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COURSE TITLE: INTERNATIONAL LAW AND ORGANISATION

MAIN CONTENT

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TABLE OF CONTENTS

MODULE 4: International Co-operative Approaches to Economic and Social Development

Unit 1: Concept and Theories of International Development.
Unit 2: Global Economic Development Initiatives in the 20th and 21st Centuries
Unit 3: Continental Initiatives for Tackling Development Issues and Challenges in Africa.
Unit 4: Regional Economic Communities in Africa
Unit 5: Cultural Organizations for Fostering World Peace and Social Development

Module 1: Understanding International Law

Unit 1: Meaning of International Law
Unit 2: Sources of International Law
Unit 3: The State as a Subject of International Law
Unit 4: Relationship between International Law and Municipal Law
Unit 5: Topical Issues in International Law

Unit 1: Meaning of International Law

1.0 Introduction
2.0 Objectives
3.0 Main Content
- 3.1 Definitions
- 3.2 Origin
- 3.3 Ancient Period
- 3.4 Middle-Ages
- 3.5 Classical Period
- 3.6 19th Century
- 3.7 20th Century
- 3.8 1945 and Beyond

4.0 Conclusion
5.0 Summary
6.0 Tutor Marked Assignment
7.0 References/Further Reading

1.0 INTRODUCTION

The international system as a composition of various political entities and institutions aggregate the complex web of interactions that take place among humans, who are markedly differentiated by colour, race, beliefs, religions, norms, mores and values, etc. Inherent in the complex web is the existence of the three Cs; conflict, communication and collaboration/cooperation. In conducting any of these forms of interactions, there must be agreed and intelligible forms of rules of engagements. Hence, the necessity for humanity to devise mechanisms for conducting interactions at every aeon of existence.

It is therefore argued that international law had always been in existence, however, the formal rules and mechanisms have gone through various stages of development. This

unit is therefore intended to introduce the students to the nature and character of international law, first, by providing some of the definitions, and secondly, by exposing the students to the developmental pattern of the subject-matter.

2.0 OBJECTIVES

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

- Present relevant definitions of international law;
- Explain the various developmental stages that international law has passed through;
- Highlight the core issues in the developmental process of international law.

3.0 MAIN CONTENT

In order to set the tone for this discourse, it is apposite that we understand the meaning of international law. The appropriate method for understanding the meaning can be inferred from the definition. The definition of international law is enriched by the contributions of scholars from various academic disciplines, especially law, international relations (and its cognate disciplines; political science and history). The various perspectives from which scholars define or explain the subject-matter of international law has however not tainted its universal meaning and acceptance as the body of rules that guide the conduct of relations among political entities, corporations and humans across boundaries. Although international law is traditionally concerned with the conduct of states and international organisations, but as actions of other non-state actors such as individuals, transnational corporations and non-governmental organisations are becoming critical to international relations, the activities of these non-state actors are also becoming relevant to the discourse on international law. Some of the important definitions of international law are provided in the next part of the unit.

3.1 Definitions

According to Beckman & Butte (2012):

> International law consists of the rules and principles of general application dealing with the conduct of states and international organisations in their international relations with one-another and with private individuals, minority groups and transnational companies.

McKeever (2006) refers to the subject matter as public international law in his definition, which says:

> Public international law is the law of the political system of nations-states. It is a distinct and self-contained system of law, independent of the national system with which it interacts, and dealing with relations, which they do not effectively govern.

In a similar tone, Starke (1977) submits thus:

> International law may be defined as that body of law 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 .....

The author continues by stating that those rules of conduct which States feel obliged to observe would also relate to the following:

a. The rules of law relating to the functioning of international institutions or organisations, their relations with each other, and their relations with States and individuals; and

b. Certain rules of law relating to individuals and non-State entities so far as the rights or duties of such individuals and non-State entities are the concern of the international community.

From these definitions, we can infer that international law is deeply linked to the conduct and practise of law across boundaries. It is therefore essential to trace the origin and development of the subject matter. This is even more so crucial because of the changes that have occurred and continue to occur in the systems of interactions in the international system. For instance, the definition of statehood in the twenty-first century is different from the definition of political entities as states in the pre-Westphalia era. Thus, these intricate changes continue to impact on the conduct and practise of international law and hence the need for the understanding of the origin and development.

3.2 Origin and Development of International Law

It has been argued that international law is as old as human existence. Its articulation and usage are tinkered in order to be relevant to existing conditions of the human-race, primarily represented by the definition of statehood and all forms of interactions, especially involving those across boundaries. The guiding principles and codes of conducts are principles held as important at various phases of human existence. For instance, most of the laws in existence before the Treaty of Westphalia in 1648 would have become moribund and of no consequential effects to the conducts of interstate relations in the twenty-first century, basically because the concept of statehood in both aeons are significantly different. Similarly, the laws guiding the exploration of space in the nineteenth century are significantly different from what exists at present. The same could be said in the analysis of territorial waters, which guides the Laws of the Seas today. Another critical example is the definition of human rights, and the relationships between citizens and the state. Furthermore, the conduct of war and the

definition of crimes against humanity are widely different from what they meant in the early days (if they existed then). Moreover, the advent of multinational corporations and non-governmental organisations are relatively recent phenomena aided by globalisation, hence, the absence of adequate articulation of their relevance in international law in the ancient era. In effect, the contents and context of the guiding principles for interactions among state and non-state actors are continuously altered to suit the conditions of various aeons.

In line with the above, Neff (2012) breaks the origin of international law into four phases. These phases reflect periods of significant transformations in the trajectory of the human-race. We shall now examine each of these periods from Neff's (Ibid.) perspectives.

3.3 Ancient World

Neff (Ibid.) begins the analysis of the existence of international law in the ancient times by presenting Herodotus' description of 'silent trading' between the Carthaginians and an unnamed North African tribe in about the sixth century BC. According to the author:

> When the Carthaginians arrived in the tribe's area by ship, they would unload a pile of goods from their vessels, leave them on the beach, then return to their boats, and send a smoke signal. The natives would then come and inspect the goods on their own, leave a pile of gold, and retire. Then the Carthaginians would return; and, if satisfied that the gold represented a fair price, they would take it and depart. If not satisfied, they would again retire to their ships; and the natives would return to leave more gold. The process would continue until both sides were content, at which point the Carthaginians would sail away with their gold, without a word exchanged between the two groups.

Based on this analysis, it could be rightly argued that international law commenced at the earliest recorded history of man in which international law "meant merely the ensemble of methods or devices which give an element of predictability to international relations". However, it is argued that this form of interaction is rather simplistic to explain international law. The author therefore shifts attention to the Middle Ages when "a more or less comprehensive substantive code of conduct applying to nations" is claimed to have existed.

SELF-ASSESSMENT EXERCISE
Briefly describe the existence of international law in the ancient period.

3.4 The Middle Ages

This period is referred to as "an intriguing picture of dizzying variety and complexity, combined-not always very coherently-with the most sweeping universality". The

period was partly symbolic with the universal institutionalisation of Thomas Aquinas' natural law ideology and the diffusion of governmental powers and jurisdictions.

According to the author, "it encompassed and regulated the natural and social life of the universe ...". The period further stresses a distinction between 'natural justice' (*jus natural*) and 'national justice' (*jus gentium)*, however without any strong lines of differences between the two systems of law. Neff (2012) elaborates:

> The *jus gentium* was much the lesser of the two, being seen largely as an application of the broader natural law to specifically human affairs. Sometimes it was regarded as comprising universal customs of purely human creation-and therefore as a sort of supplement to natural law properly speaking. These *jus gentium* rules were sometimes referred to as 'secondary' natural-law rules. It must be stressed that this original *jus gentium* did not consist entirely, or even primarily, of what would now be called rules of international law. Instead, it was a collection of laws common to all nations, affecting individuals in all walks of life, from the highest to the lowest, and dealing with all aspects of human social affairs-contract, property, crime, and the like. It was more in the nature of an ethical system of universal or trans-cultural scope, setting out general norms of conduct, as opposed to a legal code with a list of prohibitions and punishments. One aspect of this grand intellectual scheme should be particularly stressed: the fact that there was no strong tendency to think that anybody of law existed that was applicable uniquely to international relations as such. States, like private persons, were permitted lawfully to wage war for such purposes as the punishment of wickedness or, generally, for the enforcement of the law-but not for vainglory or conquest or oppression. This in fact was the conceptual kernel of natural law's most outstanding contribution to international law: the doctrine of the just war.

The argument of the natural law proponents is that the human race forms a single moral and ethical community, thus the same system of rules should apply everywhere. The contention however is that the community has within it, different set of political entities with various sets of peculiarities. The thinking pitched the Universalists against the pluralists. This became very pronounced in the debates over the legal status of the various 'independent' city-states of northern Italy. The contention centred on the legal status of the independent city-states within the wider Holy Roma Empire; the debate was the first attempt to determine the elements of independence in relation to the legal status of states.

Despite the seeming ascendancy of national law over natural law, and thus, the emphasis on the particularistic rather than the universalistic basis of law, yet, the latter

retains its importance even in today's world. An importance, which would have been better pronounced if not for the materialistic and scientific basis of the study of liberal political economy. Such study, representing the philosophical offshoot of thinking in traditional national law, emphasizes focus on free trade and the breaking down of barriers to economic activities, etc., which lend credence to the universality of human interactions, law inclusive.

In relation to the issue of conflicts, it is contended that natural law's failings come in its inability to protect the weak against the strong. According to an observer:

> It is one of history's great ironies that the natural-law tradition, which had once been so grand an expression of idealism and world brotherhood, should come to such an ignominiously blood-spattered pass. A philosophy that had once insisted so strongly on the protection of the weak against the strong was now used as a weapon of the strong against the weak. It is, of course, unfair to condemn a whole system of justice on the basis of abuses. But the abuses were many, and the power relations too naked and too ugly for the tastes of many from the developing world. Along with imperialism, forcible self-help actions left a long-lasting stain on relations between the developed and the developing worlds.

In the final analysis, the pluralists tend to have gained the upper hand considering that the existing system of law accords respect to municipal laws, while international law thrives on the consent of States, and aided by moral suasion.

As far as the development of international law is concerned, much of the practice in the Middle Ages accorded with the practise of ancient times. Neffs (Ibid) comments on diplomatic processes of the time deserves elaboration. According to the author,

> Beginning in about the eleventh century, European (chiefly Italian) States began to conclude bilateral treaties that spelled out various reciprocal guarantees of fair treatment. These agreements, sometimes concluded with Muslim States, granted a range of privileges to the foreign merchants based in the contracting States, such as the right to use their own law and courts when dealing with one another.

Similarly, the field of maritime trading experienced bilateral negotiations and consequent treaties that "governed the broad range of maritime activities, including the earliest rules on the rights of neutral traders in wartime". Specifically, some segments of international law relating to war were fundamentally refined in order to meet the exigencies of the times. For instance, "the law on the ransoming of prisoners of war (a welcome step forward from the alternatives of enslavement and summary

killing)", "the law of arms (as it was known) was expounded in the fourteenth century".

There are interesting accounts of the implementation of the tenets of international law in this era as a result of the divergent views, distinct orientations and beliefs and complex nature of the world system. Neff (Ibid.) explains one of the complex subjects of international law at the time. The author states that:

> Accounts of medieval warfare, however, incline observers to harbour grave doubts as to whether even these practical rules exerted much real influence. With the European explorations of Africa and, particularly, the New World from the fourteenth century onward, questions of relations with non-European societies assumed an urgent importance-while, at the same time, posing an immense practical *test for the universality of natural law.*

The Indo-Spanish example is equally relevant. Neff (Ibid) submits:

> The Spanish conquest of the Indian kingdoms in the New World sparked especially vigorous legal and moral debates (even if only after the fact). Dominican scholar, Francisco de Vitoria, in a series of lectures at the University of Salamanca, concluded that the Spanish conquest was justified, on the ground that the Indians had unlawfully attempted to exclude Spanish traders from their kingdoms, contrary to natural-law rules. But he also confessed that his blood froze in his veins at the thought of the terrible atrocities committed by the Spanish in the process.

In effect, the content, context and practise of international law in the medieval period was challenging to both the practitioners and the subjects of the law. This is because of the pluralistic nature of beliefs and practises that could not be universalised by the 'natural justice' adherents. All aspects of international law (diplomacy, war, trading) presented cases for and against this circumstance in practise.

3.5 Classical Period of Dualism

This period was all about the recognition of the dualistic purposes of the law of nature and the laws of nations. Neff (Ibid.) captures it thus;

> What was new in the seventeenth century was a willingness to give a degree of formal recognition to State practice as a true source of law, rather than regarding it as merely illustrative of natural-law principles.

This duality has existed up until the present day.

This novel line of thinking was initiated by Hugo Grotius and Thomas Hobbes. In his major work, "On the Law of War and Peace", Hobbes remarkable input into the study of international law is the transformation of the "*jus gentium*" (customary law held in common by all nations) to the law of nations. Remarkably, this is distinct from the law of nature, in that neither was it a sub-category of the law of nature nor was it a means of its application. In specific terms, it was not regarded as a broad category of law governing human social or political affairs, but rather, it applied specifically and singularly to rulers of states. This brought about the introduction, for the first time in history, "a clear conception of a systematic body of law applicable specifically to the relationship between nations" (Neff, 2012).

Neff (2012) also attempts to clear the air on the debate in the relationship between traditional natural law and the law of nations developed by Grotius. In his words:

> It should be appreciated that Grotius's law of nations or 'voluntary law' as it was sometimes known, was not designed to supplant or undermine traditional natural law. Far from it! The function of this law of nations was an interstitial one, filling gaps where the natural-law principles were too general, or devising workable rules as pragmatic substitutes where the application of the strict natural law was, for some reason, unfeasible. The law of nature and the law of nations, in short, were seen as partners rather than as rivals.

In contrast, though, some view the relationship between both law of nature and law of nations as more of antagonism than partnership. Thomas Hobbes' in his publication, Leviathan argued that the relationship between both systems of law is anything but cordial. In his famed Hobbesian state of nature when life was "brutish, nasty and short", political conditions were not orderly and law-governed as Grotius painted it. In contrast, Hobbes saw the state of nature as a chaotic, even violent world, with self-preservation as the only true natural right. Neff (2012) interprets Hobbes' position thus:

> Security could only be attained by the radical step of having all of the persons in a state of nature surrender their natural rights to a sovereign power of their own creation-with the result that, henceforth, the only law, which they would live under, would be the law promulgated by that sovereign. Natural law was not rejected in its entirety, but it was radically stripped-down, to the point of being reduced, in essence to two fundamental tenets: a right of self-preservation, and a duty to perform contracts or promises. It was this stripped-down version of natural law which, in the opinion of Hobbes, constituted the sole body of law between independent nation-states.

In the search for stability of the system under the circumstance, states must endeavour to enter into binding agreements whenever possible. The agreements were either written or unwritten. While treaties formed the basis of the written agreements, the unwritten agreements were customary law easily recognised and acceptable to all states. The essential aspect of this era is that Grotius and Hobbes provoked debates and won adherents that have continually formed the basis of working and reworking the tenets of international law.

3.6 19th Century

The period deepened the philosophical base of international law. Positivism became the dominant tradition, although this is not to ignore the contributions of the historical school of law. Also of importance is that natural law, despite the changing trends in the conduct of international relations was equally still relevant, even if not in the mould of the other two ideologies.

It is claimed that the underlying thesis of the positivist school of thought is to extract international law from its natural law grounding, and move the subject into the realm of science, empiricism or objectivity and free it from the manipulations and distractions of speculative, value-laden or religious modes of thought. The leading light in the mission was the French social philosopher Auguste Comte. In Comte's analysis, the human race had passed through three historical phases, viz; the theological, the metaphysical and the trending (as at then), the positive. Religion and religious inclinations had been dominant in the theological aeon, while the metaphysical age witnessed the birth of natural law as played out in the prevalence of legalistic and jurisprudential inclinations. The third age was meant to be the age of positivism, which main role was the liberation of the mind from the superstitious dogmas of the past, through concrete and objective scientific analysis without giving room to subjectivism, norms and value.

Positivism according to Comte is a complex web of "technocratic utopia", whereby the state is not ruled by the regulars of the time (clerics, politicians, lawyers), but rather by technocrats; engineers and industrialists. Furthermore, the world was expected to be borderless, that is, rendering the nation-state irrelevant with the creation of a world government. Like every socio-political and economic issues of the time, international law was equally affected by the positivist ideology.

