them insists upon its own position without contemplating any modification of it.

b) Mediation and Good Offices

Mediation is another settlement procedure which usually works simultaneously with good offices. It is the first of a series of modes of third-party settlement, and it involves the use of a third party, whether an individual or individuals, a state or group of states or an international organisation, to encourage the contending parties to reach a settlement (Shaw 1997).

In principle, mediation involves the direct conduct of negotiations on the basis of proposals made by the mediator. Good offices are involved where a third party attempts to influence the opposing sides to enter into negotiation. Examples of mediation include the mediation of the Soviet Union in the India and Pakistan dispute in 1965 (Shaw 1997). Mediation is commonly provided for in various multilateral treaties for the peaceful settlement of disputes. The United Nations and, in particular, the Secretary-General, have often used his good offices in mediating in several conflicts globally.

c) Conciliation

Conciliation is a dispute settlement method similar in purpose to mediation. The emphasis is usually on fact-finding, and conciliation is believed to be more structured than mediation. It involves a third party investigation of the basis of the dispute and the submission of a report embodying suggestions for a settlement (Shaw, 1997).In this method a dispute is settled by referring it to a commission of persons, whose task it is to extricate the facts from the parties involved and thereafter try to bring about an agreement to make a report containing proposals for a settlement, which is not binding.

d) Commissions of Inquiry

A method that has proved useful on some occasions is the Commission of Inquiry. This institution originated in the Hague Conventions of 1899 and 1907. Its specific purpose is to elucidate the facts behind a dispute in order to facilitate a settlement. It does not involve the application of rules of law. The purpose of the Commissions of Inquiry is provisional and political. The method is linked to the idea that the resort to an inquiry provides a cooling off period and reduces the risk of counter-measures or breaches of the peace. Moreover, the Report on the facts facilitates the settlement of the dispute. Recent examples of Commissions of Inquiry concerned the *Red Crusader* incident between Denmark and the United Kingdom in 1962, and the *Letelier* and *Moffitt* case between Chile and the United States in 1992(Brownlie, 2009).

7.0 REFERENCES/FURTHER READING

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Shaw, N. (2007). *International Law.* Cambridge University Press.

MODULE 3 LAW OF ARMED CONFLICT

UNIT 1 CONCEPT/PRINCIPLES OF ARMED ON FLICT

CONTENTS

1.0 INTRODUCTION

This unit being the first in the module lays the foundation for a proper understanding of the laws of Armed Conflict. The unit examines the meaning of Laws of Armed conflict and the principles governing it as well as the classification of the Laws of Armed Conflict.

2.0 OBJECTIVES

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

- expound the Laws of Armed Conflict and its evolution
- identify the sources of the Laws of Armed Conflict
- spell out the principal sources of the Laws of Armed conflicts.

3.0 MAIN CONTENT

3.1 What is Law of Armed Conflict?

The Law of Armed Conflict is premised on the fact that since war (now referred to as armed conflict as outlawed by the United Nations) cannot be completely eradicated from state relations, rules to govern the conduct of armed conflict is necessary. The Law of Armed Conflict is therefore predicated on the fact that wars must occur despite the efforts to prevent or abolish them; and that when they do occur as they surely always do, the faults for occurrence are always heaped on the loser and the vanquished; for justice is usually that of the victor (Best, 1980).

3.2 Evolution of Laws of Armed Conflict

Over the years, societies have developed rules and norms regulating the conduct of warfare. The assumption that the founding of the Red Cross in 1863 or the adoption of the first Geneva Convention in 1864 marked the beginning of laws of armed conflict is wrong. This is because human societies, including primitive societies inhabited by early men have always developed legal systems for the conduct of their relations. Just as there is no society that does not have its own basic rules and norms guiding it, so also there has never been a war that did not have a form of basic rules guiding the outbreak of hostilities and the end of hostilities, as well as the rules of engagement no matter how vague it may be. The Greek City States and Romans practiced a rudimentary form of international law, for instance, behaviour such as poisoning of well would have detrimental effects which may destroy the gains of victory.

"Taken as a whole, the war practice of primitive peoples illustrate various types of international rules of war known at the present time: rules distinguishing types of enemies; rules deterring the circumstances; formalities and authority for beginning and ending war; rules describing limitations of persons, time, place and methods of its conduct; and even rules outlawing war altogether". ICRC; (2002).

In the late 16th century A.D Roman Emperor Maurice published the *"Strategica"* which directed inter alia that a soldier repair the injury inflicted to a civilian or pay twofold damages.

The Lieber Code

This represents the first attempt to codify the Laws of Armed Conflict. Developed during the American Civil war, it came to force in April 1863. The Lieber Code is important in that it marked the first attempt to codify the existing laws and customs of war existing before the advent

of the Code. Dr Francis Lieber, a lawyer was appointed by President Lincoln to draw up the Coding of Conduct titled "Instructions for the Government of Armies of the United States in the Field". It however did not have a treaty status as it was intended solely for Union soldiers fighting in the American civil war (www.Icrc.org).

> In 1864, the Swiss Government convened the first conference in International Humanitarian Law which was the first Geneva Convention for the "Amelioration of the Conditions of the Wounded in Armies in the Field," was drawn up and signed by 16 nations.

The evolution of the Law of Armed Conflict has been in stages. Find below main treaties in a chronological order.

YEAR	TREATY
1864	Geneva Convention for the amelioration of the wounded in armies in the field.
1868	Declaration of St. Petersburg (Prohibiting the use of certain projectiles in wartime)
1899	The Hague Conventions respecting the laws and customs of war on land and the adaptation to maintain warfare of the principles of the 1864 Geneva Convention.
1906	Review and development of the 1864 Geneva Convention.
1907	Review of the Hague Conventions of 1899 and adoption of new Conventions
1925	Geneva Protocol for the Prohibition of the use in war of asphyxiating, poisonous or other gases and of bacteriological methods of warfare
1929	Two Geneva Conventions. -Review and development of the 1906 Geneva Convention. - Geneva Convention relating to the treatment of prisoners of war (new).
1949	Four Geneva Conventions i) Amelioration of the condition of the wounded and sick in armed forces in the field. ii) Amelioration of the condition of the wounded, sick and shipwrecked members of armed forces at sea

	iii) Treatment of Prisoners of war iv) Protection of Civilian Persons in time of war (new)
1954	The Hague Convention for the protection of cultural property in the event of armed conflict.
1972	Convention on the prohibition of the development, production and stockpiling of bacteriological (biological) and toxic weapons and their destruction.
1977	Two Protocol Additional to the four 1949 Geneva Conventions, which strengthen the Protection of Victims of International (Protocol I) and non-international (Protocol II) armed conflicts.
1980	Convention on Prohibitions or Restrictions on the use of certain conventional weapons which may be deemed to be excessively injurious or to have indiscriminate effects (CCW) which includes. The Protocol (I) on non-detectable fragments The Protocol (II) on prohibitions or restrictions on the use of mines, booby traps and other devices The Protocol (III) on prohibition or restrictions on the use of incendiary weapons.
1993	Convention on the Prohibition of the development, production, stockpiling and use of chemical weapons and on their destructions.
1995	Protocol relating to blinding laser weapons (Protocol IV (new) to the 1980 Convention.
1996	Revised Protocol on prohibitions on restrictions on the use of mines, booby traps and other devices (Protocol II) (revised) to the 1980 Conventions.
1997	Conventions on the prohibition of the use, stockpiling, production and transfer of anti-personnel mines and on their destruction
1998	Rome Statutes of the International Criminal Court.
1999	Protocol to the 1954 Convention on cultural property.
2000	Optional Protocol to the Convention on the rights of the child on the involvement of children in armed conflict.
2001	Amendment to Article 1 of the CCW

2005	Additional Protocol (III) to the four 1949 Geneva Convention of 2005 created a new protective emblem, the red crystal, alongside the existing red cross and red crescent.
2008	Convention on cluster Munitions (Recently Added)

Adapted from ICRC: 2004.

3.3 Sources of Laws of Armed Conflict

The Law of Armed Conflict is made up of Customary International law and Treaty law.

(a) Customary International Law

These are laws guiding the conduct of warfare that is not written, but derives from a general practice by States accepted as law; which has gradually gained universal recognition. For a certain rule to be termed customary it has to reflect state practice and the international community must recognise such practice as a matter of law.

The customary international law is based on customs and traditions as well as experiences in armed conflicts in states throughout the ages. An example is the universal ban of poisoning of wells as a form of warfare.

Customary international law remains relevant in contemporary armed conflicts for two reasons; firstly, this is because states that have not ratified important Treaty law still remain bound by rules of customary law, Secondly, the relative weakness of treaty law governing non-international armed conflict is complemented by customary international law. (A recent study by the ICPC shows that the legal framework governing internal armed conflict is more detailed under customary international law than under treaty law.

(b) Treaty Law

Before 1864, rules on the conduct of armed conflicts mainly existed in an unwritten form. The First Geneva Convention of 1864 proved to be the first of many treaties limiting the way war is waged. The Treaty law is basically the Geneva Conventions and its Protocols. The initial text of 1864 was revised and recast in 1906 and 1929, while their current version now known as the four Geneva Conventions was adopted on 12th August 1949, in the wake of the 2nd World War. Its two main areas of focus are:

The protection of persons who are not, or no longer taking part in the fighting and;

Restrictions on the means and methods of warfare in the areas of weapons and tactics.

The 1st Geneva Convention of 1949 covers the protection and care for the wounded and sick of armed conflict on land.

The 2nd Geneva Convention of 1949 concerns the protection and care for the wounded, sick and shipwrecked of armed conflict on sea.

The 3rdGeneva Convention of 1949 relates to the treatment of Prisoners of war while the 4th concerns the protection of civilians at war time.
Since 1949 three Additional Protocols have been added to the 1949 Geneva Convention they include.

- Additional Protocol I of 1977 – Relating to the protection of victims of international armed conflicts.
- Additional Protocol II of 1977 – relating to the protection of victims of non-international armed conflicts.
- Additional Protocol III of 2005 – created a new protection emblem, the crystal, alongside the existing Red Cross and Red Crescent.

There are also a series of other treaties relating to specific weapons, tactics or protected persons and objects also exist e.g 1954 Convention on the Protection of Cultural property during Armed Conflict etc.

3.4 Principles of Laws of Armed Conflict

The law of Armed Conflict contains a set of clearly defined principles that are practical and reflect the realities of conflict situations. These principles seek to credit a balance between humanity and military necessity. They include the following:

(1) *Distinction*

This refers to distinguishing between combatant targets and non-combatant targets such as civilians, civilian property, and prisoners of wars, and wounded personnel that are out of combat.

It requires that parties to armed conflict distinguish between civilians and combatant, and also between civilian objects and military targets. The main idea is to engage valid military targets in battles while sparing civilians. An indiscriminate attack would be to target military

objectives and civilians/civilians objects without distinction. The focus of the 1977 Additional Protocol to the 1949 Geneva Conventions is on the principle of distinction, as a means of securing the protection of civilian.

The 1977 Additional Protocols I&II prohibits:

- combatants from posing as civilians
- Indiscriminate attacks
- Acts of violence– or threats and correct them-whose primary purpose is to spread terror.
- The destruction of objects that are indispensable to the survival of the communities
- Attacks on places of worship.

(CICRC 2001 at www.icrc.org.eng/assets/files/other/icrc-002-0904.pdf).

(2) *Proportionality*

This refers to the proportional use of force in relation to military/civilian targets. It prohibits the use of any kind or degree of force that exceeds that which is needed to accomplish the military objective. In other words, it specifies that when military objects are attacked, civilians and civilian objects must be spared from incidental or collateral damage to the maximum extent possible. It condemns the excessive use of force during military operations. Proportionality seeks to prevent an attack in situations where civilian casualties would clearly outweigh military gains. This principle therefore encourages combat forces to minimize collateral damage i.e the unintended and incidental destruction occurring on civilians as a result of lawful attack against a legitimate military target. The 1977 Additional Protocols makes provision for this by requiring all those involved in armed conflicts to take every precaution with respect to the means and methods of warfare used so as to avoid-or minimize incidental loss of life, injury to civilians and damage to civilian objects.

(3) *Military Necessity*

This principle is enshrined in the 1868 St. Petersburg Declaration which states that the only legitimate objective which states should endeavor to accomplish during war is to weaken the military forces of the enemy. The principle requires combat forces to engage only in those acts necessary to accomplish a legitimate military objective. i.e attacks should be limited strictly to military objectives. While an attack or action must be intended to help in the military defeat of the enemy. In applying the principle the general rule is that attacks should be limited to

those objects e.g facilities, equipment and forces when if destroyed would lead as quickly as possible to the enemy's partial or complete submission. Military necessity also applies to weapons review. Illegal arms for combat include poison weapons and expanding hallows point bullets.

4.0 CONCLUSION

The law of armed conflict is a developed area of international relations and a lot of importance is placed on the conduct of war with a view to ameliorating the devastating effects on mankind.

5.0 SUMMARY

In this unit, we have examined the different dimensions of armed conflict. We examined the meaning of the laws of armed conflict, its evolution, sources and principles.

7.0 REFERENCES/FURTHER READING

Agwu, F.A. (2011). *The Law of Armed Conflict and African Wars*. Lagos: Macmillan Nigeria Publishers Ltd.

CICRC (2001). *Distinction: Protecting civilian in Armed conflict: Protocols to the Geneva Convention*. www.icrc.org.eng/assets/files/other/icrc-002-0904.pdf.

UNIT 2 PROBLEMS AND CHALLENGES OF LAWS OF ARMED CONFLICT

CONTENTS

1.0 INTRODUCTION

This unit will examine the problems and challenges facing the Laws of Armed Conflict. There are myriad of problems and challenges the Law of Armed Conflict faces and these are caused by several factors. Some of the problems will be examined in this unit.

2.0 OBJECTIVE

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

- explain the problems confronting the application of the laws of armed conflict.

3.0 MAIN CONTENT

3.1 The Changing Methods of Warfare

Unlike the conventional types of wars experienced in the past where there existed a defined armed forces and battleground, contemporary forms of warfare are now undefined in nature; comprising of irregular and low density wars fought by guerillas and rebel groups. Distinguishing between civilians and combatants becomes difficult in this situation.

3.2 The Challenge of the Determination of a Customary Rule

The process of determining that a rule is customary poses a challenge to the law of armed conflict. Ideally, manifestations of state practices and legal opinion are relevant for the formation and determination of international custom in particular: military manuals,, national legislation, official statements (protests, declaration, 'prises de position'), positions adopted by states in international conferences e.g unanimity in adopting some provisions, or the prohibition of reservations, official reports on battlefield behaviour, case law; decision of national courts, and decision of international courts etc. Gathering all these state practices from all over the world in a bid to determine if rule is customary is a huge challenge in terms of time, finance and expertise (Bugnion F. 2005).

3.3 Problem of Application of Treaty Laws in Contemporary Armed Conflict

Treaty law under international law is well developed and covers many aspects of warfare including protection of a range of persons during wartime protection of a range of persons during wartime and limiting the permissible means and methods of warfare. While the Geneva Conventions and their additional protocols provide an extensive regime for the protection of persons not or no longer directly participating in hostilities, the regulation of the means and method of warfare in treaty laws can be traced to the 1868 St. Petersburg Declaration, the 1899 and 1907 Hague Regulations, and the 1925 Geneva Gas Protocol. Others include the Biological Weapons Convention, the 1977 Additional Protocol, the 1980 Convention on Certain Conventional Weapons and its five Additional Protocols, the 1993 Chemical Weapons Conventions and the 1997 Ottawa Convention on the prohibition of Anti-personnel mines. The 1998 Statute of the International Criminal Court (ICC) also contains a list of war crimes subject to the court's jurisdiction. However, despite the plethora of Treaty laws, there remain serious impediments to the application of these treaties in current armed conflict.