In applying the positive philosophy to international law, the content of the debate was the "doctrinaire insistence that positive law is the only true law, that is, the wholesale and principled rejection of natural law as a valid or binding guide to conduct". The period commenced the era of the radical departure from the belief of a close-knit relationship between natural law and the law of nations. At this period, it was clear that "the partnership between the law of nations and the law of nature, in short, was now regarded as irredeemably dissolved". Hence, positivists argue that "international law was, fundamentally, an outgrowth or feature of the will of the States of the world. Rules of law were created by the States themselves, by consent, whether express (in written treaties) or tacit (in the form of custom). Positivist philosophy contended that

international law was the sum total, or aggregation, of agreements which States happen to have arrived at, any given time. Instructively, positivists affirmed that international law must now be seen as a law between States and not as a law above States. According to an observer,

> International law, in other words, was now regarded as a corpus of rules arising from, as it were, the bottom up, as the conscious creation of the States themselves, rather than as a pre-existing, eternal, all-enveloping framework, in the manner of the old natural law. As a consequence, the notion of a systematic, all encompassing body of law-so striking a feature of natural law-was now discarded. International law was now seen as, so to speak, a world of fragments, an accumulation of specific, agreed rules, rather than as a single coherent picture. In any area where agreement between States happened to be lacking, international law was, perforce, silent.

From another angle, the positivist perspective viewed international law from an "instrumentalist" point of view, a situation in contrast to what you used to exist when the law had its own objective to accomplish, and a universal force upon which general standards of rules were established. But the positivists were of the opinion that the law served technocratic purposes, and must be used to achieve certain goals and objectives influenced by political considerations. Being an instrument, law became the tool to be used for achieving objectives.

In the heat of the new debate was the role and place of the State in law. The positivists emphasize that the State plays the main role in international law, sometimes arguing that the State is the main subject and object of international law. In this context, States were perceived to possess "international personality" thereby having fundamental rights and most rights that humans could lay claim to, especially the right of self-preservation. That is, a State could employ any means by which to protect itself against attacks, and protect its interests wherever they may be. This gave vent to the invention of national-interest which description can be as vague and abstract as possible. The definition of self-preservation of national-interest is the exclusive preserve of the State in question. The positivists' contributions to international law debate continue to be relevant even in the twenty-first century.

Beyond the scholarship and ideological basis of international in the 19th century, Neff (Ibid.) submits thus, "if 'international law' is defined as the integration of the world at large into something like a single community under a rule of law, then the nineteenth century would be the earliest date". Coming on the heels of the defeat of France in 1815, the world (which was Euro-centric in the period) came together and formed the precursor to the League of Nations, which eventually metamorphosed into the United Nations, called, the Concert of Europe. The triumphant European powers; Britain, Prussia, Russia and Austria designed a peace settlement on the general principles that would formed the basis of relationship among nations. These European powers

formed the "Concert of Europe", a form of association that partly focused on the balance of power in order to maintain equilibrium in power relations. The main idea was to establish a deterrence mechanism such that peace can be assured and maintained. Accordingly, "the goal was to create a continent-wide set of political arrangements that would (it was hoped) keep the scourge of revolution from breaking out again". But at the forefront of maintaining the peace were the major powers that would effect military intervention in case of perceived disequilibrium in power calculus.

The international law dimension of the new order was the emphasis "on faithful adherence to treaty commitments, together with respect for established laws and legitimate governments and property rights within the States of Europe". On the other hand, "it also included a duty on the part of rulers to 'earn' their legitimacy by providing responsible and efficient government to their peoples and also by cooperating with movements for orderly and peaceful change". It would suffice to present some of the instances in which the "Concert of Europe" intervened to keep the peace;

> The first ones were in the cause of 'legitimacy' in the 1820s, when there were military interventions to subdue revolutions in Naples and Sardinia (by Austria) and in Spain (by France). Also in the 1820s, the intervention of Britain, France, and Russia in the Greek independence struggle led to independence for the Kingdom of Greece. Great-power involvement similarly led to Belgian independence in the 1830s (Neff, Ibid).

In the final analysis though, the "Concert of Europe" was criticized for being hegemonic, primarily because of the absence of the principle of equality of states in its dealings, and the group did not accommodate non-European states within its rank. With the challenges of the twentieth century, it became apparent that the world required more than the "Concert of Europe" to establish a system and pattern of relationship guided by consent in order to achieve peace and harmony.

Self-Assessment Exercise
Examine new ideas generated about international law in the 19th century

3.7 The Twentieth Century

The twentieth century emerged with its own challenges, which showed the apparent inadequacies of the "Concert of Europe". With the destruction of lives and properties that followed the trail of the First World War, it became paramount that a broad-based organisation that would exist permanently was needed to nip the incidence of war and carnage in the bud. Soon enough, the American President Woodrow Wilson motivated other world leaders into the Versailles Treaty of 1919 where a new public order that would allow for open and democratic deliberations would be formed. The formation of the League of Nations consequently followed. While the League of Nations could

not exist for long enough partly as a result of power-play among the founding states, it failed woefully because of its inability to stop another world war; the Second World-War. However, one of the fundamental achievements was the creation of a World Court known as the Permanent Court of International Justice. For the first time, the world established a standing body to decide cases that are international in nature and context. The world, through the League of Nations therefore succeeded in establishing "a substantial body of international judicial practise".

3.8 1945 and Beyond

The post Second World-War period marked a reawakening of the security consciousness of the super-powers. There seemed an agreement to finally put an end to the scourge of international war. One of the areas that received attention in this very emotive enterprise is international law. The World Court became the International Court of Justice and was energised through the prosecution for war-crimes and crimes against humanity of Japanese and German leaders in Tokyo, Japan and Nuremberg, Germany in the 1940s. This tradition continues today with the prosecution of leaders that have been accused of crimes against humanity, such as Charles Taylor (former President of Liberia) and Slobodan Milosevic (former President of former Yugoslavia), among others. Furthermore, the success in the codification of the Law of the Sea, Conventions on Diplomatic and Consular Relations, Convention on Human Rights and the Law of Treaties, among others are giant strides that have been achieved in international law.

In the final analysis, it is clear that the international system treaded a long and tortuous path in the process of codifying the conduct of relationships among its various actors. The establishment of the UN and the birth of the ICJ and its existence even till the twenty-first century is remains a hard-won accomplishment.

4.0 CONCLUSION

In conclusion, the international system continually improves on the system of law that would guide the conduct of relationship. However, the enterprise is fraught with challenges because of the forces that States have to contend with in establishing new processes or reviewing existing processes. With other non-state actors also included as subjects of international law, and the fact that States would also have to contend with some critical issues such as jurisdiction, while being conscious of the existence of sovereignty make the operationalisation of international law a daunting task.

5.0 SUMMARY

The unit is the introductory part of this module, hence, we have attempted to explain some of the important issues related to international law, which the students would find relevant as they explore the other areas of the course.

In this unit therefore, you would learn about the origin of international law, and the various phases it passed through before now. In the process, there were scholarly

debates and explanations on the relationship between national law and natural law, which also extends to the plurality or universality of international law. An interesting aspect of the history, is the era of positive thinking, which from all intent and purposes appear to be the basis upon which the system of international law has been conducted since the twentieth-century.

6.0 TUTOR-MARKED ASSIGNMENTS (TMAs)

1. Distinguish between national law and natural law.
2. Explain the term, 'International Law'.
3. Analyse each of the developmental stages of 'International Law'.

7.0 REFERENCES/FURTHER READING

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Unit 2: Sources of International Law

CONTENT

1.0 INTRODUCTION

As a system of law, international law is developed from well-grounded and coordinated sources to serve the purposes of ensuring a robust system of rules for guiding the conduct of actors in the international system.

A good starting point is to emphasize that international law is embedded in the tenets of the International Court of Justice, which is a creation of the United Nations. Having established that, it is important to elaborate on the relationship between the United Nations and the ICJ, for it is in this relationship that we can carve out the sources of international law.

The ICJ is the principal judicial organ of the United Nations, established in June 1945, and began hearing cases in April, 1946. According to the mandate:

> The court's role is to settle in accordance with international law, legal disputes submitted to it by States and to give advisory opinions on legal questions referred to it by authorised UN organs and specialized agencies.

The question arises on the methods and mechanisms by which the Court creates its law that would be adjudicated in cases concerning the consenting parties (States). Thus, the established laws must be acceptable to all members-states of the United Nations. In order to avoid ambiguity, and to appear fair and just, the Statutes of the International Court of Justice attempt to accommodate major divergent opinions on the principles of law, by deriving its law from generally known and acceptable sources. In this respect, Article 38(1) of the ICJ became the standard bearer of the sources of international law.

According to Article 38(1) of the ICJ:

The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply to:

> a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
>
> b. international custom, as evidence of a general practice accepted as law;
>
> c. the general principles of law recognized by civilized nations;
>
> d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

Article 59 referred to in (d) above states:

> The decision of the Court has no binding force except between the parties and in respect of that particular case.

For the avoidance of doubt, the order above as stated in the Statute is followed in the practise of adjudication of international law. Specifically, "judicial decisions" and "juristic decisions" are regarded as "subsidiary means for the determination of rules of law". Priority is usually accorded treaties and conventions recognised by States concerned in the determination of cases, however if existing treaties and conventions cannot be applied to a specific case, the option of existing customary rules would be adopted, but if no applicable rules are in existence, recourse would then be made to general principles of law recognised by civilised nations. The last option therefore is recourse to judicial and arbitral decisions, and juristic opinions if the circumstances do not accord with recognised principles of law.

We shall examine the various sources in the relevant part of the unit

2.0 OBJECTIVES

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

- Explain the various sources of international law
- Differentiate between international treaties and customs
- Differentiate between international judicial decisions and juristic works.

3.0 MAIN CONTENT

3.1 International Treaties and Conventions

Though, this is the main source of international law, however the effectiveness of a treaty becoming the basis for the formation of rules of international law is dependent on the nature of the treaty. Hence, the distinction between law-making treaties and treaty contracts. While law-making treaties provide the basis for the general application of laid down rules and procedures, treaty contracts deal with particular matters concerning two or fewer states in particular. Thus, treaty contracts merely lay down special obligations concerning the parties involved.

Law-making treaties, sometimes referred to as 'international legislation' arguably gained prominence due to the inadequacy of customary law in meeting the challenges associated with coordinating the interests of many sovereign states. With the advancement in the international system (industrial, economic, political and social changes), comes the complexity of managing the relationships and intercourse on the basis of customary norms and values. The management of this complex relationship may only be possible when all parties agree to abide by certain rules and laws.

Incidentally, law-making treaties are also of two kinds;

a. Those enunciating rules of universal international law, e.g. the UN Charter;
b. Those laying down general or fairly general rules.

Despite the universal or general applicable nature of law-making treaties, they are often framework conventions which impose duties and responsibilities for the enactment of legislation or offering opportunities within which states are to apply the principles spelt out by the convention. In other words, law-making treaties are more or less general standard-setting instruments which are applied by states on provisional basis.

The resounding prominence of treaties as the primary source of international law can be attributed to the transformation of the international system after the Second World War. In this respect, multilateral treaties have been the most relevant source of international law because of the following reasons:

a. The participation of a large number of States, relative to bilateral treaties, ensure the effectiveness for the purpose of codifying international law.

b. The subject-matter of multilateral treaties are usually comprehensively addressed, thus relatively guiding against ambiguities.

c. The nature of contemporary international system thrown-up by globalisation has produced the avenue for continuous intermingling among States, hence, the codification of rules emerging from such interactions.

d. In comparison, it is relatively quicker and faster to amend existing international rules or create new ones through treaties.

Treaties' dominance as a source of international law is connected to the reduced deference to customs as a source of international law. This development is similar to the replacement of customary or common law by codified law in municipal legal settings, however, customary international law continues to play a significant role in the international law system.

Self-Assessment Exercise

Explain the two types of law-making treaties.

3.2 Customs

Customs used to be the most important source of international law, until the elevation of treaties and conventions consequent upon the radical transformation of the international system. Customs are rules that evolved through long historical processes and eventually culminating in their acceptance by the international community as basis for legal conducts and management of relationships.

It is however essential to mark out the differences between 'custom' and 'usage'. According to Starke (Ibid.), "there is a clear technical distinction between the two". In the author's words;

> Usage represents the twilight stage of custom. Custom begins where usage ends. Usage is an international habit of action that has not yet received full legal attestation. Usages may be conflicting; customs must be unified and self-consistent.

The history of international law would be incomplete without relaying the history of the role played by customs. For instance, in ancient Greece, the basic rules of war and peace were results of the common usages accorded them by the Greek city-states. Starke (Ibid.) observes that "these customary rules crystallised by a process of generalisation and unification of the various usages separately observed by each city republic". The author recounts the scenarios in Italy and the whole of Europe thus:

> When in the sixteenth and seventeenth centuries Europe became a complex of highly nationalised, independent territorial States, the process was translated to a higher and more extensive plane. From the usages developed in the intercourse of modern European States there emerged the earliest rules of international law.

Customary rules are known to have emerged through usages or practises under the following three conditions:

a. Diplomatic relations between States- this involves acts and declarations by representatives of states, such as; statesmen, opinions of legal advisers to state governments, bilateral treaties, press releases or official statements by government are all considered as possible forms of usages acceptable to states.

b. Practise of international organisations- the practise of international organisations may lead to the development of customary rules of law concerning their status, or their powers and responsibilities.

c. State laws, decisions of state courts, and state military or administrative practises- this may be extracted from official books or documents, such as military, naval, and air-force manuals, or the internal regulations of each state's diplomatic and consular services. Comparisons may provide evidence of uniformity in the processes adopted by states.

A critical point to note in the acceptance of customs as a source of international law is the role played by both national and international courts. Starke (Ibid.) provides a detailed explanation as to the import of judicial application in the recognition of a customs as a source of international law. The author avers:

> Often it is claimed by one of the parties before the Court that a certain rule of customary international law exists. The Court must then investigate whether or not the rule invoked before it is a validly established rule of international custom, and in the course of this inquiry it examines all possible materials, such as treaties, the practise of states, diplomatic correspondence, decisions of state courts, and juristic writings. In certain cases, the Court's function may be more than purely declaratory; while not actually creating new customary rules, the Court may feel constrained to carry to a final stage the process of evolution of usages so generally recognised to suggest that by an inevitable course of development they will crystallise into custom.

Accordingly, the International Court of Justice describes its judicial recognition of customary rules thus;

> The Court's decisions show that a State, which relies on an alleged international custom practised by States, must, generally speaking, demonstrate to the Court's satisfaction that this custom has become so established as to be binding on the other party. This attitude of judicial caution is confirmed by the experience of the International Law Commission and of trend in the Court's decisions, viz; that the autonomy or sovereignty of a State should be respected unless the Court is duly satisfied that such autonomy or sovereignty is limited by rules that are binding on that State.

Inherent in the adoption of customs, is the practises of States over a long period, such that the actions become the norms that are acceptable standards to deserve adoption for the purposes of international law. In the analysis of state practise however, the activities of the organs of government, and indeed, the representatives of government are essential in the determination of practises relevant to international law. The reason being that the concept of the State is an abstraction, composed of three organs, and whose decisions are executed by personalities.

Contemporary discourses on the effect of customs as a source of international law has focussed on the point where a distinction between the actions of states and what they claim to be a representation of the law. This seeming incoherence tends towards a rejection of states' practise and reducing to a mere evidence of an opinion of law (*opinio juris*).

With the existing nature and character of the international system, it is argued that it is the super-powers and the developed world that parade the capacity through their actions to the development of international law. However, the most viable option for contributing to the development of the international law system may be their participation and contribution at international gatherings, especially at the level of the UN General Assembly. Often the International Court of Justice will consider General Assembly resolutions as indicative of customary international law. This is equally fraught with anomalies because the less-powerful states tend to tow the line of their benefactors- the powerful states, when voting or expressing their positions on issues.

It is important to note that there is an acceptable process of establishing a customary rule of international law. The practise that leads up to the process must be "common, consistent and concordant". In consideration of the nature of the international system, there is a caveat that says the practise does not necessarily have to involve all of the states in the system, however, a representation of the general will to accord with such practise is essential, and those whose interests would be affected must be active in the processes of such practise. In the case of a dispute, a customary rule of international law may be applied when a state accepts the rule applies to it or the two states involved in the dispute are a part of the group of states which the customary rule of international law applies.

Although, the standard is that a State can disagree with the application of a particular law relating to its own case; but this may only be acceptable if the State had made its opposing position known through persistent objection over a period of time, and not when the matter comes up for adjudication. It is however uncommon that a single State would succeed in such an objection, because most rules of international law have universal application.

Finally, it is important to be aware that the continuous transformation of the international system, and the subsequent developments make it imperative that customs in inter-state relations are not limited to long-term practises, but, in appropriate circumstances, there is also the issue of "instant custom". In this respect, the length of time of practises no longer stand as a barrier to the formation of a new

rule of international law. This has generated debate about the suitability of the word "custom" in the cases of certain practises. Be that as it may, the learning point is that custom as an acceptable source of international law is not limited by time or period of practise.