Firstly, since Treaties apply only to the states that have ratified them, different treaties of International Humanitarian Law apply in different armed conflicts depending on which treaties the states involved in the armed conflict have ratified. For instance while the four Geneva Conventions have been universally ratified, several other treaties including the Additional Protocols have not been ratified. And although Additional Protocol I (Protection of Victims of international armed conflict) have been ratified by more than 160 states; its efficacy is limited because a lot of states that have been involved in international

armed conflicts are not part to it. Similarly while nearly 160 states have ratified Additional Protocol II, several states in which non-international armed conflicts are taking place have not.

Secondly, Humanitarian Treaty law does not regulate in sufficient detail a large proportion of today's armed conflict (i.e non-international armed conflict) because there are fewer Treaties that govern these conflicts unlike those of international armed conflict. Only a limited number of treaties apply to them while most of the Treaties apply to international conflicts.

3.4 The Lack of Adequate Conceptual Clarification

There is no clear and precise definition for some of the terms used in the Laws of Armed Conflict, thereby posing a great problem to the application of the laws. For example Additional Protocol II does not contain a definition of civilians or of the civilian population even though these terms are used in several provisions. Another term not clearly defined is "direct participation in hostilities" and military objectives.

3.5 Problem of Prohibition

Among the Treaties limiting the means and method of warfare from the 1868, St. Petersburg's declaration to the recent ones like the UN convention on prohibition or restriction on the use of certain conventional weapons (1981), only the 1972 convention on the prohibition of development, production and stockpiling of Bacteriological and Toxin Weapons, prohibits the possession as opposed to the use of banned weapons. Other ones only prohibit the use of such weapons, if these treaty laws do not prohibit the possession of these weapons and only ban them, the threat of use and consequently of reprisal still remains. Additionally, any ban on these specific weapons is overtaken by events as new means of warfare are developed.

3.6 Absence of Binding Jurisdiction in International Law

The lack of recourse to judicial authority is another challenge to the application of laws of armed conflict. The lack of a binding supranational jurisdiction to settle disputes between states except in cases where there is prior acceptance by the state of such an authority remains a great challenge to the application of laws of armed conflict

4.0 CONCLUSION

The Laws of Armed Conflict is confronted with several problems and challenges that undermine the successful application of these laws during times of armed conflict.

5.0 SUMMARY

In this unit, we discussed a number of problems and challenges confronting the laws of armed conflict ranging from non-clarity of terms, lack of binding jurisdiction etc.

6.0 TUTOR-MARKED ASSIGNMENT

Discuss the several problems of Laws of Armed Conflict as they apply to the contemporary world.

7.0 REFERENCES/FURTHER READING

Agwu, F.A. (2011). *The Law of Armed Conflict and African Wars*. Lagos: Macmillan Nigeria Publishers Ltd.

Bugnion, F. (2005).“The Law of Armed Conflict: Problem and Prospects”. Paper Presented at the Chattam House Conference, 18-19 April.

UNIT 3 WAR CRIMES AND WAR GUILT

CONTENTS

1.0 INTRODUCTION

Laws of armed conflict can be divided into three areas:
laws in war(Jus in Bellum); laws of war (Jus ad Bellum) and laws after the war (Jus post Bellum). Violations of the laws in war are what are called war crimes.

2.0 OBJECTIVES

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

- explain the terms - War Crimes
- discuss War Guilt and Human Rights in international law.

3.0 MAIN CONTENT

3.1 War Crimes

War Crimes can be defined as a violation of the laws of armed conflict;that is, laws in war (jus ad bellum). They are regarded as any violation of the laws of war, as laid down by international customary law and certain international treaties. Examples of such crimes include murder, the ill-treatment or deportation of civilian residents of an occupied territory to slave labour camps, forced pregnancy, the murder or ill-treatment of prisoners of war, the killing of prisoners, the wanton destruction of cities, towns and villages, and any devastation not justified by military or civilian necessity.

The signing of the London Agreement at the end of World War II established three categories of war crimes: conventional war crimes (including murder, ill-treatment or deportation of civilian population of

occupied territories), crimes against peace, and crimes against humanity (political, racial or religious persecution of civilian population). The charter provisions included a military tribunal on war crimes which tried the German and Japanese war criminals before Allied tribunals in Nuremberg and Tokyo in 1945–46 and 1946–48, respectively. In the 1990s, an international war crime tribunal was authorised by the United Nations Security Council UNSC to try war criminals; the International Criminal Tribunal for the Former Yugoslavia and Rwanda (Goldstein, 2007). Accountability for war crimes, crimes against humanity and genocide has received increasing international attention since the establishment of the International Criminal Tribunal for the Former Yugoslavia in 1993. Internationalised criminal tribunals have subsequently been established for Sierra Leone, Cambodia, Iraq and Lebanon, and high profile war crimes cases against Slobodan Milošević, Saddam Hussein and Charles Taylor have taken place.

Following the UN Tribunals for former Yugoslavia and Rwanda, the Rome Statute creating the permanent International Criminal Court was signed by many countries of the world to carry out two objective namely to:

a) Safeguard higher values such as the protection of human rights, an obligation that transcends state borders and;
b) Accountability for those responsible for commission of these crimes, so as to put an end to the impunity that is often associated with these violations (Ladan, 2007).

Article 8 of the Rome Statute gives the International Criminal Court ICC jurisdiction over war crimes during international conflicts (Articles 8(2) a and b), and when committed during non-international armed conflict (Articles 8(c –f).Definitions of war crimes committed in international and non- international armed conflict in the Rome statute are consistent with existing international law, particularly with the definitions in the four Geneva conventions, Additional Protocol II, and the Hague Regulations. Subparagraphs 8(2) (D) and (F) however limit the scope of ICC's jurisdiction over acts committed in non-international armed conflicts. They exclude internal disturbances, and tensions, riots, isolated and sporadic acts of violence and other similar acts (Ibid, 2007 p. 232).

3.2 War Guilt Clause

The Treaty of Versailles was the peace settlement signed after World War I had ended in 1918. It forced Germany to say that they alone caused World War 1 - and that it was therefore right and proper that they had to pay reparations. The politicians wanted Germany to accept moral

responsibility for the war and all the consequences thereof, after realising that Germany would not be able to pay reparations as high as 33 million. The war guilt clause was the justification for reparations. It was also widely taken to mean that Germany was a 'rogue state'. The accord was reached on April 7, 1919 and adopted as article 231 of the VersaillesTreaty(http://www.history.ucsb.edu/faculty/marcuse/classes/33d/projects/1920s/CarlosTreaty.htm).

Article 231 of the Versailles Treaty, which was designed to provide the legal basis for reparations, reads as follows:

"The Allied and Associated governments affirm, and Germany accepts, the responsibility of Germany and her allies for causing all the loss and damage to which the Allied and Associated Governments and their nationals have been subjected as a consequence of a war imposed upon them by the aggression of Germany and her Allies." (Marks, 1976).

"This clause, more than any other in the entire Treaty of Versailles, was to cause lasting resentment in Germany. The guilt clause resulted in Germany's humiliation and rage, with most Germans not understanding why all the blame was placed on the German state.

3.3 Human Rights Law

One of the most recent and significant areas of development of international law since 1945 is in the area of International Human Rights Law. International Human Rights Law is concerned with the international protection of human rights, which are the rules states agree to observe with regard to the rights and freedom of individuals and peoples. The acknowledgement of the importance of human rights by all states which ratified the UN Charter has done much to stimulate the large amount of international law protecting human rights now in place (Ladan, 2007). Issues of human rights within countries have attracted international attention because of several reasons ranging from television images of the horror of human rights abuses in states, efforts of individual and groups working in the area of human rights and the growing awareness of that human rights violations are a major source of international instability (Rourke & Boyer, 2004).

The United Nations Charter provided for the upholding of basic rights in its provisions; with the General Assembly adoption of the *Universal Declaration of Human Rights* in 1948, which roots itself in the principle that violations of human rights upset international order(causing outrage, spurring rebellion etc (Goldstein, 2005). Aside these UN provisions are a number of multilateral treaties listed below.

Eight Important Multilateral Human Rights Treaties

	Multilateral Treaties	**Year**
	Convention on the Prevention and the Punishment of the Crime of Genocide	1949
	Convention relating to the Status of Refugees	1951
	International Convention on the Elimination of All Forms of Racial Discrimination	1965
	International Covenant on Civil and Political Rights	1976
	International Covenant on Economic, Social, and Cultural Rights	1976
	Convention on the Elimination of All Forms of Discrimination Against Women	1979
	Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment	1984
	Convention on the Rights of the Child	1989

Source Rourke & Boyer, 2004

On the regional level, the European Convention on Human Rights 1950, the European Social Charter 1961, the American Convention on Human Rights 1969, and the African Charter on Human and People's Right 1981 have been adopted (Ladan, 2007).

4.0 CONCLUSION

A significant impact has been made by human rights in international law, particularly changing the notion that issues of human rights are a state's internal business. There is now a general agreement that human rights are a matter of legitimate international concern and they are appropriately a part of the international legal system.

5.0 SUMMARY

In this unit, we examined the notion of human rights in the international arena. We also examined different multilateral treaties on human rights in existence.

7.0 TUTOR-MARKED ASSIGNMENT

Briefly discuss the relationship between the Laws of Armed Conflict and International Human Rights Law.

7.0 REFERENCES/FURTHER READING

Marks, S. (1976). *The Illusion of Peace, International Relations in Europe,1918-1933*. New York: St. Martin's Press.

Rodley, B. (1992). "UN Non-Treaty Procedures for Dealing with Human Rights Violation".In: H. Hannum (Ed).*Guide To International Human Rights Practice.* (2nd ed.).

UNIT 4 PEOPLE OF WAR

CONTENTS

1.0 INTRODUCTION

This refers to the classification of people (both military and non-military) that are associated with wars or warfare by the specific conflicts in which they were involved. They are the civilians and combatants who are involved in modern forms of war. These different categories of people are entitled to different status as provided for in the laws of armed conflict/international humanitarian law.

2.0 OBJECTIVES

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

- recognise the status of the different categories of peoples as provided in the laws of armed conflict.

3.0 MAIN CONTENT

3.1 Civilians

The changing method of warfare since the end of the Cold War has greatly blurred the distinction between civilians and combatants, and this has increasingly led to severe attack and targeting of the civilian population which is a flagrant violation of rules of conduct governing hostilities. Although it is primarily the responsibility of government of warring states to protect the civilian population, this does not happen most times either because they are unable or unwilling to act do this.

Consequently, the protection of civilians in armed conflicts has attracted global concern following the horror experienced by the civilian

population in armed conflicts. The fundamental goal of international law therefore is to make both states and non-state armed groups alike, respect international law during such conflicts, and to address the needs of civilians caught up in the conflict with appropriate assistance.

The instruments of international law which provide a legal framework for the protection of civilian populations in armed conflicts notably include the following:

International Humanitarian Law and in particular the Fourth Geneva Convention of 1949 and the two additional protocols of 1977 which established basic rules of conduct during hostilities and the need for making a fundamental distinction between the civilian population and combatants. IHL offers protection to those not participating in the hostilities and to non combatants.

Convention Relating to the Status of Refugees (1951) which provides those who flee to another country to escape conflict at home and the associated persecution with a legal status and a legal framework of protection.

Certain fundamental rights, such as the right to life and the prohibition of torture apply in situations of conflict.
Specific plans of political action and legal norms developed to protect particularly vulnerable groups and notably women, children and internally displaced persons.

The International Criminal Court is governed by the Rome Statute (1998) by means of which the international community is able to combat impunity. The ICC has the power to initiate criminal proceedings against perpetrators of the most serious crimes, in particular war crimes and crimes against humanity (http://www.eda.admin.ch/eda/en/home/topics/human/hum/proci.html).

3.2 Prisoners of War (POWs)

They are defined as members of the armed forces of one of the parties to a conflict who fall into the hands of the adverse party. The third 1949 Geneva Convention provides a wide range of protection for prisoners of war to include other categories of persons who have the right to POW status or may be treated as POWs. It defines their rights and sets down detailed rules for their treatment and eventual release. International Humanitarian Law (IHL) also protects other persons deprived of liberty as a result of armed conflict. The rules protecting prisoners of war (POWs) are specific and were first detailed in the 1929 Geneva Convention. They were refined in the third 1949 Geneva Convention,

following the lessons of World War II, as well as in Additional Protocol I of 1977.The status of POW only applies in international armed conflict.

Under the third 1949 Geneva Convention, POWs cannot be prosecuted for taking a direct part in hostilities. Their detention is not a form of punishment, but only aims to prevent further participation in the conflict. They must be released and repatriated without delay after the end of hostilities. The detaining power may prosecute them for possible war crimes, but not for acts of violence that are lawful under IHL.

POWs must be treated humanely in all circumstances. They are protected against any act of violence, as well as against intimidation, insults, and public curiosity. IHL also defines minimum conditions of detention covering such issues as accommodation, food, clothing, hygiene and medical care.

In non-international armed conflicts, Article 3 common to the 1949 Geneva Conventions and Additional Protocol II, provide that persons deprived of liberty for reasons related to the conflict must also be treated humanely in all circumstances. In particular, they are protected against murder, torture, as well as cruel, humiliating or degrading treatment. Those detained for participation in hostilities are not immune from criminal prosecution under the applicable domestic law for having done so **(**www.icrc.org/eng/war-and-law/protected-persons/prisoners-war/overview-detainees-protected-persons.htm)

3.3 Journalists

Journalists working in areas of armed conflict are at great risk of serious forms of violence including death. Since they fall under the category of civilians they are equally protected under international humanitarian law against direct attacks. However, the Geneva Conventions and their Additional Protocols contain two explicit references to media personnel article 4 A (4) of the third Geneva Convention and article 79 of Additional Protocol I). Most importantly, article 79 of Additional Protocol I provides that journalists are entitled to all rights and protections granted to civilians in international armed conflicts. (http://www.icrc.org/eng/resources/documents/interview/protection-journalists-interview-270710.htm)

3.4 Spies

Article 46 of the Additional Protocol I to the 1949 Geneva Convention provides for the following with regards to Spies:

1. *Notwithstanding any other provision of the Conventions or of this Protocol, any member of the armed forces of a party to the conflict who falls into the power of an adverse party while engaging in espionage shall not have the right to the status of prisoner of war and may be treated as a spy.*

2. *A member of the armed forces of a party to the conflict who, on behalf of that party and in territory controlled by an adverse party, gathers or attempts to gather information shall not be considered as engaging in espionage if, while so acting, he is in the uniform of his armed forces.*

3. *A member of the armed forces of a party to the conflict, who is a resident of territory occupied by an adverse party and who, on behalf of the party on which he depends, gathers or attempts to gather information of military value within that territory shall not be considered as engaging in espionage unless he does so through an act of false pretences or deliberately in a clandestine manner. Moreover, such a resident shall not lose his right to the status of prisoner of war and may not be treated as a spy unless he is captured while engaging in espionage.*

4. *A member of the armed forces of a party to the conflict who is not a resident of territory occupied by an adverse party and who has engaged in espionage in that territory shall not lose his right to the status of prisoner of war and may not be treated as a spy unless he is captured before he has rejoined the armed forces to which he belongs.*

4.0 CONCLUSION

We have examined the status of different categories of people under international humanitarian law in this unit with a view to gaining an in-depth understanding.

5.0 SUMMARY

In this, unit we discussed the status of civilians, spies, journalists and prisoners of war in armed conflict as provided for in international humanitarian law.

6.0 TUTOR-MARKED ASSIGNMENT

Briefly discuss the status of mercenaries and combatants in non-international armed conflicts.

7.0 REFERENCES/FURTHER READING

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UNIT 5 INTERNATIONAL LAW AND TERRORISM

CONTENTS

1.0 INTRODUCTION

A major raison d'être of international law is the guidance of the relations amongst states with a view of total or partial eradication of wars and violent conflicts from the globe. In as much as international law has been able to achieve that (especially between states),that is inter-state war, intra-state wars still remain pervasive, with large scale civil wars occurring in several parts of the world. Another dimension to this which is in no wise recent is terrorism. The question to ask is whether international law has been able to arrest the menace of terrorism? Terrorism has recently gained a higher and global prominence, interrogating the role of international law in curbing terrorism is therefore of extreme importance.