3.3 International Judicial Decisions

This is a fundamental source of international law, one that is directly connected to the workings of the International Court of Justice. The ICJ is the successor of the former Permanent Court of International Justice which delivered land-mark judgments and provided advisory opinions on matters of international importance during the period 1921-1940. The ICJ continues to play this part today.

It should be noted that in making the rules of international law, international judicial decisions might be said to serve secondary functions. The conditions that creates judicial decisions, such as; the decisions of international and municipal courts, the publications of academics, etc. are often not regarded as sources of law per se, but as mechanisms for recognizing the law emanating from other sources. In practise, it is contended that the ICJ for instance does not make reference to domestic decisions, but would rather draw inferences from it's hitherto case-law.

It is instructive to however note that the workings of the ICJ are such that the decisions have "no binding force except between the parties and in respect of particular cases". From evidence, the ICJ is reported to have "shown itself as free to develop international law without being tied by the weight of prior practise and authority". However, the Court customarily refers to its past decisions and explores its advisory opinions to support its positions on particular instances. Essentially therefore, there exists no rule of "Let the Decision Stand" (*stare decisis)* in international law.

In its history, the ICJ has made remarkable contributions to the development of international law, one of the often cited cases being the International Military Tribunal at Nuremberg and Tokyo in 1946 that provided the framework that defined issues relating to crimes against humanity. Till date, cases are brought against personalities that are thought to have breached international law through their actions while in government. Some of the celebrated cases are those of Charles Taylor (former President of Liberia) and Slobodan Milosevic (late President, former Federal Republic of Yugoslavia).

The process of contributing to the development of international law is however not limited to the activities and functions of the ICJ; the judicial decisions arising from the general principles of law in States are also regarded as formidable means of the formation of the rules of international law. According to Starke (1977), there are two ways in which the decisions of State Courts can lead to the formation of rules of international law; these are;

a. The decisions may be treated as weighty precedents, or even as binding authorities;
b. The decisions of State Courts may, under the same principles as dictate the formation of custom, lead directly to the growth of customary rules of international law.

In this respect, there are also decisions of international arbitral tribunals- some of the known influential decisions have contributed to the development of international law; Permanent Court of Arbitration, the British-American Mixed Claims Tribunal, etc. Specifically, arbitral decisions have impacted on the law in the following areas; territorial sovereignty, neutrality, state jurisdiction, state servitude, and state responsibility.

Despite these achievements, there have been contentions about the potency of arbitral decisions. There are claims that arbitral and judicial decisions are distinct because arbitrators tend to be more of diplomatic agents or negotiators seeking agreement, and not judges focussed on facts and law. Thus, the subjective nature of arbitration weakens the capacity of its decisions to be employed in law. However Starke (Ibid.) lays it out clearly in the following words:

> The main distinction between arbitration and judicial decision lies not in the principles which they respectively apply, but in the manner of selection of the judges, their security of tenure, the independence of the parties, and the fact that the judicial tribunal is governed by a fixed body of rules of procedure instead of by ad hoc rules for each case.

In effect, the decisions of international arbitral tribunals are as important as the decisions of national courts to the processes of sourcing international law.

Let us take a closer look at what arbitration entails.

The New York Convention which was adopted by a UN Diplomatic Conference in 1958 gave vent to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards. In the main, the convention is a call on courts of contracting states to give recognition and act on private agreements and enforce arbitration awards made in other contracting states. This is the platform upon which international arbitration was laid. It concerns itself basically with arbitrations that are not of the nature of domestic awards in the State where the complainant seeks enforcement.

The Convention stipulates that an arbitration award issued in any other state can generally be freely enforced in any other contracting state under the ‘reciprocity’ reservation clause (this states that some contracting states may elect to enforce only awards from other contracting states), only subject to certain, limited defences. The defences are:

1. a party to the arbitration agreement was, under the law applicable to him, under some incapacity;
2. the arbitration agreement was not valid under its governing law;
3. a party was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings, or was otherwise unable to present its case;
4. the award deals with an issue not contemplated by or not falling within the terms of the submission to arbitration, or contains matters beyond the scope of the arbitration (subject to the proviso that an award which contains decisions on such matters may be enforced to the extent that it contains decisions on matters submitted to arbitration which can be separated from those matters not so submitted);
5. the composition of the arbitral tribunal was not in accordance with the agreement of the parties or, failing such agreement, with the law of the place where the hearing took place (the "lex loci arbitri");
6. the award has not yet become binding upon the parties, or has been set aside or suspended by a competent authority, either in the country where the arbitration took place, or pursuant to the law of the arbitration agreement;
7. the subject matter of the award was not capable of resolution by arbitration; or
8. enforcement would be contrary to “public policy”.

In effect, arbitration is a voluntary process of dispute resolution that accommodates the interference of a third-party, as agreed upon by parties involved in dispute, which therefore renders a final and binding decision after the presentation of submissions by each side to the dispute.

The process of arbitration is different from a judicial process in terms of composition of adjudicators. The presumed impartial arbitrators are selected by parties to the dispute based on the nature and characteristics of the contract or issues involved. Arbitration is customarily undertaken by either one arbitrator or a panel of three arbitrators with the structure, format, site and scope of arbitration decided by the parties and documented in the arbitration clause of their contract. The arbitration clause is usually a subject of negotiation at the period of the first phase of developing the contract.

Furthermore, arbitration creates room for flexibility as compared to the judicial process. Some of the possibilities can include, flexible periods in which to respond to claims, location for the arbitration, the level of formality, and whether to involve legal practitioners. Some of the features of arbitration include;

1. Likelihood of Impartial Decision Maker
2. Finality of Enforceability of Arbitral Awards
3. Often Confidential Proceedings
4. Choice of Expertise in Choosing Arbitrators
5. Limited Discovery
6. Reasonably Cheaper than Litigation
7. Known for Relatively Shorter Resolution Processes

Self-Assessment Exercise
Explain the differences between judicial decisions and arbitration.

3.4 Juristic Works

The importance of the role of jurists in the development of international law cannot be overemphasized. Aside of interpreting the laws, they also use their broad knowledge in initiating the processes of the development of new laws and codes of conduct. Despite the immense contributions of jurists, their works are not considered as an independent source of law. Juristic works are appreciated for their evidentiary value. To reemphasize the non-independent nature of juristic works, the report of a body of experts concludes with the following;

> ... Juristic opinion is only important as a means of throwing light on the rules of international law and rendering their formation easier. It is of no authority in itself, although it may become so if subsequently embodied in customary rules of international law; this is due to the action of States or other agencies for the formation of custom, and not to any force which juristic opinion possesses.

In essence, therefore, the main function of juristic works is to provide reliable evidence of law. In practise, jurists have been responsible for extracting customary rules coincidental or an aggregation of similar usages or practises, as such, they perform a most important service. Although there is divided opinion on whether the opinion of jurists should be recognised as a force of law, however, the fact that juristic opinions may be taken as evidences that are not limited to established customary rules, but indeed, of customary rules which later become established is an indication of the importance of juristic opinions. According to Starke (Ibid.): "The reaction of juristic opinion may be of great importance in assisting the transition from usage to custom".

Thus, the *evidentiary* function of juristic opinion is consolidated as events of unfold, particularly if generally relied upon, or if no principles contrary to such opinion become established. For this purpose therefore, juristic works may acquire the nature of a prescriptive authority. Caution must however be exercised in accepting the opinions of jurists, even when it has evidentiary value as a recognised customary law. For emphasis though, in the absence of no established customary law or treaty rules in regard to a particular case, "recourse may be had to juristic opinion as an independent 'source', in addition to the views expressed in decided cases or in diplomatic exchanges".

3.5 Decisions or Determinations of the Organs of International Institutions, or of International Conferences

In recognition of the important roles played by non-state actors in the processes of establishing the rules and codes of conducts in international relations, the decisions

taken by these institutions are accorded requisite respect in the processes of the systems of international law.

The current debate is focussed on the lack of clarity in the ICJ provision that refers to the "General Principles of Law" as a source. However, it is assumed to relate to municipal law, which may act as the method of filling any gap that may not be covered by treaties or customs. Despite the overriding influences of treaties and customs as a source of the rules of international law, the principles of law as practised by recognised states have also been very relevant especially when vacuum exists in the process of application.

According to Starke (Ibid.), decisions taken at these institutions or gatherings may enrich the processes of the formation of international law in the following ways:

a. They may represent immediate or final steps in the evolution of customary rules, particularly those governing the constitutional functioning of these institutions. The decisive criterion is the extent to which the decision, determination or recommendation has been adhered to in practice; of itself it is not of normative effect.

b. A resolution of the organ of an international institution which validly formulates principles or regulations for the internal working of the institution may have full legal effect as laying down rules which are binding on the members and organs of the institution.

c. In as much as an organ of an international institution has inherent power, in doubtful cases not precisely covered by its Constitution, to determine the limits of its own competence, such decisions by it on questions of its jurisdiction may have a law-making effect.

d. Sometimes, organs of international institutions are authorised to give binding determinations concerning the interpretation of their constituent instruments. These interpretative decisions will form part of the law of the international institution in question

e. Some organs of international institutions are empowered to give general decisions or directives of quasi-legislative effect, binding on all the members to whom they are addressed.

f. The determinations or opinions of Committees of Jurists, specifically instructed by the organ of an international institution to investigate a legal problem.

4.0 CONCLUSION

The unit focuses on the sources through which the rules of international law are established. With emphasis on the current trend whereby treaties entered into by

States and States' practises, which become customs are given higher priority than other sources; this shows the strength of State as the primary subject of international law. The next unit would further accentuate this position.

5.0 SUMMARY

In summary, the unit attempts to explain the various sources of international law. In this effort, the role of the State is quite pronounced. Aside of the four sources outlined in the Convention of the United Nations, we are also able to discuss "Decisions or Declarations of the Organs of International Institutions or of International Conferences". This also re-emphasizes the important role played by States in the system and practises of international law, and reinforces the argument that States' submissions to judgments arrived through international law are voluntary.

6.0 TUTOR-MARKED ASSIGNMENTS (TMAs)

1. Outline the sources of international law.
2. Write brief notes on arbitration.
3. Distinguish between juristic works and international judicial decisions.

7.0 REFERENCES/FURTHER READING

Nickerson, K. (2005). "International Arbitration". See: www.osec.doc.gov. Retrieved 28/12/2012

Starke, J. (1977). Introduction to International Law. London: Butterworths

See: The UN Charter

Unit 3: The State as a Subject of International Law

CONTENTS

1.0 INTRODUCTION

There exists a contentious debate about the subjects of international law, in other words, there are different perspectives on what (political entities and institutions) and who (individuals) constitute subjects of international law. The debate also concerns how each constitutes a subject under international law.

However, this unit would focus on the State as a subject of international law because the understanding of the State as a political entity is capable of exposing the relationship that exists among the other subjects of international law, and by extension, with international law because these subjects are the basic elements that form the State.

Primarily, the concern of international law is about managing the rights, duties and interests of states, since the basic rules of conduct are fashioned in line with the abilities of states to observe them. Moreover, the treaties that form a fundamental aspect of international law process are designed by states, and thus, states are the signatories. The three major line of thinking are those that accept states as the only subject of international law, those that accept that states share the privilege with other actors (such as individuals and organisations), while the third perspective believes that individuals, and not state or any other abstract collection of people are the only subject of international law. For the latter, the argument is that:

> The duties and rights of States are only the duties and rights of the men who compose them.

This perspective is founded on the notion that a State is purely a technical legal concept which serves to accommodate the totality of legal rules which apply to a collective within a particular territory. In other words, the State is actually synonymous with the law. The State as a concept is therefore used as an expressive

technical language for legal circumstances whereby individuals are bound to commit certain acts, which receives punishment or carry out duties with expectations of benefits, all in the interest of the group of people in which they belong.

The argument above seems to miss the point on the legal status of states. For emphasis, "treaty provisions are couched in the form of rules of conduct binding upon, or conferring on States" (Starke, 1977), this is despite the fact that treaties provide that individuals may have rights. Starke (Ibid.) uses the British position on the status of the State under international law as an illustration. The author cites Lord Atkin's comment in a judgement. According to Lord Atkin:

> When the Crown is negotiating with another sovereign a treaty, it is inconsistent with its sovereign position that it should be acting as agent for the nationals of the sovereign State, unless indeed the Crown chooses expressly to declare that it is acting as agent.

In effect, the State, the individuals and other corporate entities are subjects of international law. Nowhere is this assertion more pronounced than the Nuremberg Tribunal of 1946, and which has set precedent for other trials in the case of individuals committing atrocities against humanity. According to the Nuremberg Tribunal:

> Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced.

Though the individual is accepted as a subject of international law, however, there is a recognised rule of international practise, which states, "that before an international tribunal, the rights of, or the obligations binding individuals at international law, are respectively enforceable at the instance of or against those States only whose nationality such individual possess." Starke (1977) further submits:

> In other words, an individual cannot generally assert his own rights against a State before an international tribunal or be answerable to a State in the same jurisdiction for failing in his obligations, but only through the State of which he is a national.

However, with the passage of time, the trend has changed such that corporations and groups are also beginning to have access to international tribunals. In summary Starke (Ibid.) concludes:

a. That under modern practise, the number of exceptional instances of individuals or non-State entities enjoying rights or becoming subject to duties directly under international law, has grown.
b. That the doctrinaire rigidity of the procedural convention precluding an individual from prosecuting a claim under international law except

through a State of which he is a national, has been to some extent tempered.

c. That the interest of individuals, their fundamental rights and freedoms, etc., have become a primary concern of international law.

In view of the above, we can conclude that the explanation that States are the exclusive subjects of international law may not be acceptable any longer, despite being a good working generalisation. With the never-ending development of the modern international system, the State alone cannot be a useful tool, whether for the purposes of analysis or in practical terms cannot be sole subject of international law.

However, the analyst or the practitioner must equally be wary of underrating the importance of the State in matters of international law. Starke (1977) contends:

> Yet it is wrong to minimise this traditional theory as artificially to explain away the developments that have subjected the theory to such strain. The bulk of international law consists of rules which bind States, and it is only in the minority of cases, although it is a substantial minority, that lawyers have to concern themselves with individuals and non-State entities as subjects of international law.

In effect, the State remains the principal subject of international law, if for no other reason than the fact that all the arguments for and against State's importance revolves round the relationship or connection of other possible subjects with or to the State. Based on this premise, we now turn our attention to the understanding of the State, and its duties, responsibilities, obligations and rights as a subject of international law.

2.0 OBJECTIVES

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

a. Highlight the primacy of State as a subject of international law.
b. Discuss the essential characteristics of a State
c. Distinguish between De Jure and De Facto Recognition

3.0 MAIN CONTENT

3.1 What is a State?

The term is subject to various interpretations bothering on the existence or non-existence of primordial affiliations. In order to put this argument to rest, and thereby understand the position of international law concerning issues related to the State, international law adopts the essential characteristics that make-up a State as provided in Article 1 of the Montevideo Convention of 1933 where the State is described thus:

> The State as a person of international law should possess the following qualifications: - (a) a permanent population; (b) a defined territory; (c) a Government; and (d) a capacity to enter into relations with other States.

This description is apt in that it sets the limits as to what political entity constitutes a State. Specifically, the ability to enter into relations with other States is considered most critical in the processes of international law. According to Starke (1977):

> A State must have recognised capacity to maintain external relations with other States. This distinguishes States proper from lesser units such as Members of a Federation, or Protectorates, which do not manage their own affairs, and are not recognised by other States as full-fledged members of the international community.

3.2 Understanding the Basic Rights and Duties of States

There have always been two positions on the basic rights and duties of States. The first being that of naturalist scholars who contend that States are creatures of natural law, and by this are guided by the principles and conducts of the law of nature. On the other hand, modern-day scholars have alluded to more pragmatic basis for understanding the rights and duties of States. According to the latter group, there is an establishment of universal standards of law and justice in international relations, which aid and sets the limits for the rights and duties of States.

The most basic of rights of States is the independence and equality of States, of territorial jurisdiction, and of self-defence or self-preservation. The duties on the other hand include; not resorting to war in case of disputes, of carrying out in good faith treaty obligations, and of not intervening in the affairs of other States. The independence of States which bestows equality is derived from the concept of sovereignty. Each independent State is presumed to possess sovereignty over its subjects and its affairs within its territorial limits. The power of sovereignty can be spelt out thus:

a. The power exclusively to control its own domestic affairs;

b. The power to admit and expel aliens;

c. The privileges of its diplomatic envoys in other countries;

d. The sole jurisdiction over crimes committed within its territory.

On the question of equality of States, the doctrine has a long history in international law, dating back to the period when relationship was established between the concepts of the law of nations and the law of nature. It was argued then that:

> By nature all nations are equal the one to the other. For nations are considered as individual free persons living in a state of nature. Therefore, since by nature all men are equal, all nations too are by nature equal the one to the other.