20 OBJECTIVES

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

- explain the phenomenon of terrorism
- enumerate he role of international law in curbing the global scourge of terrorism.

3.0 MAIN CONTENT

3.1 Concept of Terrorism

Terrorism is a concept that has gained greater attention since the September 9, 2001 attack in the United States of America and the consequent counter-terrorism framework and strategies adopted by the US government and other states of the world. Terrorism like most social science concepts lacks a single acceptable definition. It has been defined in multiple ways by several scholars from different perspectives and

approaches. In a General Assembly debate by the UN, it was observed,"the absence of a definition seriously undermined international efforts to tackle a grave threat to humanity".

Terrorism has been defined as a shadowy world of faceless enemies and irregular tactics marked by extreme brutality (Benjamin D. & Steven S. 2002). It is generally seen as an act which is used to pursue political, social, ideological, religious and philosophical objectives. It is also seen as a scourge that takes innocent lives, threatens values of humanity, human rights and freedoms, and impedes development and world progress.

A general agreement on the causal factors for terrorism similar to its definition has also proved elusive. Several causal factors and approaches have been developed by scholars in explaining the reasons for terrorist's activities. This ranges from political, economic, and religious to psychological factors. Crenshaw (1981) identifies a distinction between preconditions (root causes), and precipitants (trigger causes). Abolurin (2011) provides another framework for explaining the causes of terrorism as follows:

Multi-Causal Approach:- This approach incorporates psychological factors as well as economic, religious, political and sociological factors as causal factors of terrorism.

Political/Structural Approach:-This approach identifies poverty, oppression, and inequality as causes of terrorism.

Rational/Organisational Approach:- This argues that terrorism is not the product of individual or personal development, but as a result of a group process and its collective rational decision.

Psychological Approach:- This approach focuses on the features and characteristics of the individual terrorist or the group as a whole. It examines the behavior, individual profile, recruitment methods and causes of terrorism

3.2 International Law and Terrorism

There is a growing body of international law which is directly relevant to the fight against terrorism. International law provides the framework within which national counter-terrorism activities take place and which allows States to cooperate with each other effectively, in preventing and combating terrorism. This framework includes instruments addressing specific aspects of counter-terrorism alongside other international instruments designed for international cooperation in criminal law, the protection of human rights or refugees or the establishment of the laws of war which provide the broader context within which counterterrorism

activities take place. International law, which specifically address terrorism, exists within the general framework of international law.

These include international criminal law, international humanitarian law, international human rights law and refugee law.

The United Nations is at the fore front of global counter terrorism efforts, and continues to carry out extensive work in that area. It has adopted a number of resolutions on countering terrorism; a milestone being the United Nations Global Counter Terrorism Strategy adopted in September 2006. It is a global instrument that aims at enhancing the national, regional and international efforts to counter terrorism. Adopted as a General Assembly resolution and an annexed plan of action, it serves as a common strategic approach by member states to combat terrorism. Its four pillars are measures to :

a) prevent the conditions conducive to the spread of terrorism
b) prevent and combat terrorism
c) build states' capacity to prevent and combat terrorism and to strengthen the role of the UN system in this regard.
d) ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism.

There is, however, no comprehensive treaty on terrorism nor a generally agreed definition of the term. The need to place actions to combat terrorism in the broader context is clear from the text of United Nations Security Council resolutions:

Security Council Resolution 1456 (2003):

> States must ensure that any measure taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international law, in particular international human rights, refugee, and humanitarian law.

Applicable international framework on counter-terrorism can also be found in a number of sources ranging from Treaties, General Assembly and Security Council resolution and jurisprudence. There are also international conventions and protocols related to terrorism that require states to criminalise specific manifestations of terrorism at the international level. In addition to these is the international Convention for the suppression of the financing of terrorism (1999), which provides a generic description of terrorist acts for the purposes of the offence of

financing terrorism. Examples of these international conventions include the following:

a) I963 Convention on Offences and Certain other Acts Committed on Board Aircraft (Aircraft Convention).
b) 1970 Convention for the Suppression of Unlawful Seizure of Aircraft(Unlawful Seizure Convention
c) 1973 Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons (Diplomatic Agents Convention)
d) 1980 Convention on the Physical Protection of Nuclear Materials (Nuclear Materials Convention)
e) 1997 International Convention for the Suppression of Terrorist Bombings (terrorist Bombing Convention)
f) 1999 International Convention for the Suppression of the Financing of Terrorism
g) 2005 Amendment to the Convention on the Physical Protection of Nuclear Materials

4.0 CONCLUSION

International Law remains a potent tool for eradicating the scourge of terrorism. Several international instruments and framework exist on combating terrorism globally.

5.0 SUMMARY

In this unit, we have briefly examined the role of international law in the global fight against terrorism. We also looked at some legal instruments and treaties in this regard.

6.0 TUTOR-MARKED ASSIGNMENT

Discuss the challenges of international law in combating terrorism.

7.0 REFERENCES/FURTHER READING

Abolurin, A. (2011). *Terrorism: Nigerian and Global Dimensions*. Ibadan: Golden-Gems Unique Multiventures.

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MODULE 4 MAINTENANCE OF GLOBAL PEACE AND SECURITY

Unit 1 International Organisations and World Peace
Unit 2 Structure and Functioning of International Organisations
Unit 3 International Organisations and Contemporary World Order
Unit 4 Examination of relevant International Instruments viz:
- International Court of Justice
- Geneva Conventions and Protocols
- United Nations Charter

Unit 5 Additional International Legal Frameworks

UNIT 1 INTERNATIONAL ORGANISATIONS AND WORLD PEACE

CONTENTS

1.0 INTRODUCTION

This is the first unit in the module of the maintenance of global peace and security which also forms the bedrock for all other units in the module. It is therefore pertinent that a lot of attention be given to it. Mankind's innate quest for global peace and security transcends state borders, language and tribe; it is one goal to which all countries of the world is united in achieving.

2.0 OBJECTIVES

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

- explain the meaning of global security
- highlight the role of international organisations in bringing about global peace and security.

3.0 MAIN CONTENTS

3.1 Concept of Global Security

Since the end of the two World Wars and the earlier wars that plagued mankind, man's search for global peace and security both in the national and international arena has been pivotal. The eradication of wars and the use of force from the dealings and relations amongst states is one goal both state and non-state actors seek to achieve in world politics. In fact, the appreciation of a peaceful settlement of international disputes and the joint use of force when necessary, in furtherance of the prevention or suppression of threats to the peace or breaches of the peace ran deep in the impulse of world statesmen upon the excruciating experience of World War II (Morrison, 1994).

Global Security also known as International Security refers to the methods and strategies that countries as well as international organisations employ in ensuring world peace and safety. It refers to the efforts taken by countries to protect against threats which are transnational in nature.

From the Peace of Westphalia (1648), the Congress of Vienna (1814 to 1815), the Concert of Europe, the Leagues of Nations (1918 – 1939) to the United Nations (1945 to date). The international community has been striving to achieve the goal of collective security for humanity (Agwu, 2007). Global Security is a concept that has been viewed from multiple perspectives and encompasses different notions of security including human security, environmental security, military and defense security etc. It has been argued that the idea of security must go beyond the traditional meaning of military and defense security to include political, economic, environmental, health and other international and global threats that are transnational in nature. Whilst the two World Wars, and the Cold War's focus was on military and defense security, global security is increasingly geared towards the individual i.e. meeting the basic needs of the individual to providing healthcare and protecting the fundamental rights of individuals.

3.1.1 What are International Organisations?

The quest for the peaceful co-existence of countries in the international arena remains a major objective of mankind. Despite the anarchical nature of the international system due to the realist tendencies of states, the international norms and rules established by international institutions have proved essential in entrenching mutual cooperation amongst states, hereby preventing a total collapse of the world order.

Although states are the key actors in the international arena; international organisations remain a platform for the presentation of their activities within a framework of mutual cooperation. According to Plano and Ottoh (1988) an international organisation is "a formal arrangement transcending national boundaries that provides for the establishment of an institutional machinery to facilitate cooperation among members in security, economic, social or related field". They have been further described as institutions drawing membership from at least three states, having activities in several states and whose members are held together by a formal agreement. They are seen as formal institutions that have structures and are established by agreements among sovereign stated with the aim of pursuing the crown interest of the members (Akinboye and Ottoh, 2005).International organisations have brought about a deeper sense of interdependence among states and this has led to an increased need for cooperation on issues of regional and international contexts.