In a similar vein, the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the United Nations Charter, adopted by the General Assembly proclaims:

> All States enjoy sovereign equality. They have equal rights and are equal members of the international community, notwithstanding differences of an economic, social, political or other nature.

The condition of equality of States has great consequences for the conduct of international relations. In relation to multilateral treaties where unanimity of States present in conference is necessary for the adoption of instruments, the caveat of unanimity is believed in some quarters to delay the progress of international legislation. That is why the adoption of the voting procedure over the unanimity process is applauded.

The principle of equality of States also precludes other States from claiming jurisdiction over, or in respect of another sovereign State in the absence of a treaty. This is regarded as "a more far-reaching proposition" Starke (1977), wherein:

> ... the Courts of one State cannot question the validity or legality of the acts of State of another sovereign country or of its agents, and that such questioning must be done, if at all, through the diplomatic channel; this is the so-called 'Act of State' doctrine ..

The most controversial aspect of the principle of equality of States is the recognition and acceptance of *de facto* inequalities. For instance, the five permanent members of the UN Security Council (China, France, Russia, United Kingdom and the United States of America) can according to Article 27 veto the decisions of the Council on non-procedural questions. At the moment, the veto of China and Russia has kept the UN at bay from taking any decisive step about the situation in Syria.

*** SOVEREIGNTY***

In part, the definition of sovereignty applies to supreme public power, which has the right and, in theory, the capacity to impose its authority in the last instance. The second aspect of definition of State sovereignty refers to the holder of legitimate power, who is recognized to have authority. When national sovereignty is discussed, the first definition applies, and it refers in particular to independence, understood as the freedom of a collective entity to act. When popular sovereignty is discussed, the second definition applies, and sovereignty is associated with power and legitimacy.

On the international level, sovereignty means independence, i.e., non-interference by external powers in the internal affairs of another state. International norms are based on the principle of the sovereign equality of independent states; international law excludes interference and establishes universally-accepted rules. Thus, sovereignty is eminently rational, if not dialectical, since the sovereignty of a state depends not only on the autonomous will of its sovereign, but also on its standing *vis-a-vis* other sovereign states. From this perspective, one can say that the sovereignty of any single state is the logical consequence of the existence of several sovereign states.

In international law, sovereignty means that a government possesses full control over affairs within a territorial or geographical area or limit. Determining whether a specific entity is sovereign is not an exact science, but often a matter of diplomatic dispute. There is usually an expectation that both de jure and de facto sovereignty rest in the same geo-political entity at the place and time of concern. Foreign governments use varied criteria and political considerations when deciding whether or not to recognise the sovereignty of a state over a territory. Similarly, membership in the United Nations requires that "the admission of any such state to membership in the United Nations will be effected by a decision of the General Assembly upon the recommendation of the Security Council".

Sovereignty may be recognized even when the sovereign body possesses no territory or its territory is under partial or total occupation by another power. A common example is the status of The Holy See between 1870 and 1929 when the Lateran Treaties were signed by Italy and the Papal States. Interestingly, The Holy See was granted recognition by many States despite the lack of territory, until it was allowed to possess the Vatican City.

Other examples in this regard include the situation of many European States during the Second World-War when governments-in-exile, for instance in Norway, Netherlands and Czechoslovakia were accorded recognition as sovereign by friendly nations in spite of the fact that their territories had been taken over by the German-controlled occupation forces. It was therefore a smooth transition for the government to regain their roles as soon as the German forces were forced out at the end of the war. Similarly, the Kuwaiti government found itself in a similar scenario as a result of the Saddam Hussein-led Iraqi annexation of 1990-1991. Friendly nations, especially in the western world kept faith with the legitimate Kuwaiti government by granting recognition to it as possessing the sovereign power over the Kuwaiti people, until the situation returned to normal after the US-led Gulf War that forced Iraq out of the Kuwaiti territory.

China and Taiwan's political history equally demonstrates the basic features and characteristics found in the issue of recognition as regards sovereignty. In this instance, the 1911-1971 periods witnessed the recognition of the government of Republic of China in spite of the fact that mainland China had been taken over by Communist Forces of Chinese origin since 1949. The status of mainland China

thereby became a subject of UN debate and eventually lost its recognition to the communist-led government of the People's Republic of China. Inadvertently, the territory had to change its name from China to Taiwan.

For purposes of clarity, some remarks must be made about non-intervention in the internal affairs of other States, which is regarded as a violation of the principles of sovereignty and independence. The exceptional cases in which the sovereignty of States can be violated, through a legitimate right of intervention by other(s) under international law, includes;

a. Collective intervention pursuant to the Charter of the UN and any other regional organisation in such capacity;

b. To protect the rights and interests, and the personal safety of its citizens abroad;

c. Self-defence, if intervention is necessary to meet a danger of an actual armed attack;

d. If the State subject of the intervention has been guilty of a gross breach of international law in regard to the intervening State.

Finally, a very important aspect of sovereignty is the principle of "economic self-determination", which in essence means the freedom and independence of peoples to exploit and use their natural resources and wealth. Various resolutions have been adopted to further proclaim the rights of peoples over their natural resources. However, it does not preclude States for seeking external assistance or entering joint-venture partnership in exploiting the resources.

Based on the explicit recognition of a State's permanent sovereignty over its natural resources, therefore, all matters of contention bothering on the issue of compensation for the participation of foreign multinationals in the exploitation process must be attended to at the national courts. Recourse may however be made to the ICJ if any of the parties is not comfortable with the decisions.

Despite the sovereignty accorded States in the exploitation of their wealth, the international system is equally concerned about the possible implications of uncensored exploitation on the human environment in general. The matter was however put to rest at the Stockholm Conference on the Human Environment where it was proclaimed that:

> States have a sovereign right to exploit their own resources pursuant to their own environmental policies, while remaining responsible for ensuring that activities within their jurisdiction or control do not cause damage to the environment of other States.

Self-Assessment Exercise
Explain the power of sovereignty of a State

3.4 RECOGNITION

The dynamic nature of the international system, often throws up issues and events that warrant disintegration of States (leading to the birth of new States), coming together of new States and especially some four decades ago, the independence of hitherto colonised States. Aside from this, there are also circumstances that change the status of government in States. For instance, the revolutionary Arab-Spring brought sweeping changes to the government of Egypt, Libya and Tunisia. Presently, the on-going crisis in Syria is affecting the relationship of the country with the rest of the world.

When the above two scenarios occur, it raises challenges for the rest of the world on the determination of recognition, or the withholding of recognition, either to the new State or the new government in power. For instance, Britain, France, etc., now recognises the opposition government in Syria as the true representative of the Syrian people. This is against Russia and China's recognition as the true representative of the Syrian people. This Syrian dilemma is a reflection of the fact that recognition has no form; it is a unilateral diplomatic act on the part of one or more States for the purposes of defending interests as defined by them. Since no clear-cut or established legal principles defines recognition (when to recognise a State or Government) States focus on the necessity of using recognition as a tool for protecting their own interest, which is closely aligned with maintaining proper relations with any new State or new Government that is likely to be stable or permanent. The difficulty in removing selfish national interest in the consideration of recognition is made even more difficult with the fact that Articles 3-4 of the UN Charter only presents the characteristics of States in its definition of recognition. According to the UN Charter:

> ... the free act by which one or more States acknowledge the existence on a definite territory of a human society politically organised, independent of any other existing State, and capable of observing the obligations of international law, and by which they manifest therefore their intention to consider it a member of the international community.

Be that as it may, recognition may either be express or implied. In the case of express recognition, there is a formal declaration of the recognising State of its intentions to recognise the State or Government whose status is disputed. The expression could be carried out through a diplomatic note (*note verbale)*, or personal messages from the highest authorities or their representatives of the recognising State. On the other hand, the implied recognition is reflected in the nature of cordial relationship between the recognising State and the State or Government to be recognised. To all and sundry, and without any formal expression, it must be clear that the recognising State has

recognised the State or Government carrying the burden of disputed status. However, States are not subjected to specific laws on how to recognise- States choose whichever method deemed appropriate for any situation.

Theoretically, the function, nature and effect of recognition can be anchored on two thesis, viz; the Constitutive Theory and the Declaratory (Evidentiary) Theory. Starke (1977) elaborates on the theories:

a. "According to the *constitutive* theory, it is the act of recognition alone which creates statehood or which clothes a new Government with any authority or status in the international sphere.

b. According to the *declaratory or evidentiary* theory statehood or the authority of a new Government exists as such prior to and independently of recognition. The recognition is merely a formal acknowledgement of an established situation of fact".

Furthermore, the declaratory theory is supported by the following salient rules:

a. "The rule that if a question arises in the Courts of a new State as to the date at which the State came into existence, it will be irrelevant to consider the date when treaties with other States recognising it came into operation. The date when the requirements of statehood were in fact first fulfilled is the only material date.

b. The rule that recognition of a new State has retroactive effect, dating back to its actual inception as an independent State".

From the foregoing, it is clear that the declaratory/evidentiary theory is premised on the fact that there should not be a period when newly recognised States or Governments are deemed to have been non-existent. While the constitutive theory holds that it is upon recognition that the newly recognised State or Government acquire any status, in the national Courts of the recognising State.

In the final analysis, international law is of the opinion that recognition of a State or Government is synonymous with the privileges of the membership of the comity of nations. The State or Government has the right to enter diplomatic relationships and all other forms of relationships, and indeed, be a party to treaty-making. Likewise, the State or Government incurs responsibilities and obligations to the international community, thus, recognition comes with both the "burden and bounty of international law".

Self-Assessment Exercise
Explain the concept 'Recognition' in the international law

3.5 De Jure and De Facto Recognition

The conduct of States' interactions, guided by the principles of international law falls within the concepts of de jure and de facto recognition. De jure recognition refers to recognition conferred because the State or Government so recognised formally fulfils the requirements acceptable under international law, and which forge participation within the international community. De facto recognition on the other hand refers to provisional, conditional or temporary grant of recognition to a State or Government subject to either withdrawal of such recognition or transitioning of such recognition to a de jure status if the State or Government fulfils the requirements laid down by international law. In fact, in reality though, de facto recognition is hardly ever revoked. More often than not, it is a prelude to the more formal and more permanent form of recognition- de jure recognition. Starke's (1977) understanding of de facto recognition is quite enlightening. According to the author:

> By recognising a State or Government de facto, the recognising State is enabled to acknowledge the external facts of political power, and protect its interests, its trade, and citizens, without committing itself to condoning illegalities or irregularities in the emergence of the de facto State or Government. To this extent, recognition de facto is probably a necessary legal expedient.

According to Starke (Ibid.), the major differences between de jure and de facto recognition can be summarised thus;

a. Only the de jure recognised State or Government can claim to receive property locally situated in the territory of the recognising State

b. Only the de jure recognised State can represent the old State for purposes of State succession, or in regard to espousing any claim of a national of that State for injury done by the recognising State in breach of international law

c. The representatives of entities recognised only de facto are not entitled to full diplomatic immunities and privileges
d. De facto recognition can, in principle, owing to its provisional character, be withdrawn on several grounds other than those normally justifying a withdrawal of de jure recognition.

It is understandable that every State and Government want to be recognised. Non-recognition carries a heavy burden that no State or Government wants to experience. According to Starke (1977), there are legal disabilities for an unrecognised State or Government. These include;

a. It cannot sue in the Courts of a State which has not recognised it.

b. By reason of the same principle, the acts of an unrecognised State or Government will not generally be given in the Courts of a non-recognising State the effect customary according to the rules of "comity".

c. Its representatives cannot claim immunity from legal process.

d. Property due to a State whose Government is unrecognised may actually be recovered by the representatives of the regime which has been overthrown.

4.0 CONCLUSION

In conclusion, the unit establishes the importance of the State as the fundamental subject of international law, although, also acknowledging the fact of the existence of other subjects. However, the emphasis is that all other subjects exists and operates within the territorial confines of States, either within a particular State or across international boundaries.

5.0 SUMMARY

The unit presents the full nature and character of the State as a subject of international law. The starting point being the explanation of the meaning of State. It goes further to explicate on the rights and duties of the State, for it is in these, that we can capture the nature and character of the State as a subject of international law. Furthermore, the issue of sovereignty as a fundamental element of statehood is treated, in order to emphasize the equality of states in the international system. Related to this, is the issue of recognition which the nature of relationship that can exists between a State and other actors in the system. Finally, the unit explains the two variants of recognition that can be accorded a State or government (*de jure* or *de facto*).

6.0 TUTOR-MARKED ASSIGNMENTS (TMAs)

1. Explain your understanding of a State.
2. Differentiate between De Jure and De Facto Recognition.
3. Explain your understanding of State sovereignty.

7.0 REFERENCES/FURTHER READING

Starke, G. (1977). Introduction to International Law. London: Butterworths.

Unit 4: Relationship between International Law and Municipal Law

CONTENTS

1.0 INTRODUCTION

The relationship between the two systems of law has always been a topic of debate among scholars and practitioners alike. The direction of this debate is often about which of the two systems is superior or which predates the other.

The debate has led to the development of theoretical underpinnings for the explanation of the relationship. This unit would explain the various theories and find expressions for them in the practise of law.

2.0 OBJECTIVES

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

a. Analyse the relationship between the two systems of law

b. Present the theoretical body of knowledge on the relationship between the two systems of law.

c. Expatiate on the possibilities of the existence of primacy in the two systems of law.

3.0 MAIN CONTENT

3.1 Theories of the Relationship

The clarification of the relationship between international law and municipal law is essential amidst the cross-cutting of boundaries in the settlement of disputes or interpretation of the law as it concerns States or State(s) and other actors in the international system. The clarification is even more required as it concerns the law of treaties as a result of the important role played by the law of treaties as the most important branch of international law, and by extension, the rate at which the law of treaties encroaches on the domain of State law.

The relationship between both systems of law, though practically confronts the world daily, the explanations for the relationship would be more accurate from the prisms of theories as advanced by scholars in the field. Within the theories, we would be able to understand the limitations between international law and municipal law, and furthermore, the theories would also explain the extent to which national courts give effect to rules of international law, in the two cases whereby the rules are or not in conflict with the dictates of international law. Also, is the question of engaging international tribunals to determine the status and effect of a rule of municipal law that forms the basis of the defence of one of the parties to a case?

There are two major theories in this area of study; however, there are also complementary theories for explaining the relationship between the two systems of law.

3.1.1 Monism

The monist theory derives its foundation from the thinking that both municipal law and international law draw their inspirations from a single system, which is the system of law, ideally therefore, there is no distinction between municipal law and international law. According to Starke (1977),

> ... monism regard all law as a single unity composed of binding legal rules, whether those rules are obligatory on States, on individuals, or on entities other than States. In their view, the science of law is a unified knowledge, and the decisive point is therefore whether or not international law is true law. Once it be accepted as a hypothesis that international law is a system of rules of a truly legal character, it is impossible ... to deny that the two systems constitute part of that unity corresponding to the unity of legal system.

In effect therefore, monism emphasizes the true legal character of international law, and with it is the municipal law, which both form the interrelated parts of a single

legal structure. A variant of monism however claims that the single legal structure is designed to bind humanity collectively or singly. In other words, the individual is the critical anchor for the unity of law.

3.1.2 Dualism

The theoretical underpinning of dualism is that municipal law and international law are products of two distinct legal systems; thus, the character, nature, contents and context of municipal law and international law are different. The theory of dualism is also known as the Pluralistic Theory simply because there are various numbers of domestic legal systems, and as such, the differences are reflected in the plurality.

The dualist view is a reflection of the opposition to the view that natural law determines the law of nations, and indeed, the very existence of States. In the views of dualist theorists, the independent existence of State-will and the development of the trend of domestic legislatures, thereby, State(s) claim to sovereignty, there is no longer contention about the duality of the system of law. The positivists are the most vocal in this school of thought. On the basis that international law has a consensual origin and municipal law as determined by individuals; there are therefore two remarkable differences between international law and municipal law. These differences are:

a. The subjects of State law are individuals, while the subjects of international law are States solely and exclusively.

b. Their judicial origins are different; the source of State law is the will of the State itself, the source of international law is the common will of States.

In effect, beyond the common will of States are fundamental principles of international law, superior to it and indeed regulating its exercise or expression.

From another perspective, the dualists differentiate international law and municipal law on the basis of the fundamental principles upon which each system operates. On State law, the fundamental principle or norm is that State legislation must be obeyed, while international law thrives on the fundamental principles that agreements between and among States must be obeyed. Viewed from the perspective of the separateness of both systems of law, there cannot be conflicts between them.

Aside of the positivist thinkers, other contributors to the debate on dualism have adopted the notion that the differences between the two systems of law emanate from empiricism. Accordingly, these writers believe that:

> ... the empirical differences in the formal sources of the two systems, namely, that on the one hand, international law consists for the most part of customary and treaty rules, whereas municipal law, on the other hand, consists mainly of judge-made law and statutes passed by municipal legislatures.

3.1.3. Transformation Theory

This is one of the theories whose premises rest on the consensual nature of international law as contrasted against the non-consensual character of State law. Specifically, the transformation theory focuses on the differences between treaties on the one hand, and State laws or regulations on the other. The theory argues that there fundamental difference between treaties which are of the nature of promises and municipal law which are more of commands. On this basis therefore, "a transformation from one type to the other is formally and substantively indispensable". For the purposes of treaty therefore:

> ... there must be a transformation of the treaty, and this transformation of the treaty into State law, which is not merely a formal but a substantive requirement, alone validates the extension to individuals of the rules laid down in treaties.

3.1.4 Specific Adoption Theory

This works in unison with the transformation theory. The argument is that the rules of international law cannot directly apply to cases within the domestic jurisdiction of States by the courts. This can only be possible when such laws are taken through the process of specific adoption by, or specific incorporation into municipal law. The idea behind this notion is that the separateness of the two systems of law, in terms of structure, etc. international law cannot encroach into the domain of State law except the State allows its constitutional machinery to be applied for the purpose.

3.1.5 Delegation Theory

The last in this category is the delegation theory, which is an attempt to debunk the claims of the transformation theorists. The claim is the constitutional rule of international law delegates to each State Constitution the power to determine the conditions under which the provisions of a treaty or convention are to come into force and the manner in which they may be embodied into State law. Furthermore, the procedures for this purpose are merely a continuation of the process undertaken at the end of the treaty or convention. In effect, the process of incorporating treaty laws is merely a constitutional requirement of State law since there is only a single mechanism for the creation of law. Thus, there is no need for the creation of rules or the transformation of treaty dictates to suit the constitutional provisions of States.

Self-Assessment Exercise
Explain the three theories outlined above

3.2 Primacy in the System(s) of Law

The argument is rife about where primacy resides; international law or municipal law? On the one hand, there is the view that State law is superior to international law. The inspiration for this conclusion is drawn from the dualistic theory of the sovereignty of

the State-will. This submission is faulted on the premise that primacy would belong to not just one State but all of the States in the system, because any of them can lay claim to the oldest and superior legal order. To further fault this claim, Starke's (1977) submission remains relevant. According to the author:

a. If international law drew its validity only from a State Constitution, it would necessarily cease to be in force once the Constitution on which its authority rested, disappeared. But nothing is more certain than that the valid operation of international law is independent of change or abolition of Constitutions, or of revolutions.

b. The entry of new States into the international Society. It is well established that international law binds the new State without its consent, and such consent if expressed is merely declaratory of the true legal position. Besides, there is a duty on every State to bring not only its laws, but also its Constitution, into harmony with international law.

Furthermore, even when a State court must be conscious of the provisions of its laws in the event of conflict with international law, such a situation must not hinder the State from performing its international obligations. In effect,

> A municipal Court which defers to municipal law, notwithstanding an inconsistent rule of international law, itself acts in breach of international law, and will, as an organ of the State, engage the international responsibility of that State. Hence, before an international tribunal, a respondent State cannot plead that its municipal law (not even its Constitution) contains rules which conflict with international law, nor can it plead the absence of any legislative provision or of a rule of internal law as a defence to a charge that it has broken international law.

The author has this to say about treaties:

> A State cannot plead that its domestic law exonerated it from performing obligations imposed by an international treaty, unless in giving its consent to the treaty, a fundamental rule of municipal law concerning constitutional competence to conclude the treaty concerned was broken, and this breach of municipal constitutional law was manifest.

In the final analysis, it is safe to submit that the question of primacy between international law and municipal law remains unanswered. This is not unconnected with the peculiar character of each of the systems of law, their cross-cutting functions and the complex nature of international relations.

We can therefore summarise the distinctions between the two systems of law, thus:

a) International Law

1. It is adopted by States as a common rule of action by and for States

2. It is derived from customs and traditions, treaties and general principles of international dimension.

3. It presumably governs the relationship among States

4. It produces collective liability in case of violations and sanctions for erring States.

b) Municipal Law

1. Issued by a particular political superior for the observance of those under the authority within a State;

2. Enactment from the law-making body authority;

3. Governs the relationship between the individuals and the State;

4. If there is a violation of a municipal law, the aggrieved party will avail administrative and judicial processes within the state.

5. Enforcement is undertaken by a law enforcement arm of the State.

Self-Assessment Exercise
Outline the features of Municipal Law

4.0 CONCLUSION

In conclusion, we can surmise that this unit has dealt with the sometime knotty issue of the relationship between the two systems of law. Using the analysis of the natural law system and the law of nations, the unit explains the theoretical persuasions that have been relevant in the analysis of the relationship between the two systems of law.

5.0 SUMMARY

The unit commenced with an explanation of the two major theories of the relationship of the two systems of law, and delves into the explanation of the complementary theories that continue to impact on the discourse about the relationship between the two systems of law. The unit ends with the conclusion that the issue of primacy between both systems of law remains unresolved.

6.0 TUTOR-MARKED ASSIGNMENTS (TMAs)

1. Provide your understanding of these two theories; Monism and Dualism.
2. Discuss in detail, the primacy between the two systems of law.
3. Highlight the major differences between international law and municipal law.

7.0 REFERENCES/FURTHER READING

Starke, G. (1977). An Introduction to International Law. London: Butterworths.

Unit 5: Topical Issues in International Law

CONTENTS

1.0 INTRODUCTION

This unit concerns itself with some of the salient issues germane to the understanding of the workings and processes of international law. The combination of the three issues discussed below have all the trappings of inter-state relations from all the important entries; socio-cultural, political/diplomatic and economic relations. International law speaks directly to the treatment of these issues in ways calculated to protect the dignity and respect of the human race. Through the instrumentality of the various United Nations conventions, the principles of international law attempt to regulate the international economic order such that growth and development can be spread across the globe, similarly, the same principles of international law attempt to promote equality of the human race despite differences in colour and lastly, regulate the standard of relations among state-actors.

Having been exposed to the introductory aspect of international law in the initial units, this unit would fundamentally focus on the application of the relevant sections of international law to three main issues of interest in the international system.

2.0 OBJECTIVES

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

- Discuss the position of international law on racial discrimination;
- Explain the main issues in developing the international economic order;
- Explain the concept of diplomatic immunity and inviolability.

3.0 MAIN CONTENT

3.1 Racial Discrimination

The international system is composed of races differentiated along colour and ethnic lines, and divided by politically constructed geographical lines of demarcation. Against the existence of differences and demarcations are the competitions for superiority among the various races whose only commonality rests on the common humanity shared. In some parts of the globe, these differences engender tough competition that lead to discrimination and hatred among the races.

The first international acknowledgement of the evils of racism and xenophobic tendencies came to light in 1960 when the incidents of anti-Semitism were elevated to the front-burner of international politics. The consequences of the development were recognised for its negativities, and state-actors realised the compelling need to thwart the dangers and hatred it could generate among the various races in the world. In full realisation and acknowledgement of its mandate of advancing a secure and prosperous world, the United Nations General Assembly adopted a resolution that condemns "all manifestations and practices of racial, religious and national hatred" and declared such as violations of the United Nations Charter and the Universal Declaration of Human Rights. Article 1 of The Universal Declaration of Human Rights (1948) categorically states: "all human beings are born free and equal in dignity and rights", specific reference is made to discrimination of any forms in Article 2, where the Declaration states:

> ...everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion...

In response to the growing demand to address the issue of racism, the United Nations adopted the International Convention on the Elimination of All Forms of Racial Discrimination in 1965, which entered into force in 1969. The motivation for the convention was among others,

> ... to adopt all necessary measures for speedily eliminating racial discrimination in all its forms and manifestations, and to prevent and combat racist doctrines and practices in order to promote understanding between races and to build an international community free from all forms of racial segregation and racial discrimination.

For clarity, Article 1 of the United Nations Convention on the Elimination of All Forms of Racial Discrimination defines racial discrimination as:

> ... any distinction, exclusion, restriction or preference based on race, colour, descent, or national ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

In clear terms, the Convention condemns racial discrimination and instructs state-parties to ensure the institutionalisation of mechanisms that would prevent the existence of racial discrimination through the pursuit of "appropriate means and without delay a policy of eliminating racial discrimination in all its forms". Specifically, Article 2 of the Convention implores parties:

1. To engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;
2. Not to 'sponsor, defend, or support' racial discrimination by any persons or organisations;
3. Review existing national and local policies, and amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;
4. Prohibit and bring to an end 'by all appropriate means, including legislation,' as required by circumstances, racial discrimination by any persons, group or organisations within their jurisdictions;
5. Encourage, where appropriate, integrationist multiracial organisations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.

The Convention also represented a wake-up call for the authorities in the Southern-Africa sub-region where the triple-evils of 'settler colonialism, apartheid, and segregation' were entrenched in the official policies of the minority-white government. The parties to the convention had been,

> Alarmed by manifestations of racial discrimination still in evidence in some areas of the world and by government policies based on racial superiority or hatred, such as policies of apartheid, segregation or separation.

Hence, the contents of Article 3 of the Convention condemns apartheid and racial segregation and therefore implores parties to the convention to 'prevent, prohibit and eradicate' such "practices in territories under their jurisdiction". To further assert the

repugnant nature of the policies of apartheid and racial segregation, the Rome Statute of the International Criminal Court recognises apartheid as a crime against humanity.

By the 1990s the Southern-Africa sub-region witnessed the end of white-minority rule and the subsequent dismantling of the structures and policies of apartheid, which paved the way for democracy and majority rule in the affected countries. This incident marked a watershed in the history of the global fight against racism, segregation and apartheid. However, it must be remarked that despite the position of international law on issues of racial discrimination and profiling, the world is still confronted with the challenges of total elimination.

Self-Assessment Exercise

Explain the functions that the state-parties to the Convention on the Elimination of All Forms of Racial Discrimination are expected to perform

3.2 Diplomatic and Consular Immunity

The practical conduct of inter-state relations is carried out by professional diplomats who used to be special and ad-hoc representatives of sovereigns in ancient times. The trend changed in the modern times to appointments of permanent representatives with presence and residents in the host-states. As the ears, mouths and eyes of the sending-state, the diplomats represent all that is known of the sending-state. In this regard, the work of the diplomat is meant to be carried out without hitch, as such; there are established rules to protect his person and location in order to carry out his official duties and responsibilities effectively. This special status is undertaken through the granting of diplomatic and consular immunity.

Diplomatic or consular immunity is simply the rights and privileges enjoyed by the official representatives of foreign countries from the legal jurisdiction of the country in which they are duly accredited. This is referred to as the inviolability of the person and properties of a diplomatic representative. The whole idea revolves round a form of legal protection in which diplomats are given safe passage and are protected from any form of lawsuit or prosecution under the legal dictates of their host-state.

The philosophy behind the granting of diplomatic immunity has a long history in which its content, context and application are adjusted to suit the circumstances of the times. It is believed that even in ancient times, envoys were treated specially through the granting of safe-conduct. Essentially, the ancient mechanism of protecting diplomats was mostly based on religious codes of hospitality which involved the frequent use of religious officers, especially priests, as emissaries. The practice became customary among friendly states, and eventually was adopted on the basis of reciprocity.

The ancient system of protection for foreign envoys lacked uniformity, and since it was usually on the basis of bilateral relationships, it was more or less conditioned by the laws of reciprocity between friendly states. In ancient Greece, the city-states made safe-passage arrangements for visiting envoys through negotiations that would have taken place before the commencement of the journey by the envoy. However, this system was improved upon by the Romans through the institutionalisation of the law of diplomatic immunity. The Roman philosophy on the subject of diplomatic immunity is inspired by religious and natural law dictates, which emphasizes a system of legal codes believed to be applicable to all human conditions, and which emanated from nature rather than the society. One of the fundamental contributions of the Romans to the development of diplomatic immunity is the guarantee of the unassailability of foreign envoys even in time of war.

The Middle Ages provided further opportunities for building on the earlier achievements in respect of providing enabling environment for foreign envoys in their host-states. Despite the cover and protection given the diplomats, they are expected to be above board in their dealings, such that even when the diplomat was not answerable for crimes committed before taking up appointment at his posting, he could be prosecuted for crimes committed during his service period.

The Renaissance period in Europe brought further development to the idea of diplomacy and the treatment of diplomats. The period witnessed a transformation from the system of ad-hoc representation to a system of permanent representation with the establishment of permanent missions abroad and the enlargement in the number of personnel required to make the embassies function. In this regard, there was equally expansion in the number of people covered by diplomatic immunity and the range of cover enjoyed by each category of staff.

It was during the Renaissance period that the concept of extraterritoriality gained currency and became a standard basis upon which diplomatic relations are conducted. The concept of extraterritoriality as developed by Hugo Grotius simply means the "treatment of diplomats, their residences, and their goods as though they were located outside the host country- to justify diplomatic exemption from both criminal and civil law". It was further reasoned that "the representative nature of a diplomat and the importance of his functions- especially that of promoting peace- justified his inviolability; the same moral law underscored his obligations to the larger community".

The various transformations experienced in Europe between the 18th and 19th century, for instance, the French Revolution partly distorted the developments of diplomatic conduct. During the French Revolution, a number of diplomats were accused of working against France without any consideration for their diplomatic status, and thus,

treated like regular persons, without any form of immunity. After the revolution though, further interests in the work of diplomats were sought, and efforts were continually made to provide enabling environments for them to function.

The ascendancy of Europe in global reckoning at that period helped spread various European philosophies to the rest of the world. Hence, the concept of diplomatic immunity, the establishment of permanent missions in friendly states, etc. became standard modes of conducting international relations.

The 20th century came with its own challenges for diplomacy, some of which included the substantial decline in the respect accorded diplomats, the growth in the number of new states after World War II and by extension, the increase in the number of diplomatic missions, increase in the size of missions and the campaign to limit diplomatic privileges to only necessities. The challenges faced during this period were as a result of the mode through which diplomacy was practised. Originally, the rights and privileges enjoyed by diplomats were granted on bilateral and ad-hoc basis which generated conflicts and misunderstandings among states, and also put pressure on weaker states in respect of which state to support. Fundamentally, it became impossible to objectively judge among conflicting states. All of these developments necessitated the need for consensus on the codes of conduct that would govern diplomacy and the privileges and rights of diplomats.

The Vienna Convention on Diplomatic Relations (1961) provided the basis under international law for consensus on the practice of international diplomacy. Under the convention, attempts were made to initiate uniformity and standards in the conduct of diplomacy. The Vienna Convention among other issues streamlined the privileges and rights accruable to diplomats, their families and staff. Essentially, the convention avoided the controversial issue of diplomatic asylum, and also, recognises permanent envoys, rather than ad-hoc representatives. In summary, the convention provides the diplomat and their immediate family members' immunity from criminal prosecution and some civil matters.

In Article 29 of the Convention,

> The person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. The receiving State shall treat him with due respect and shall take all appropriate steps to prevent any attack on his person, freedom or dignity.

Furthermore, Article 31 explicitly states the extent of the immunity to be enjoyed by diplomats in the receiving state, though there are exceptions to the immunity clause under some specific circumstances. Article 31 states:

> A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction...

However, like series of other issues under international law, the existence of the convention has however not prevented the violation of its provision, in fact, there have been state-sponsored violations of the provisions of the convention. A very instructive example of the violation of the principles of the Vienna Convention on Diplomatic Relations is the case of the seizure of the US embassy in Tehran, Iran in 1979 by the supporters of the Islamic Revolution in the country. In this particular instance, over fifty diplomatic personnel of the US embassy were held hostage for over a year, after which reason prevailed and they were set free. In 2012, the US embassy in Tripoli was invaded by protesters and the ambassador and some of the members of staff of the embassy were killed in the process.

In contrast though, there have also been examples of adherence to the provisions of the Convention. An example is the case of Julian Asange (the whistle-blower) who has been given diplomatic asylum in the Ecuadorian Embassy in London, England since 2012. Despite being subject to a European Arrest Warrant, he is protected under the principles of extraterritoriality and therefore, there has been no attempt to forcefully arrest him. The act of the UK government in this instance is borne out of respect for the provisions of the Vienna Convention.

Self-Assessment Exercise
Mention the contributions of the Romans to the development of diplomatic relations

3.3 International Economic Order

The whole idea of rules governing international economic relations can be traced to the success of the Bolshevik Revolution and the emergence of the former USSR in 1917. The union of states adopted an economic policy of state ownership of the means of production which invariably established competition with the *laissez faire* policy that had hitherto been in place globally. The global arena eventually became divided into either free trade system or protectionist policies.