International Organisations can be categorised into three groups:

i. **Intergovernmental Organisations**:

These are established by intergovernmental agreements and membership is made up of states. Intergovernmental organisations range in size from three members to more than 185 (e.g. United Nations), their geographic representation varies from one world region to all regions and can have singular or plural objectives and purposes e.g. United Nations, European Union, NATO, IMF, G8 etc.

ii. **International Non-Governmental Organisations (INGOs)**

They are essentially nonprofit private organisations engaging in a myriad of international activities e.g. International Committee of the Red Cross (ICRC); Amnesty International etc.

iii. **Multinational Corporations**

These are the third category of International organisation. They are for profit firms having subsidiaries and branches in two or more countries, and engaging in transnational production activities. Examples include Wal-Mart, Shell Petroleum, and General Motors etc.

However, for the purposes of this course, our focus will be on the intergovernmental organisations.

3.2 International Organisations and Search for World Peace

International organisations remain a veritable platform for cooperation amongst countries and consequently entrenching peace and security among states in the international community. Referred to as multilateralism, states and international organisations are key actors in achieving world peace, and bringing about order and stability in the international arena. Although the United Nations remains the paramount organisation at the international level for multilateral cooperation amongst states on issues of peace and security, other regional organisations also play very significant roles in achieving world peace.

From the European Union (EU) which has a global/regional actor capacity to the African Union (AU), North Atlantic Treaty Organisation (NATO) etc. these organisations mainly regional in nature have been active players in maintaining world peace and easing the burden of the United Nations by participating in peacekeeping and peace building missions singularly in their regions or jointly with the UN missions. They also employ other diplomatic tools outside the "use of force" in fostering peace on the globe as stated in Article 3/3(1) Chapter VI of the United Nations charter, which include inter alia negotiation, enquiry, mediation conciliation, arbitration, judicial settlement etc.

3.3 United Nations and World Peace

In its over 65 years of existence, the United Nations has steadfastly pursued its goal of "saving succeeding generations from the scourge of war which twice in our lifetime has brought untold sorrow to mankind" (UN Charter). The UN which was established before the outbreak of the World War II has the prime responsibility for the maintenance of international peace and security. Since its creation, it has been involved in the prevention of wars, restoration of peace in conflict regions, and promotion of lasting peace in societies emerging from

conflicts. Emerging as the successor to the League of Nations at the end of the World War II, the UN has as one of its primary purposes as stated in Article 1 of the United Nation Charter to "maintain international peace and security and to take effective collective measures for the prevention and removal of threats to peace", a goal the League of Nations could not achieve and which led to its failure.

The United Nations Security Council is the major UN organ with the primary responsibility for maintenance of international peace and security conferred on it by the UN member state (Article 24, UN Charter).The United Nations Peace Support Operations has been an important instrument in achieving its goal of maintaining international peace and security, beginning from United Nations Truce Supervision Organisation (UNTSO) of 1948 (when the Arab-Israeli conflict broke out and which was unarmed through the UN Emergency Force (UNEF I, 1956-67) and UNEF II (1973-79), to the UN Observer Mission in Sierra Leone (UNOMISIL, 1998 to date), and the UN Interim Administration Mission in Kosovo (UNMIK, 1999 to date): the United Nations has mounted several humanitarian Peace Support missions in its bid to entrench peace and security in the global community (Agwu, 2007).
However, despite its wide ranging efforts in making the world more peaceful and war free, the UN has been criticized as being incapable in achieving its objectives. Consequently, there have been calls for the reform and restructuring of the world body to accommodate and reflect current contemporary world systems.

4.0 CONCLUSION

In this unit, you have been exposed to the meanings and definitions of global security as a concept, and international organisations. We have also examined the different types and categories of international organisations, and their role in the search for global peace. The United Nations role in the maintenance of international search for peace and security was also examined.

5.0 SUMMARY

The unit has examined different issues as it relates to international organisations and world peace.

6.0 TUTOR-MARKED ASSIGNMENT

i. Briefly explain the concept of Global Security.
ii. Describe the different types of International Organisations, giving specific examples of their roles in maintaining international peace and security.

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UNIT 2 STRUCTURE AND FUNCTIONS OF INTERNATIONAL ORGANISATIONS

CONTENTS

1.0 INTRODUCTION

This unit will examine international organisations, their structures, functions and roles in the contemporary world order. This is important in that it helps students to have a better understanding of the entire module.

2.0 OBJECTIVES

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

- explain the growth and structures of international organisations
- mention the functions of international organisations and the theoretical approaches underpinning them.
- explain the roles they play in the contemporary world order.

3.0 MAIN CONTENTS

3.1 Growth and Development of International Organisations

Although sovereign states are the primary actors in world politics, international organisations are non-state actors that play important roles in world politics. The evolution of modern nation-state, and the consequent development of an international order founded upon a growing number of independent and sovereign territorial units inevitably gave rise to questions of international cooperation (Shaw, 1997). The growing number of independent and sovereign territorial units gave rise

to an increase in diplomatic representation and gatherings in areas of economy, peace and political cooperation. The Peace of Westphalia (1648) was the major instance of such gatherings, and was a significant milestone in the development of international organisations.

Another conference similar to the above and that provided a forum for great European powers to gather for mutual political interests is the Congress of Vienna ((1814-1815). Other international conferences like the Paris Conference (1856), Berlin Conference (1884-85) etc. to a large extent, played important roles in world politics before the World War I. These conferences were a kind of peace overtures initiated by these powers based on the principle of concerted consultation and collective diplomatic negotiation (Akinboye and Ottoh, 2005).

Another significant development of the 19th century was the growth of international non-governmental organisations such as the Universal Postal Union(1875), International Committee of the Red Cross(1863), the International Bureau of Telegraphic Administrations(1868)etc. The Conferences covered a wide range of issue areas and rose in response to the need for mutual cooperation by states in solving problems arising from these areas. The Hague system of conferences was another major milestone in the development of international organisations that provided for the peaceful settlement by parties and the use of good offices in achieving this. The Hague system attested to the potential value of international organisations as instruments of world peace (Akinboye and Ottoh, 2005).

The growth of international organisations in contemporary times can be traced back to the creation of the League of Nations (1919) after World War I (1914-1918). It sought to promote international cooperation, peace and security upon the basis of disarmament, peaceful resolution of disputes, a guarantee of the sovereignty and independence of member states and sanctions (Shaw, 2007). In spite of its lofty aims, the League failed and was replaced with the United Nations in1945. Alongside the United Nations are other international organisations such as the European Union, North Atlantic Treaty organisation, Organisation for Security and Cooperation in Europe, African Union and the Arab League.

3.2 Types and Features of International Organisations

Types of International Organisations
International organisations can be classified according to whether they are general purpose, dealing with many issues or specialised, dealing with a specific concern. Another way of dividing INGOs is into global and regional organisations.

S/n	PURPOSE		
	Geography	General	Specialised
1.	Global	United Nations	World Trade Organisation
2.	Regional	European Union African Union	Arab League, North Atlantic Treaty Organisation (NATO)

(Adapted from Rourke, J.& Boyer, M. 2003)

Basic features of International Organisations

i) All international organisations have governments as their members, while some like the United Nations have universal membership open to all states. Some have limited membership e.g. Arab League open to mainly Arab speaking countries.

ii) They are established by means of agreement between states. The states involved surrender part of their sovereignty to the organisation through consensus, recommendation and cooperation rather than enforcement.

iii) International organisations possess a legal personality separate from its members, which makes them subjects of international law with rights and duties under it.

iv) They are categorised by their purpose based on the issues they can take up. For instance, while the African Union is a general and multi-purpose IGO, addressing a myriad of issues ranging from economic, social, and political to security issues. The World Health Organisation (WHO) is a specific purposed IGO focusing only on issues of health.

v) Another feature of IGOs is that they lack a legislative body that has the power to make laws. Rather legislative functions are carried out through conferences.

vi) International organisations also have permanent secretariats and are financed by their members.