As the USSR pushes its ideology of communism and sought to attract converts, the US continued to consolidate on the goodwill it receives as the champion of free-trade enterprise. By the end of the Second World War, many economies were in ruins, a development that gave the US the opportunity of taking the lead role in restructuring the global economy through its own system of removing trade barriers and assisting in international monetary stability. In this effort, three main institutions were established; these were the Breton Woods Institutions- the International Monetary Fund and the

International Bank for Reconstruction and Development, and lastly, the General Agreement on Trade and Tariffs that was formed in 1947.

The dynamics of international relations however changed with the independence of hitherto colonised states in Africa and Latin-America. These new states protested the nature of international economic relations and agitated for a new forum and agreement that would be protective of their own aspirations. These agitations led to the first United Nations' Conference on Trade and Development in 1964. UNCTAD eventually became one of the permanent institutions of the General Assembly. The newly independents states turned out as peripheral players in international economic relations, a position that made them subservient to the US and its Western-European allies. They continued to agitate for better treatment in the international economic order, and this eventually paid off with the establishment of the United Nations Development Programme (UNDP) in 1965 and the United Nations Industrial Development Organisation (UNIDO) in 1966. The aim of these organisations is to promote and accelerate industrial development in the developing countries.

The 1970s heralded the agitation against relatively unfavourable terms of international economic relations for third-world countries who are largely non-industrialised, and basically commodity producers. This group of countries put up proposals through UNCTAD to redress the inequality in the existing order in international economic relations, through the improvement of their terms of trade, increase in development assistance, and developed-country tariff reduction on trade, among others. In response to that, the General Assembly adopted the Declaration on the Establishment of a New International Economic Order and a Programme of Action on the Establishment of the New International Economic Order in 1974.

The NIEO was meant to replace the unfavourable terms set by the Breton Woods Institutions which only favoured the parties that created it, especially the US. The agitation led to a series of meetings between the developed and developing countries, otherwise known as the North-South Dialogue. In the final analysis, the aim was to achieve the opening up of the global economy to accommodate greater participation and benefits to developing countries.

In summary, the major tenets of the New International Economic Order are:

1. Developing countries must be entitled to regulate and control the activities of multinational corporations operating within their territory;
2. They must be free to nationalise or expropriate foreign property on conditions favourable to them;

3. They must be free to set up associations of primary commodities producers similar to the OPEC; all other states must recognise their right and refrain from taking economic, military, or political measures calculated to restrict it;
4. International trade should be based on the need to ensure stable, equitable, and remunerative prices for raw materials, generalised non-reciprocal and non-discriminatory tariff preferences, as well as transfer of technology to developing countries; and should provide economic and technical assistance without any strings attached.

Unfortunately, the creation of a NIEO is yet to equitably balance the rewards of international economic relations between the developed and the developing countries. The phenomenon of globalisation continues to move the developing countries away from the centre of international economic relations. With the lack of industrial capability and focus on commodity products, the safety nets provided by international law through NIEO is yet to move the developing countries away from the periphery of international economic relations.

4.0 CONCLUSION

The post-1945 era opened a new vista in the relationships among actors in the international system. The horrors of the Second World War, and the determination to avoid similar occurrence in future inspired global leaders to provide the platform through international law to regulate international relations. Hence, the existence of codes of conducts and laws guiding relationships between and among actors in the international system. Racial Discrimination, Diplomatic Immunity and the coordination of international economic relations are just some of the issues under the purview of international law.

5.0 SUMMARY

The first part of the unit dealt with the treatment of racial discrimination, which generated a lot of attention during the period of the anti-Jew sentiments and also during the political upheavals in Southern-Africa. The United Nations has done well in denouncing the act of racism and all other forms of discrimination, but unfortunately, discrimination still occurs today in various endeavours, especially, sports. The second part focussed on the issue of diplomatic immunity, which remains relevant because of the need to promote diplomacy if the international system is to be peaceful and harmonious. Lastly, we treated the case of the international economic order, which is germane to the balanced and equitable growth and development of the world in general. Despite the efforts being made by the UN, we are yet to experience an international economic order that would benefit the world equally, third-world countries continue to bear the brunt of an unfair international economic order.

6.0 TUTOR-MARKED ASSIGNMENT

1. Define racial discrimination as given in Article 1 of the United Nations Convention on the Elimination of All Forms of Racial Discrimination.
2. Analyse the contents of Articles 29 and 31 of the Vienna Convention on Diplomatic Relations (1961)
3. List the major tenets of the New International Economic Order (NIEO).

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Module 2: The Fundamentals of International Law

Unit 1: Law of Treaties

Unit 2: Law of the Seas

Unit 3: International Environmental Law

Unit 4: International Criminal Law

Unit 5: International Humanitarian Law

UNIT 1: Law of Treaties

Contents

1.0 INTRODUCTION

The international system has over the ages evolved into an interdependent system, partly because human and material resources are unevenly distributed amongst nations, hence the need for cooperation amongst state-actors. State actors interact, either bilaterally or multilaterally, to form common ground on issues of interest, which could be as diverse as the issue of non-proliferation of arms, law, trade, conflict resolution, aid, peace, politics, economic, sports, etc.

The various interactions become legalized when binding agreements are created between or among parties. The formal agreement between two or more countries is called a treaty. It is worthy of note that treaties are regulated through a set of international principles and rules known in the legal parlance as the Law of Treaties. Treaties aim to legally substantiate the relationship or cooperation between or among states.

This unit provides exposition of the use of treaty as an instrument or mechanism for the promotion of world peace and economic prosperity. It also critically examines the

law of treaty whilst paying attention to its fundamentals: meaning, sources and principles of the law of treaties; the processes involve in the enactment of the law of treaty; and, the operation, termination, suspension and invalidation of treaties.

2.0 OBJECTIVES

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

- Provide a basic understanding of the law of treaty.
- Critically analyse the phases leading to the conclusion of treaties.
- Explain some basic terminologies of treaty.

3.0 MAIN CONTENT

3.1 The Meaning and Sources of International Law of Treaties

The imperativeness of conceptualizing the term 'treaty' cannot be overemphasized as it would provide us with better insight into the meaning and the significance of the 'international law of treaty'. Invariably, without the former the latter will be non-existing. The question that is begging for an answer is: What is a treaty? Treaty is analogous to such terms as 'agreement', 'covenant', 'protocol', 'convention', 'exchange of letters' or 'contract'. So, simply put treaty is an agreement, a special form of official written agreement entered into by State actors or non-state actors (especially international governmental organization) to legally bind themselves on issues of common interest to the parties.

The Vienna Convention on the Law of Treaties provides a conceptual clarification of treaty when it defines the term as:

> an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.

There are two types of treaty: bilateral treaty and multilateral treaty-

1. an official agreement could be regarded as bilateral treaty if it involves only two States
2. multilateral treaty- if it involves three or more State.

History is replete with numerous treaties that States and non-state actors have concluded since time immemorial. Some of these are:

1. **The 1648 Peace Treaty of Westphalia-** this ended the Thirty Years' War in Europe and established the principle of the sovereignty of nations;
2. **1919 Treaty of Versailles-** that formally ended World War I;

3. **Breton Woods Agreement-** that established rules for commercial and financial relations among major industrial states;

4. **1947 Paris Peace Treaties-** that formally ended World War II;

5. **1947 Inter-America Treaty of Reciprocal Assistance;**

6. **1949 North Atlantic Treaty*;***

7. **1959 Antarctic Treaty System-** that set aside Antarctica as a scientific preserve;

As noted earlier, two types of treaty can be identified, namely, bilateral treaty and multilateral treaty. The former is an international agreement concluded between two states while the latter is concluded between three or more states. It is also very possible to have a bilateral treaty where the parties are more than two. For instance, a treaty between a country and an intergovernmental organization which membership are nation-states like the European Union or the African Union. As with most contracts and agreements there are also rules that guide the 'conclusion procedure of treaties'.

Accordingly, Law of Treaties is described as:

> a set of international principles and rules regulating the conclusion procedure of treaties, as well as the issues of operation, amendments and modifications, termination, suspension and invalidity of treaties.

Sources of International Law of Treaties signify the basis from which the rules and regulations guiding the conclusion procedure of treaty come into existence with binding force. Several factors have contributed to the development of International Law of Treaties and the factors constitute its sources. The major sources of International Law of Treaties include the followings:

1. official country treaty series;

2. intergovernmental organization treaty series;

3. official gazettes;

4. statutory compilations;

5. periodical literature.

Self-Assessment Exercise
Explain the meaning of treaty.

3.2 Variations in Names of Treaties

There are various nomenclatures by which treaties can be referred. The differences in terminology are a reflection of the procedure or formality in the processes of making the treaty. As explained by Starke (1977), these are some of the names that treaties are known by:

1. Convention- this is used for a multilateral instrument. Furthermore, it includes instruments adopted by the organs of international organizations, e.g.; International Labour Conference.

2. Protocol- it is an agreement that is less than a treaty in respect of formality. This agreement is usually not in the Heads of State form. The term subsumes the following instruments:
   a. An instrument lower than a Convention and drawn up by the same negotiators. This is also called a Protocol of Signature.
   b. An ancillary instrument to a Convention, but of an independent character and operation and subject to independent ratification.
   c. An altogether independent treaty.
   d. A record of certain understandings.

3. Agreement- this instrument is less formal than a treaty or Convention, and also not in Heads of State form. It is usually applied to agreements of more limited scope and with fewer parties than the ordinary Convention. Also, it is only employed for agreements of a technical or administrative nature only, signed by the representatives of Government Departments, but not subject to ratification.

4. Arrangement- this is used for a transaction of provisional or temporary nature.

5. Procès-Verbal- it is both the summary of the proceedings and conclusions of a diplomatic conference and also the record of the terms of agreement reached between the parties. Furthermore, it is used to record an exchange or deposit of ratifications, or for an administrative agreement of a purely minor character, or to effect a minor alteration to a Convention. It is usually not subject to ratification.

6. Statute- this can be categorized into three:
   a. A collection of consistent rules relating to the functioning of an international institution.
   b. A collection of rules laid down by international agreement as to the functioning under international supervision of a particular entity.

c. An accessory instrument to a Convention setting out certain regulations to be applied.

7. Declaration- the meaning can be expressed in the following ways:
   a. A proper treaty
   b. An informal instrument appended to a treaty or Convention
   c. An informal agreement with respect to a matter of minor importance
   d. A resolution by a diplomatic conference, enunciating some principles for observance by all states.

8. Modus Vivendi- this is an instrument recording an international agreement of a provisional character intended to be replaced by an arrangement of a more permanent and detailed nature. It is usually made in an informal way and requires no ratification.

9. Exchange of Notes (Letters)- this is an informal method in which States subscribe to certain understandings as binding on them. It could be effected through the diplomatic or military representatives of the concerned States. It could be bilateral or multilateral.

10. Final Act- refers to an instrument which records the winding up of proceedings of the Conference summoned to conclude a Convention. It summarises the terms of reference of the Conference, and enumerates the States or Heads of States represented, the delegates that participated in the discussions, and the instruments adopted by the Conference. Furthermore, it sets out resolutions, declarations and recommendations adopted by the Conference which were not incorporated as provisions of the Convention. It may also contain interpretations of provisions in the formal instruments adopted by the Conference. The Final Act does not require ratification.

11. General Act- this is a treaty that could be of either formal or informal character.

3.3 The Principles of Law of Treaties

In both the Preamble and Article 26 of the Vienna Convention on Law of Treaties (VCLT) 1969, there are three basic principles underlying the Law of Treaties. These are; Free Consent, Good Faith and Pacta Sunt Servanda. Furthermore, the list also includes the following principles; Jus Cogens, Rebus Sic Stantibus and Favor Contractus. These principles are explained below.

3.3.1 Free Consent

The principle of Free Consent is adequately captured in Paragraph 3 of the Preamble of the Vienna Convention of the Law on Treaties of 1969. The principle simply says treaty should be concluded based on free will of the state.

It is a reaction to the use of threat or force to compel states to enter into treaties against their will. The principle categorically states that:

> International agreements are binding upon the parties and solely upon themselves. These parties cannot create either obligations or rights for third States without their consent.

The observation of this principle is significant for maintaining international peace and security.

3.3.2 Good Faith

As noted above Good Faith is also one of the fundamental principles of law of treaties. The imperativeness of the principle of good faith to the conduct of relations among States in the international system cannot be overemphasized. Little wonder, the principle is also adequately represented in Paragraph 3 of the Preamble of the Vienna Convention on the Law of Treaties. Good Faith has been described as requiring "fairness, reasonableness, integrity, and honesty in international behaviour". It could be inferred from the foregoing that the absence of good faith in international relations is an invitation to anarchy, chaos and the breach of international peace and security.

3.3.3 Pacta Sunt Servanda

This is also one of the fundamental principles of the Law of Treaties; it is also captured in the Preamble to the Vienna Convention on the Law of Treaties. More also, to underscore the significance of this principle, Article 26 of the Convention explicitly states the crux of the principle. According to the article, "Every treaty in force is binding upon the parties to it and must be performed by them in good faith". Oyebode (2012) has opined that "while states are duty bound to implement treaties in good faith, in compliance with the *pacta sunt servanda* maxim, that is as far as international law goes".

Self-Assessment Exercise

Explain the various principles of treaty

3.4 The Phases of Treaties' Conclusions

Conclusion is an integral part of treaty making; this is because the provisions of the treaty would only take effect after the conclusion. The conclusion of international treaties has been described as

> the process of becoming contractual norms of international law and the formation of an agreement between States, expressed in successive stages, and legal action, whose content depends on mutual interests, intentions, positions, legislation and practices of the parties, the substance, object and purpose agreement.

Article 6 of the Vienna Convention of the Law of Treaties 1969 expressly states the fundamental right every State possesses to conclude a treaty. So, conclusion may refer

to as an expression of consent by a State through its official representative(s) to be bound by international agreements. In other words, conclusion may be said to be in congruence with the final adoption of a treaty, that is, "the final stage of its conclusion". Conclusion has also been seen as "International Agreement when the state clearly expressed their will to be bound by it".

It should be borne in mind at this juncture that the conclusion of treaty is a technical and rigorous process; it is a complex process consisting of successive stages, sub-stages and legal actions which include but not limited to preparation and adoption of the treaty text, signing, ratification, and exchange of instruments of ratification. Consequently, the conclusion of international treaties requires a step-by-step approach and involves a long process as a result of the "complexity of objects of contracts, the nature and number of participants".

Articles 9, 10 and 11 of the Vienna Convention on the Law of Treaties of 1969 sum up the stages of the conclusion of treaties. Specifically, it identified three stages viz.,

1. the adoption of the text;
2. the establishment of the authenticity of the text;
3. and consent to be bound.

With respect to the first stage the draft of the text of the treaty is adopted by agreement of all the parties to the treaty and in the case of multilateral agreement by the two-thirds majority of the parties. The second stage is carried out by signature; signature and referendum or initialling by the representatives of the States participating in the drafting of the text of the treaty in order to establish it as "authentic" and "definitive". The third and final stage involves consent to be bound which can be in the form of signature, ratification or accession, which, by and large, depends on the manner provided for in the treaty itself.

It could be added here that in order for treaty to be valid States must enter into the treaty through its representatives which must bear the highest instruments of States power, for instance, the President, Prime-Minister, Attorney-General of the Federation or Minister of Foreign Affairs.

3.5 Concepts in Treaty Relations

There are some terminologies of the law of treaties that we need to be conversant with. These include operation, termination, suspension and invalidity of treaty. They shall be treated one after the other as follows:

3.5.1 Operational Treaty

A treaty becomes operational when it has been adopted, signed and ratified by parties involved in its making. Operation of treaty has its manifestation in the execution and

implementation of the treaty. It is noteworthy that while some treaties may be self executing, i.e. by becoming a party to a treaty automatically puts it and all its obligations in action. Some treaties do not follow this pattern; in fact, they require some processes before they can become operational. Oyebode (2012) describes these processes as including the "municipal performance of the agreement" which usually effect a change in the municipal/domestic law of a State in order to accommodate the fulfilment of the treaty obligations.

3.5.2 Suspension and Termination of Treaties

Treaties can be temporarily suspended or totally terminated. There are several reasons these actions can be taken; however, the most cogent among them is the fact that if one of the parties to a treaty materially violates or breaches its treaty obligations, then the other parties may invoke this breach as a basis for either temporarily suspending their obligations to the parties defaulting or permanently terminate the treaty. It should be quickly added that suspension or termination of treaty are done in accordance to the rule of law by presenting the matter before an international court or tribunal, failure to do this makes the party culpable.

It is noteworthy that there is provision for 'self termination' of treaties. In other words, a treaty may be concluded to achieve a specific objective or condition within a time frame and once these conditions are met the treaty automatically ceases to exist, thereby no longer binding.

3.5.3 Invalidity of Treaties

There is another crucial point to note about treaty: treaties can become invalid. In recognition of the importance of the invalidity of treaties, Articles 46, 47, 48, 49, 50, 51, 52, and 53 of the Vienna Convention on the Law of Treaty explicitly capture the ways through which treaties can be invalidated. These are:

1. when treaties become 'ultra vires';
2. when a treaty is against 'peremptory norms';
3. when there is evident misunderstanding between the parties or elements of fraudulent activities, like corruption or fraud or if any party to the treaty is coerced through the threat or the use of force to compel the party to be a signatory.

A treaty becomes "ultra vires" or "null and void" if the consent of a party has been given by person(s) or representative(s) that are not authorized to do so based on the municipal law of that country.

Moreover, a treaty becomes invalid if it violates a "peremptory norm" which are the norms 'recognized as permitting no violations and so cannot be altered through treaty obligation'.

3.6 United Nations as the Custodian of Treaties

The United Nations Organization is the foremost intergovernmental organization in the world. The membership is composed of all existing sovereign states. Due to the role the United Nations plays in maintaining peace and order in the international system, and ensuring harmonious and peaceful inter-state relations, the organization plays a significant role in the processes of treaty making.

The Charter of the UN expressly states that treaties must be registered with the organisation in order for the treaties to be invoked before it or to become enforceable in its judicial organ, the International Court of Justice. This becomes necessary to prevent the problems associated with the proliferation of 'secret treaties'.

4.0 Conclusion

The utmost significance of treaty and by extension the law of treaty in guiding the peaceful conduct of states in the international system cannot be overemphasized. Treaty making and observance of the rules and regulations guiding treaty make the international system less anarchic thereby preventing the degeneration to the nadir of civilization as witnessed in the 19th century. The role of the United Nations, its judicial organs and the Vienna Convention on the Law of Treaties which came into force in 1969 speak eloquently of the necessity for State actors to respect any legal agreement they voluntarily conclude with other state(s).

5.0 Summary

What we have done in this unit is to dissect the international law of treaties, the principles as well as the stages for the conclusion of law of treaties. In a nutshell, treaty, an official agreement put in a written form that legally binds states or parties to it, is a mechanism that has been instrumental to the maintenance of world order and to a greater extent has been able to curtail the outbreak of another world war.

6.0 Tutor-Marked Assignment

1. How do you conceptualize treaty?
2. Elucidate on the stages involved in the conclusion of treaty.
3. Differentiate between suspension, termination and invalidity of treaty.

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UNIT 2: International Law of the Seas

Main Content

1.0 INTRODUCTION

International Law of the seas, popularly known as 'Law of the Sea' explicitly enshrined in the United Nations Convention on the Law of the sea (UNCLOS) which has been tagged with several nomenclatures such as "Law of the Sea Convention", "The Law of the Sea Treaty' or "Constitution for the Oceans", is one of the branches of international law. It is majorly concerned about how to achieve and maintain peace, decorum and order at seas.

The importance of the sea to humanity cannot be overemphasized. The sea is very useful for navigation, transit, fishing, transportation and scientific research just to mention a few. Additionally, the economic importance of the sea for international trade is very pertinent. Little wonder then much attention is given to how the activities of the users of the oceans of the world should be regulated so as to forestall disorderliness on the territorial waters.

This unit would deal with the various issues pertaining to the laws of the seas, and particularly, the three United Nations Conventions (UNCLOS I, UNCLOS II and UNCLOS III).

2.0 OBJECTIVES

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

- Reflect on the meaning and significance of the seas.
- Understand some basic oceans terminologies
- Understand the importance of the United Nations Convention on the Law of the Seas.

3.0 MAIN CONTENT

3.1 The Nature and Significance of the Seas/Oceans

Though with little distinction, sea and ocean are often used interchangeably as they are assumed to be synonymous. However, a sea is a "large body of saline water that may be connected with an ocean"; an ocean, on the other hand, is "a continuous body of water encircling the earth". Whilst there are several seas in the world, there exit only five principal oceanic areas that are delimited by the continents and various oceanographic features. These include the Atlantic Ocean, Arctic Ocean, Indian Ocean, Pacific Ocean and Southern Ocean. Due to the fact that some seas make up an ocean, perfect line of demarcation may not be successfully drawn between the sea and the ocean hence, the rationale for the interchangeable use. So, we have the law of the 'seas', the convention on the 'seas' or the constitutions of the 'oceans'. Invariably, in this unit both terms are used interchangeably.

Sea forms an integral part of the universe. In fact, it takes close to three quarter of the entire earth surface. It is on record that the "earth's oceanic waters…comprises the bulk of the hydrosphere, covering almost 71% of the earth's surface, with a total volume of 1.332 billion cubic kilometres". Seas are very strategic to human civilization since they provide medium for the transportation of humans and cargoes, navigation and exploration, conduct of marine scientific research, fishing on the high seas, trade and investment, installations of scientific equipment, construction of seaport, adventures and tourism, exploration and exploitation of mineral resources and mining just to mention but a few.

The sea has always been a critical aspect of human interaction. Moving from one state to the other, and connecting the world in a smooth-creasing form by over-flowing the territories of political entities. The nature of the international system calls for adequate and proper management of relations on the seas, otherwise there would be chaos and anarchy, as would be the case if the affairs of men are not adequately and properly managed on the ground level. The next part of the unit discusses the instruments for managing the international affairs on the seas.

3.2 Foundations of Modern Ocean Law and Policy

The oceans law and policy are meant to promote rule of law in the world's oceans; the essence of international maritime agreement among nations of the world is the

promotion of the understanding of and adherence to the rule of law so that anarchy and chaos would not be the order of the day. So, as we have the law of the land that guides the conduct of humanity, so there is also the law of the oceans that regulate the activities of seafarers.

It should be noted that the development of modern oceans law and policy could be traced to the emergence of *Lex Rhodea* popularly known as Rhodian Sea Code that was popularized around 8th century A.D. However, modern ocean laws got crystallized through the exertions of Hugo Grotius. In the early 17th century Grotius, a Dutch scholar, produced a treatise titled *Mare Liberum* meaning "freedoms of the seas".

Grotius' contribution was a watershed in the development of law of the seas in as much as nations adopted the concept of the "freedoms of the seas" as the guiding principle that regulates their activities in the oceans. As maritime relations became more sophisticated the treatise put forward by Grotius was subjected to critical review especially in the 20th century. So from the debris of *Mare Liberum* there have arisen new laws guiding maritime relations.

Self-Assessment Exercise
Discuss the origin of modern ocean law.

3.3 Overview of United Nations' Conventions on the Law of The Seas (UNCLOS)

As noted above, with the passage of time the weaknesses of *Mare Liberum* became obvious and a more dynamic alternative becomes inevitable. In the "freedom of the seas" concept,

> national rights were limited to a specified belt of water extending from a nation's coastlines, usually three nautical miles… All waters beyond national boundaries were considered international waters: free to all nations, but belonging to none of them.

By the 20th century, this 17th century philosophy was no longer acceptable to most sovereign states. As a matter of fact, attempts were made in 1930 when the erstwhile League of Nations called a conference to address the issue of the desire of some states to shift their claims to the seas to include mineral resources, protection of fish stocks and to have access to enforce pollution controls.

In the absence of existing instruments to the contrary, some states including the US in 1945 exercised their rights under the customary international law principle of protecting their natural resources even on the seas. The US took control of the natural resources on its continental shelf; this action was also taken by Chile, Peru and Ecuador by extending their rights to three hundred and seventy kilometres to cover specific fishing areas.

This seeming lack of coordination and reliance on a 17th century custom in the 20th century prompted the revision of international relations on the seas. The revision of the conditions was undertaken with the first United Nations Conference on the Law of the Seas in 1956. The outcome of the conference was the treaty signed in 1958 that covered the following pertinent areas:

1. Convention of the Territorial Sea and the Contiguous Zone

2. Convention on the Continental Shelf

3. Convention on the High Seas

4. Convention on Fishing and Conservation of Living Resources on the High Seas.

This first conference was considered successful; however, there were still unanswered questions on the issues of the breadth of territorial waters. This prompted the need for more deliberations. The second conference in 1960 UNCLOS (II) did not result in any significant improvement on the first round of agreements. As a result of lack of standards, there emerged a situation of varying claims on territorial waters.

The need to avert conflicts over territorial waters led to the 1973 Conference of the UN on issues pertaining to the seas. The conference lasted between 1973 and 1982 and culminated in UNCLOS (III).

The convention establishes the regime for contemporary oceans law by setting out rules governing the rights and jurisdiction of nations in various maritime zones. This Convention often refers to as the 'constitution of the oceans' covers virtually all activities in the ocean, thus provides the modality for the development of a branch of international law that has its convergences on seas and its uses. With over one hundred and sixty signatories the convention passes for a customary international law in all its ramifications.

A number of significant provisions were introduced in UNCLOS (III). The following areas are covered:

1. setting limits;
2. navigation;
3. archipelagic status and transit regimes;
4. exclusive economic zones (EEZs);
5. continental shelf jurisdiction;
6. deep seabed mining;
7. the exploitation regime;
8. protection of the marine environment;
9. scientific research;
10. settlement of disputes.

3.3.1 Basic Features of the Convention

1. Coastal States exercise sovereignty over their territorial sea which they have the right to establish its breadth up to a limit not to exceed 12 nautical miles; foreign vessels are allowed "innocent passage" through those waters;
2. Ships and aircraft of all countries are allowed "transit passage" through straits used for international navigation; States bordering the straits can regulate navigational and other aspects of passage;
3. Archipelagic States, made up of a group or groups of closely related islands and interconnecting waters, have sovereignty over a sea area enclosed by straight lines drawn between the outermost points of the islands; the waters between the islands are declared archipelagic waters where States may establish sea lanes and air routes in which all other States enjoy the right of archipelagic passage through such designated sea lanes;
4. Coastal States have sovereign rights in a 200-nautical mile exclusive economic zone (EEZ) with respect to natural resources and certain economic activities, and exercise jurisdiction over marine science research and environmental protection;
5. All other States have freedom of navigation and over flight in the EEZ, as well as freedom to lay submarine cables and pipelines;
6. Land-locked and geographically disadvantaged States have the right to participate on an equitable basis in exploitation of an appropriate part of the surplus of the living resources of the EEZ's of coastal States of the same region or sub-region; highly migratory species of fish and marine mammals are accorded special protection;
7. Coastal States have sovereign rights over the continental shelf (the national area of the seabed) for exploring and exploiting it; the shelf can extend at least 200 nautical miles from the shore, and more under specified circumstances;
8. Coastal States share with the international community part of the revenue derived from exploiting resources from any part of their shelf beyond 200 miles;
9. The Commission on the Limits of the Continental Shelf shall make recommendations to States on the shelf's outer boundaries when it extends beyond 200 miles;
10. All States enjoy the traditional freedoms of navigation, overflight, scientific research and fishing on the high seas; they are obliged to adopt, or cooperate with other States in adopting, measures to manage and conserve living resources;
11. The limits of the territorial sea, the exclusive economic zone and continental shelf of islands are determined in accordance with rules applicable to land territory, but rocks which could not sustain human habitation or economic life of their own would have no economic zone or continental shelf;
12. States bordering enclosed or semi-enclosed seas are expected to cooperate in managing living resources, environmental and research policies and activities;
13. Land-locked States have the right of access to and from the sea and enjoy freedom of transit through the territory of transit States;

14. States are bound to prevent and control marine pollution and are liable for damage caused by violation of their international obligations to combat such pollution;
15. All marine scientific research in the EEZ and on the continental shelf is subject to the consent of the coastal State, but in most cases they are obliged to grant consent to other States when the research is to be conducted for peaceful purposes and fulfils specified criteria;
16. States are bound to promote the development and transfer of marine technology "on fair and reasonable terms and conditions", with proper regard for all legitimate interests;
17. States Parties are obliged to settle by peaceful means their disputes concerning the interpretation or application of the Convention;
18. Disputes can be submitted to the International Tribunal for the Law of the Sea established under the Convention, to the International Court of Justice, or to arbitration. Conciliation is also available and, in certain circumstances, submission to it would be compulsory. The Tribunal has exclusive jurisdiction over deep seabed mining disputes.

In furtherance of the UN's commitment to ensuring peaceful, harmonious and beneficial relations on the management of the world's sea, the organisation established a division to manage issues related to the Law of the Seas. The division is called, the "Division of Ocean Affairs and the Law of the Sea". Its functions are:

1. Providing advice, studies, assistance and research on the implementation of the United Nations Convention on the Law of the Sea, on issues of a general nature and on specific developments relating to the research and legal regime for the oceans;

2. Providing substantive servicing to the General Assembly on the law of the sea and ocean affairs, to the Meeting of States Parties to the Convention and to the Commission on the Limits of the Continental Shelf;

3. Providing support to the organizations of the United Nations system to facilitate consistency with the Convention of the instruments and programmes in their respective areas of competence;

4. Discharging the responsibilities, other than depositary functions, of the Secretary-General under the Convention;

5. Conducting monitoring and research activities and maintaining a comprehensive information system and research library on the Convention and on the law of the sea and ocean affairs;

6. Providing training and fellowship and technical assistance in the field of the law of the sea and ocean affairs;

7. Preparing studies on relevant Articles of the Charter for the Repertory of Practice of United Nations Organs.

3.4 Relevant Areas and Baselines for Sea Relations

There are some technical areas whose definitions and measurement are important to conflict-free sea relations. It is important for us to understand the meanings of these areas for a better understanding of the contents of the Convention. Some of these are explained below.

3.4.1 Contiguous Zone

The law of the sea recognizes the importance of the 'contiguous zone.' According to Article 33 of the United Nations Convention on the Laws of the Seas 1982:

1. In a zone contiguous to its territorial sea, described as the contiguous zone, the coastal State may exercise the control necessary to:

a. prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea;
b. punish infringement of the above laws and regulations committed within its territory or territorial sea.

2. The contiguous zone may riot extend beyond 24 nautical miles from the baselines from which the breadth of the territorial sea is measured.

The contiguous zone is the 12 nautical miles from the territorial area baseline limit which is beyond the initial 12 nautical mile limit. As provided for in the law of the seas, the State has power to enforce laws in four specific areas in the contiguous zone. These areas include:

(1) Customs
(2) Taxation
(3) Immigration, and
(4) Pollution

3.4.2 Exclusive Economic Zones

The significance of the 'Exclusive Economic Zones' cannot be overemphasized, little wonder then that about 20 articles: Articles 55-75 in the United Nations Convention on the Laws of the Sea was dedicated to it. Article 55 defines the EEZ thus:

> The exclusive economic zone is an area beyond and adjacent to the territorial sea, subject to the specific legal regime established in this Part, under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this Convention.

Article 56 speaks to jurisdiction and all other related matters, thus:

1. In the exclusive economic zone, the coastal State has:

a. sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the sea-bed and of the sea-bed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;
b. jurisdiction as provided for in the relevant provisions of this Convention with regard to:
    i. the establishment and use of artificial islands, installations and structures;
    ii. marine scientific research;
    iii. the protection and preservation of the marine environment;
c. other rights and duties provided for in this Convention.

2. In exercising its rights and performing its duties under this Convention in the exclusive economic zone, the coastal State shall have due regard to the rights and duties of other States and shall act in a manner compatible with the provisions of this Convention.

3. The rights set out in this article with respect to the sea-bed and subsoil shall be exercised in accordance with Part VI.

3.4.3 Continental Shelf

This also receives the attention of the parties to the United Nations Convention on the Law of the Sea of 1982 as Article 76 to 82 explicitly captured the essence of the continental shelf.

With regard to the seabed beyond territorial waters, every coastal country has exclusive rights to the oil, gas and other resources in the seabed up to 200 nautical miles from shore or to the outer edge of the continental margin, whichever is the further, subject to an overall limit of 350 nautical miles (650km) from the coast or 100 nautical miles (185km) beyond the 2,500metre isobaths (a line connecting equal points of water depth).

In the continental shelf the coastal countries have the reserved right to exploit mineral and non-living resources in the subsoil; they also have the exclusive rights over the living resources found within the continental shelf.

In Article 77, the rights of the coastal state on the continental shelf are defined thus:

1. The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.

2. The rights referred to in paragraph 1 are exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities without the express consent of the coastal State.

3. The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation.

4. The natural resources referred to in this Part consist of the mineral and other non-living resources of the sea-bed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the sea-bed or are unable to move except in constant physical contact with the sea-bed or the subsoil.

3.5 Other Issues Relevant to the Law of the Seas

3.5.1 Claims of Sovereignty over the High Seas

Article 89 of the United Nations Convention on the Law of the Seas addresses the invalidity of claims of sovereignty over the high seas. It states that: "No state may validly purport to subject any part of the high seas to its sovereignty'. The implication of this is that all states of the world, either coastal or landlocked, have unrestricted access to use the high seas either for 'navigation', over flight, laying 'submarine cables and pipelines' constructing 'artificial islands and other installations permitted under international law, 'fishing' or 'scientific research'.