3.3 Functions of International Organisation: A theoretical Perspective

Two major theoretical approaches that assist us in understanding the functions of international organisations are the Realist and Liberalist theory of international relations.

Realist Perspective

Realism is the oldest theoretical approach in international relations. It centres on the struggle for power and supremacy by states (who are the key actors) in an anarchical world where "might is power". In this vein, it asserts that since the international system is organised around sovereign states; with sovereignty connoting the final say on issues within their jurisdictions, there is therefore no higher authority other than itself. Realists argue that there is a hierarchy of power or balance of power among the states in the international community which entrenches order. Realists view international organisations as extensions of great powers which are created to serve their functions. States will therefore belong to and use international organisations if it is in their interest to do so (Pease, 2000).

Liberalist Perspectives

Liberalism grew as a major critique to the realist approach. They argue that non- state actors such as international organisations are also important actors in world politics, exercising significant amount of influence just like states. Liberalists view relations between states as that of conflict and cooperation, arguing that contemporary world issues are trans-national in nature, and seeking collective solution among states.

International organisations, therefore serve the function as platforms for cooperation among states. Liberals see international organisations from two perspectives. While some see international organisations as precursors of world government—New World Order, other see international organisations as mechanisms that assist government in overcoming collective action problems and help settle conflicts and problem peacefully(Ibid, p.9).

3.4 Functions of International Organisations

Two major functions common to all international organisations include:

a) An instrument of cooperation among states or groups in two or more states to perform tasks in areas where cooperation is essential and beneficial to members of the organisations. This is

especially true in respect of issues which are trans-national in nature, transcending state borders and territories.

b) Provision of multiple channels of communication among the members to facilitate accommodation or consensus formation to solve problems.

However specific functions performed by international organisations include:

- Provision and maintenance of Peace and Security
- Increase economic standards of members
- Preservation and Promotion of ethnic or ideological identity of members
- To promote political and social goals among nations

UNIT 3 INTERNATIONAL ORGANISATIONS AND CONTEMPORARY WORLD ORDER

CONTENTS

1.0 INTRODUCTION

International organisations play very important and distinct roles in our world today. An understanding of the various roles they play in the international arena is germane.

2.0 OBJECTIVE

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

- discuss the roles played by international institutions in our world today.

3.0 MAIN CONTENT

3.1 International Organisations and Role in Contemporary World Order

International organisations, since the late 19th century, have played very significant roles in world politics. Some of these are:

a) Interactive Arena

International organisations provide an interactive arena through which its members pursue their national interest in the international community. The United Nations aptly portrays this, for example; research on the UN General Assembly since the end of the Cold War indicates that its principal dimension of conflict is between the dominant West, led by the United States and a

counter hegemonic bloc of countries (Rourke J, & Boyer M, 2003).

b) Platform for Cooperation among States

Another major role of international organisations is the facilitation and promotion of cooperation among states on a wide range of issues. Today's issues and problems as it affects states are globalised in nature, transcending beyond state borders.

Multilateral cooperation is therefore a sine qua non in devising effective solution to them. International organisations create platforms for this cooperation. International organisations working on a wide range of issues e.g. International Monetary Fund IMF, World Bank, World Trade Organisations are major organisations working on issues of trade and the economy, while the United Nations, North Atlantic Treaty Organisation, African Union are also working in the areas of peace and security issues.

4.0 CONCLUSION

In this unit, we examined the roles international organisation play in the contemporary world order.

5.0 SUMMARY

In this unit, we examined the roles of international organisations as platform for cooperation among States and interactive agenda for states to pursue their national interests.

6.0 TUTOR-MARKED ASSIGNMENT

Discuss ways states can utilise international organisations' platforms to achieve collective security and combat terrorism globally.

7.0 REFERENCES/FURTHER READING

Shaw, N. (2007). *International Law* (4th ed.). UK: Cambridge University Press.

Pease, K. (2000). *International Organisations: Perspectives on Governance in the Twenty-First Century.* New Jersey: Prentice Hall Inc. Upper Saddle River.

UNIT 4 EXAMINATION OF RELEVANT INTERNATIONAL INSTRUMENTS

CONTENTS

1.0 INTRODUCTION

This unit will discuss some relevant international instrument with a view to detailing their roles and function in the international community.

2.0 OBJECTIVE

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

- describe the different international instruments.

3.0 MAIN CONTENT

(i) International Court of Justice

The International Court of Justice ICJ is the principal judicial organ of the United Nations and was established in 1946 by Article 92 of the UN Charter in pursuance of one of the primary purposes of the UN:

> To bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which may lead to a breach of peace (Ladan, 2007).

The Court is composed of fifteen judges through an informal regional arrangement that ensures that the Court represents all the main legal systems of the world. These are usually five Western, three African (one

each representing common law, civil law and Islamic law), three Asian, two East European and two Latin American judges (Aust, 2005).

The ICJ seats at the Peace Palace at The Hague, in the Netherlands and has two fold objectives:

a) To settle in accordance with international law disputes submitted to it by states and;
b) To give Advisory Opinion on legal questions referred to it by duly authorized UN organs and specialised agencies.

Under Article 34 of the ICJ Statute, only states may be parties in contentious cases before the Court, hence neither individuals, corporations or international organisations can be parties to cases before the Court.

Although all UN members are *ipso facto* parties to the statute of the Court, the Court can only exercise jurisdictions on cases between states if such jurisdiction has been conferred on it by the parties.

ii) Geneva Conventions and Protocols

The Geneva Conventions and Protocols are part of the sources of law governing the conduct of armed conflict, the other one being the Hague laws. Broadly speaking, international Humanitarian law can be divided into two:

a) Hague Law (1899, 1907)

These are rules stating how hostilities can be conducted in a lawful manner. The law determines the rights and duties of belligerents in the conduct of military operations and limits the means of inflicting damage on the enemy.

b) Geneva Conventions and Protocols

Geneva law comprises the four Geneva Conventions drawn up in 1949(and which supplemented the earlier Conventions of 1864, 1906 and1929). These are rules governing the treatment of non-combatant and the protection of war victims, be they military or civilians, on land or water. It protects all persons *hors de combat.* i.e. peoples not taking part or no longer taking part in armed hostilities i.e. the wounded, sick, shipwrecked and prisoners of war (POW) (Ladan, 2008).

In summary, the Geneva laws concentrate on protecting the victims of armed conflict:

- The First Geneva Convention protects the wounded and sick on land
- The Second Geneva Convention protects the wounded, sick and shipwrecked at sea
- The Third Geneva Convention deals with the status and treatment of prisoners of war
- The Fourth Geneva Convention protects civilians in times of war.

The Geneva Conventions of 1949 have however been supplemented by Additional Protocols I and II of 1977 in order to make them more relevant. Both Additional Protocols which combine and update elements of Hague law and Geneva law have been widely ratified with Additional Protocol I, having 162 parties and II having 157 parties.

While Additional Protocol I apply to armed conflicts between a state and a national liberation movement, Additional Protocol II applies to internal conflicts.

iii) United Nations Charter

The United Nations came into existence as a result of the world's quest for peace and security. The devastation of World War II, coupled with the advent of atomic weapons brought about a renewed sense of urgency in preventing future wars (Pease, S. 2000). According to Article 1(1) of the UN Charter, its raison d'être is:

> To maintain international peace and security and to that end; to take effective, collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situation which might lead to a breach of the peace.

(Article 1(1) UN Charter).

The UN Charter is a revolutionary international instrument that seeks to guide the conduct of states in the international arena through its charter provisions. The aim as stated above is the maintenance of international peace and security and the prevention of wars.

a) Use of Force

Article 2(4) of the Charter explicitly forbids member states from threatening or using force in their conduct with other states except in cases of self-defence or collective self-defence (Article 51).

> All members 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 Nation.
>
> (Article 2(4) UN Charter).

Instead peaceful settlement of disputes is encouraged by states Article 2(3). Thus the international peace and security interests of all member states are to be served by effectively outlawing war as a legitimate option of international diplomacy (Ibid, p.100).

Article 42 however empowers the Security Council to authorise states to use force when it considers that other measures would be inadequate or have proved inadequate (Aust, 2005).

b) Security Council

Chapter V, Article 24 of the UN Charter gives the Security Council the responsibility for preventing and responding to wars:

> In order to ensure prompt and effective action by the United Nations, its members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.

Comprising of the five victorious allied powers emerging after World War II (Britain, France, USA, Russia and China); they were given the responsibility of providing international stability in the post-war period. As permanent members, their seats are retained continuously and alongside this is the possession of an absolute veto by each state. Chapter V also mandates that the ten non-permanent member of the Security Council be elected by the General Assembly for two year terms. The Security Council was created as an organisational mechanism that would permit states to act collectively to deter

international aggression and provide a framework for a collective military response should deterrence happen to fail (Pease, 2000).

iv) International Criminal Court (ICC)

The 20th century witnessed some of the major atrocities perpetrated against mankind, with more than 86 million civilian deaths in over 250 conflicts (Ladan, 2007). Significant also of the 20th century is the establishment of international criminal jurisdiction to punish grave breaches of international criminal law, hereby making individuals accountable for crimes against humanity.

Although the Nuremberg international criminal tribunal followed by the Tokyo tribunal was the first to be established, they were not truly international in scope. However the Charter and judgment of the Nuremberg international tribunal laid down important principles of international law, endorsed unanimously by the UN General Assembly in 1946(Aust, 2005). The most important being that persons are responsible individually for international crimes; aggressive war is a crime against the peace; a head of state and other senior officials can be personally responsible for crimes even if they did not actually carry them out; and the plea for superior order is not a defense(Aust, 2005)

In this vein the Security Council acting under chapter VII of the UN Charter established the International Criminal Court for the former Yugoslavia ICTY in 1993 at The Hague in Netherlands, and the International Criminal Court for Rwanda in 1994 in Arusha Tanzania.

Both courts have jurisdiction over crimes of genocide, war crimes and crimes against humanity in their states.

Unlike the ICTY and the ICTR, the International Criminal Court was created by Treaty. The Rome Statute was adopted at a UN conference on 17th July 1998, and entered into force on July 1, 2002. The ICC is the first permanent and universal international criminal court (Aust, 2005).Jurisdiction of the ICC is limited to under Article 5 of its Statute to crimes such as—genocide, crimes against humanity, war crimes, and the crime of aggression.

Under Article 13, the jurisdiction of the ICC can be invoked by;

- a party referring an alleged crime to the Prosecutor;
- the UN Security Council, acting under Chapter VII of the UN Charter, referring an alleged crime to the Prosecutor; or
- the Prosecutor initiating an investigation into an alleged crime.

4.0 CONCLUSION

There are several instruments that exist in international law to guide the conduct of both states and non-state actors in the international arena. Some of these were discussed above.

5.0 SUMMARY

In this unit, we have discussed some relevant international instrument including the International Court of Justice, the Geneva Conventions and Additional Protocols, the United Nations Charter, and the International Criminal Court. This was done with a view to gaining a better understanding of their roles and functions in the international arena.

6.0 TUTOR-MARKED ASSIGNMENT

i. Describe any two of the above instruments and explain its relevance in today's world.
ii. Examine the UN Charter provision in relation to maintenance of international peace and security.

7.0 REFERENCES/FURTHER READING

Aust, A. (2005). *Handbook of International Law.*UK: Cambridge University Press.

Ladan, M.T. (2007). *Materials and Cases on Public International Law*. Zaria: Ahmadu Bello University Press Ltd.

Shaw, M .N. (1997). *International Law.* (4th ed.). UK: Cambridge University Press.

Pease, K.S. (2000). *International Organisations*. New Jersey: Prentice-Hall Inc. Upper Saddle River.

UNIT 5 SOME INTERNATIONAL LEGAL FRAMEWORKS

CONTENTS

1.0 INTRODUCTION

In this unit, we shall examine some additional international legal frameworks guiding the conduct of states in the international arena.

2.0 OBJECTIVE

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

- identify the international frameworks guiding the conduct of states in the international arena, and its operations.

3.0 MAIN CONTENTS

3.1 International Convention on Law of the Sea

The Law of the Sea represents the international legal framework guiding the conduct of states in respect to the sea, based on a series of conferences and a codification of the four conventions of 1953:

a) Geneva Convention on Territorial Sea and Contiguous Zone
b) Geneva Convention of the High Seas.
c) Geneva Convention on the Continental Shelf
d) Geneva Convention on Fishing and Conservation of the Living Resources of the High Seas.

The 1982 convention on the Law of the Seas contains 320 articles and 9 annexes and entered into force on 16 November 1994(Shaw, 1997). The law seeks to reconcile the interest of the coastal states with those of the landlocked ones, and several other conflicting interests of states.

Basically, the law protects the freedom of navigation, safeguards the marine environment and minimises pollution (Umozurike, 1999). Although some new rules were proposed in the Convention, a large number of the 1982 Convention on the laws of the Seas are a repetition of the provisions and principle entered in earlier instruments. New additions to the old laws include: the 12- mile territorial sea, the 200 - mile Exclusive Economic Zone EEZ, and the exploitation on the deep sea bed under the authority and management of international authority.

3.2 International Environment Law

The protection of the environment, as well as the provision of solutions to the challenges facing the environment has recently occupied the front burner of most countries of the world. Such challenges include atmospheric pollution, marine pollution, global warming and ozone layer depletion, the dangers of proliferation nuclear weapons etc. (Shaw, 1997). These problems according to Shaw possess international character basically because of two reasons namely: pollution generated from a country often have impact on other countries, an example of this is acid rain (a situation whereby chemicals emitted from factories rise to the atmosphere, reacting with water and sunlight to form acids). These are then carried away thousands of miles (usually to another country) by the wind to fall as acid rain. Secondly, because it has become increasingly clear that environmental challenges and problems cannot be resolved by states individually. A joint effort and cooperation by states is a sine qua non to overcoming such environmental problems.

Even though several bilateral and multilateral agreements on different aspects of pollution had existed prior to the Stockholm Conference of 1972, the Stockholm Conference of 1972 was the first attempt at fully dealing with environmental issues (Umozurike, 1999).According to Umozurike, the Conference prepared the ground for the systematic extension of international cooperation and the current practice of making recommendations or giving directives for the utilisation of rivers, the oceans, and control of pollution and military uses of environment. It recognised the rights and responsibilities of states and individuals in environmental protection and preservation (Ibid, 1999).

3.3 Air Space and Outer Space Law

Several views and questions existed before World War I with regards to sovereignty over the airspace of a country. The use of aircraft for bombing and surveillance during the World War I and its capabilities as a strategic instrument amplified the legal questions connected with the airspace (Umozurike, 1999). Such questions included if the airspace of a state was entirely within its sovereignty, or free for all, or if a right of

innocent passage was necessary for foreign aircraft. The Chicago Convention on International Civil Aviation, which is the present regime on air navigation developed from the 1944 Chicago Conference, emphasises the complete and exclusive sovereignty of states over their airspace, with Article 6 of the convention stating that no scheduled international air service may be operated over or into the territory of a contracting state without that state's special authorisation (Shaw, 1997).

The Convention establishes the regulations for air navigation and transportation and the International Civil Aviation Organisation (ICAO) to administer the rules; it adopts the distinction between scheduled and non-scheduled flights, provides for standards and codes of operation, for health and safety rules, registration and other matters, and recommends customs regulations (Umozurike, 1999).

4.0 CONCLUSION

More international legal frameworks guiding the conduct of states in the international arena have been further treated in the unit.

5.0 SUMMARY

In this unit, you have been exposed to more international conventions and legal framework to further broaden your scope in understanding international law.

6.0 TUTOR-MARKED ASSIGNMENT

Briefly identify and explain four international legal frameworks guiding states in the international arena.

7.0 REFERENCES/FURTHER READING

Pease, K.S. (2000). *International Organisations*. New Jersey: Prentice-Hall Inc. Upper Saddle River.

Umozurike, U.O. (1999). *Introduction to International Law*. Ibadan: Spectrum Law Publishing.

Shaw, M .N. (1997). *International Law*. (4th ed.). Cambridge: University Press.