3.5.2 Sea Piracy

Doing business on the high sea, at times, could be dangerous as a result of the activities of the pirates. These are the equivalent of armed robbers on the land. Sea piracy poses a serious threat to the seafarers and the law of the seas also seeks means for addressing the problems.

Articles 100-107 of the United Nations Convention on the Law of the Seas (UNCLOS) of 1982 are all about sea piracy. Specifically Article 101 defines piracy as consists of:

> (a) Any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed: (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any state; and
> (b) Any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft.

The issue of piracy is a very critical one as many lives have been lost, property stolen, defenceless crew members either taken hostage or kidnapped. The Somalia Coast in the Horn of Africa is very notorious for sea piracy. Treves (2009) notes that "attacks against ships off the coast of Somalia have brought piracy to the forefront of international attention, including that of the Security Council".

3.5.3 Land-Locked States

The conditions of land-locked states are also addressed by the United Nations Conventions on the Law of the Seas of 1982. Article 124 of the convention defines the land-locked state as a 'state which has no sea-coast'. There are eighteen of those states in the world. In Africa land-locked States include Burundi, Central Africa Republic, Ethiopia, Niger, Rwanda, South Sudan and Swaziland.

Article 125 states among other things, that:

> Land-locked states shall have the right of access to and from the sea for the purpose of exercising the rights provided for in this convention including those relating to the freedom of the high seas and the common heritage of mankind.

3.6 International Tribunal for The Law of The Seas and International Seabed Authority

The judicial bodies that are equipped with the power for exercising authority over ocean matters, interpreting seas laws, settling ocean disputes and providing advisory opinions among others are the International Tribunal of the Law of the Seas and the International Seabed Authority. The United Nations Convention on the Law of the Seas (UNCLOS) of 1982 provides for the establishment of these two judicial bodies that engage in the arbitration on oceans dispute.

The International Tribunal for the Law of the Sea is an independent judicial body with the mandate of adjudicating on disputes arising from the interpretation and application of the United Nations Conventions on the Law of the Seas 1982. The Tribunal has jurisdiction over any dispute concerning the interpretation and application of the Convention, and over all matters specifically provided for in any other agreement which confers jurisdiction on the Tribunal.

As regards International Seabed Authority, it is saddled with the responsibility of regulating seabed mining beyond the limits of national jurisdiction, that is, beyond the limits of the territorial sea, the contiguous zone and the continental shelf.

Self-Assessment Exercise
What is the role of the international tribunal for the law of the sea?

4.0 CONCLUSION

Seas are very important for mankind. Their benefits include navigation, transportation, scientific research and fishing, among others. In a bid to prevent the breakdown of law and order on the world's oceans, the law of the seas was invented and among its provisions are the means of ensuring peaceful conduct among ocean users.

5.0 SUMMARY

What we have done in this unit is to holistically provide insight into the basic issues concerning the international law of the sea. We have succeeded in conceptualizing the sea/ocean as well as other oceans' terminologies. There is also an exposition on the United Nations Convention on the law of the sea, and also an insight into some other issues that concern the management of the sea.

6.0 Tutor-Marked Assignment

1. Explicate the following; contiguous zone, exclusive economic zone and continental shelf.

2. Highlight five features of UNCLOS III

3. What are the positions of UNCLOS III on sea-piracy and landlocked states?

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UNIT 3: International Environmental Law

CONTENT

1.0 INTRODUCTION

The state of the environment is crucial to human existence, hence the need to regulate its management. The management is undertaken through the institutionalization of legal regimes to coordinate the activities of both state and non-state actors in ensuring that the ultimate aim of global environmental sustainability is achieved.

Environmental laws are therefore the preferred standards instituted by states established to manage natural resources and environmental quality. The natural resources and environmental quality referred to can be grouped thus:

1. as air and water pollution;
2. forests and wildlife;
3. hazardous waste;
4. agricultural practices;
5. wetlands;
6. land use planning.

This unit intends to shed light on the legal regulations pertaining to the environment. In this endeavour, we would examine the basic features of international environmental law and the UN instrument through which the protection of the environment is sought.

2.0 OBJECTIVES

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

- Explain the basic features of international economic law

- Discuss the role of the UN in ensuring that the global environment is adequately protected.

- Understand the processes of international environmental law.

3.0 MAIN CONTENT

3.1 Nature and Character of International Environmental Law

To start with, the whole gamut of environmental law is a combination of the text, the regulations that implement them and the judicial decisions that interpret it. IEL is made up of conventions, regulations, statutes and relevant municipal laws intended to manage and regulate how the human-race maximize the natural environment without causing damage that would jeopardize the future of the human-race.

The origin of IEL is traceable to the 1960s when it became apparent that "the natural environment was fragile and in need of special legal protections". The fragility of the environment became even more amplified with the growth and development in science, technology, marine and fisheries, ecology, space-science and agriculture. This can be summarized thus:

1. mankind's first steps into outer space;
2. increased public concern over the impact of industrial activity on natural resources and human health;
3. the increasing strength of the regulatory state;
4. the advent and success of environmentalism as a political movement.

All of these incidents made the emergence of international environmental law a *fait acompli*.

3.2 Norms of International Environmental Law

Norms are customary rules that are adhered to by parties to an agreement. They are not necessarily codified in a document, yet they form part of the basis of relationships.

We have drawn extracts from "Global Change Instruction Programme" to present the leading norms in the field of international environmental law. These are:

a. Foremost among these norms is Principle 21 of the 1972 Stockholm Declaration on the Human Environment. Principle 21 maintains that:

> States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental law and development policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

b. Another widely shared norm is the duty of a state to notify and consult with other states when the first state undertakes an operation (such as the construction of a power plant) that is likely to harm neighbouring countries'

environments, such as impairing air or water quality in downwind or downstream states.

c. Over and above the duty to notify and consult, a relatively new norm has emerged whereby states are expected to monitor and assess specific environmental conditions domestically and disclose these conditions in a report to an international agency or international executive body created by an international agreement and authorized by the parties to the agreement to collect and publicize such information.

d. Another emerging norm is the guarantee in the domestic constitutions, laws, or executive pronouncements of several states, including India, Malaysia, Thailand, Indonesia, Singapore, and the Philippines, that all citizens have a right to a decent and healthful environment. In the United States, this fundamental right has been guaranteed by a handful of states but not by the federal government.

e. Most industrialized countries subscribe to the polluter pays principle. This means polluters should internalize the costs of their pollution, control it at its source, and pay for its effects, including remediation or cleanup, rather than forcing other states or future generations to bear such costs.

f. Another new norm of international environmental law, which is also articulated in Agenda 21, is the precautionary principle**.** This is basically a duty to foresee and assess environmental risks, to warn potential victims of such risks, and to behave in ways that mitigate such risks.

g. Environmental impact assessment is another widely accepted norm of international environmental law. Typically, such an assessment balances economic benefits with environmental costs. The logic of such an assessment dictates that before a project is undertaken, its economic benefits must substantially exceed its environmental costs.

h. Another recent norm is to invite the input of nongovernmental organizations (NGOs), especially those representing community-based grassroots environmental activists. This NGO participation ensures that the people who are likely to be most directly affected by environmental accords will have a major role in monitoring and otherwise implementing the accord.

i. In October 1982, the United Nations General Assembly adopted the World Charter for Nature and Principles of Sustainable Development. This agreement expressly recognized the principle of sustainable development**,** which was defined as using living resources in a manner that “does not exceed their

natural capacity for regeneration" and using "natural resources in a manner which ensures the preservation of the species and ecosystems for the benefit of future generations".

j. Intergenerational equity is among the newest norms of international environmental law. It can best be understood not so much as a principle but rather as an argument in favour of sustainable economic development and natural resource use. If present generations continue to consume and deplete resources at unsustainable rates, future generations will suffer the environmental (and economic) consequences. It is the future generations who will be left without forests (and their carbon retention capacities), without vital and productive agricultural land and without water suitable for drinking or sustaining life. Therefore, we must all undertake to pass on to future generations an environment as viable as the one we inherited from the previous generation.

k. At the 1982 United Nations Conference on the Law of the Sea, developing countries articulated the norm that certain resources, such as deep seabed, are part of the common heritage of humanity and must be shared by all nations.

l. Finally, and of special importance to developing countries, the principle of common but differentiated responsibilities was articulated in the Rio Declaration of 1992 (Principle 7). This means that all countries have a shared responsibility to protect the global environment, but the richer countries have a special responsibility to undertake and pay for preventive and remedial action.

3.3 Administration and Enforcement of International Environmental Law

The 1960s agitations for managing the environment received a welcome boost in 1972, with the convening of the United Nations Conference on the Human Environment. At the conference, the Declaration was made thus:

> A point has been reached in history when we must shape our actions throughout the world with a more prudent care for their environmental consequences. Through ignorance or indifference we can do massive and irreversible harm to the earthly environment on which our life and well being depend. Conversely, through fuller knowledge and wiser action, we can achieve for ourselves and our posterity a better life in an environment more in keeping with human needs and hopes …
>
> To defend and improve the human environment for present and future generations has become an imperative goal for mankind.

The success of the Conference was a call to action for the UN General Assembly, which afterwards established the United Nations Environment Programme. The mission of UNEP is:

> To provide leadership and encourage partnership in caring for the environment by inspiring, informing, and enabling nations and peoples to improve their quality of life without compromising that of future generations.

The focus of UNEP are the environmental dimensions of six core areas:

1. Disasters and Conflicts
2. Ecosystem Management
3. Environmental Governance
4. Harmful Substances
5. Resource Efficiency
6. Climate Change

Climate Change

The mission and goals of UNEP in the core areas are treated below:

According to UNEP (2010):

> Climate change is one of the major challenges of our time and adds considerable stress to our societies and to the environment. From shifting weather patterns that threaten food production, to rising sea levels that increase the risk of catastrophic flooding, the impacts of climate change are global in scope and unprecedented in scale. Without drastic action today, adapting to these impacts in the future will be more difficult and costly.

The relevant drastic action taken by UNEP (UNEP, 2010) in tackling the challenges of climate change are:

1. **Adapting to climate change:** UNEP helps countries reduce their vulnerability and use ecosystem services to build natural resilience against the impacts of climate change.
2. **Mitigating climate change:** UNEP supports countries in making sound policy, technology and investment choices that lead to GHG emission reductions, with a focus on scaling up clean and renewable energy sources, energy efficiency and energy conservation.

3. **Reducing emissions from deforestation and forest degradation (REDD):** is an effort to create a financial value for the carbon stored in forests, offering incentives for developing countries to reduce emissions from forested lands and invest in low-carbon paths to sustainable development. REDD+ goes beyond that to include the role of conservation, sustainable management of forests and enhancement of forest carbon stocks.

4. **Enhancing knowledge and communication:** UNEP works to improve understanding of climate change science and raise awareness of climate change impacts among decision-makers and other target audiences.

Ecosystem Management

According to UNEP:

> Human well-being depends on the health of ecosystems. An ecosystem is a dynamic complex of plants, animals, microorganisms and their nonliving environment, of which people are an integral part. The benefits that we derive from nature and rely on every day, from timber and food to water and climate regulation, are all ecosystem services.

The goals of the organization in the management of the ecosystem are:

1. **Making the case:** UNEP provides leadership in promoting the ecosystem management approach and explaining its advantages for development.

2. **Restoration and management:** UNEP develops and tests tools and methodologies for national governments and regions to restore and manage ecosystems and biodiversity.

3. **Development and investment:** UNEP helps national governments integrate ecosystem services into development planning and investment decisions

Harmful Substances and Hazardous Wastes

> Chemicals are an integral part of everyday life. There are over 100,000 different substances in use today. They play a role in every economic sector and nearly every industry, and many are critical to human wellbeing and sustainable development. Yet chemicals can also endanger human health and the environment if not managed properly.

The major goals of the organization in managing chemicals are:

1. **Scientific assessments:** UNEP conducts global assessments of the environmental fate and exposure pathways of harmful substances, and raises awareness of these findings to help governments and others take action.

2. **Legal instruments:** UNEP assists governments to develop appropriate policy and control systems for harmful substances of global concern.

3. **National implementation:** UNEP provides the tools, methodologies and technical assistance to help States design, finance and implement national programmes that improve assessment and management of harmful substances and hazardous waste.

4. **Monitoring and evaluation:** UNEP promotes best practices, helping States monitor, evaluate and report on the progress of their national programmes

Environmental Governance

According to UNEP (2010):

> Governing our planet's rich and diverse natural resources is an increasingly complex challenge. In our globalised world of interconnected nations, economies and people, managing environmental threats, particularly those that cross political borders such as air pollution and biodiversity loss, will require new global, regional, national and local responses involving a wide range of stakeholders.

The major goals are therefore:

The Environmental Governance sub-programme focuses on strengthening global, regional, national and local environmental governance to address agreed environmental priorities. The sub-programme has four key goals:

1. **Sound science for decision-making:** UNEP aims to influence the international environmental agenda by reviewing global environmental trends and emerging issues, and bringing these scientific findings to policy forums.

2. **International cooperation:** UNEP helps States cooperate to achieve agreed environmental priorities, and supports efforts to develop, implement and enforce new international environmental laws and standards.

3. **National development planning:** UNEP promotes the integration of environmental sustainability into regional and national development policies, and helps States understand the benefits of this approach.

4. **International policy setting and technical assistance:** UNEP works with States and other stakeholders to strengthen their laws and institutions, helping them achieve environmental goals, targets and objectives.

Resource Efficiency
According to UNEP (2010)

> Economic growth and social development cannot be sustained with our current consumption and production patterns. Globally, we are extracting more resources to produce goods and services than our planet can replenish, while a large share of an increasingly urban world population is still struggling to meet basic needs.

The Resource Efficiency sub-programme focuses on reducing the adverse environmental impacts of producing, processing and using goods and services, while also meeting human needs and improving well-being. The sub-programme has four key goals:

1. **Assessing critical trends:** To strengthen the knowledge base on Resource Efficiency, UNEP assesses and reports on trends in how resources are extracted, processed, consumed, and disposed of in our global economy

2. **Building capacity for policy action:** UNEP works closely with partners from government, city authorities and the research community to develop and roll out policy tools and instruments that accelerate the shift towards more resource efficient societies.

3. **Seizing investment opportunities:** UNEP builds on its assessment and policy work to forge expert networks and industry partnerships. These collaborations help small and large businesses adopt resource-efficient technologies, products and services in developing markets.

4. **Stimulating demand for resource efficient goods and services:** UNEP develops consumer and procurer information tools, market incentives and public-private initiatives to promote sustainable lifestyles and value chains.

Disasters and Conflicts
This is the guiding principles of the action for the environmental dimension of disaster and conflict by UNEP.

> Since the start of the new millennium, over 35 major conflicts and some 2,500 disasters have affected billions of people around the world. These crises destroy infrastructure, displace entire populations and threaten ecosystems and the people who rely on them to survive. Reducing the risk of disasters and conflicts,

mitigating their impacts when they occur, and building resilient societies and economies is therefore at the top of the international agenda.

The Disasters and Conflicts sub-programme focuses on helping States minimize the threats to human well-being from environmental causes and consequences of disasters and conflicts. It has four key goals:

1. **Disaster risk reduction:** UNEP works to prevent and reduce the impacts of natural hazards on vulnerable communities and countries through sustainable natural resource management.

2. **Assessment:** To inform local populations, decision-makers and recovery efforts, UNEP conducts field-based scientific assessments to identify the environmental risks to human health, livelihoods and security following conflicts, disasters and industrial accidents.

3. **Recovery:** In the aftermath of a crisis, UNEP implements environmental recovery programmes through field-based project offices to support long-term stability and sustainable development in conflict and disaster-affected countries.

4. **Cooperation for peace-building:** UNEP aims to use environmental cooperation to transform the risks of conflict over resources into opportunities for peace in war-torn or fragile societies.

Self-Assessment Exercise
Explain the methods by which international environmental law is enforced.

3.4 Sources of International Environmental Law

Treaties, Conventions and Agreements
Characteristically, international environmental agreements are first and foremost creations of treaties or conventions. In a significant sense, such treaties or conventions are tailored towards resolving specific environmental issues, not less because of the complexities in tackling environmental challenges. The place of the environmental is extremely crucial in the modern world, especially with the ever-increasing spread of globalisation, hence, the significantly high volume of conventions relating to environmental law.

Furthermore, the adoption of Protocols has been critical in the field of international environmental law because of its flexibility which allows the incorporation of scientific findings in an already existing rule. Also, it provides the avenue for state-actors to reach subtle agreements on issues that may generate controversies. The

Kyoto Protocol which came on the heels of the United Nations Framework Convention on Climate Change is the most significant today.

Organisations, Institutions and Bodies
In the process of creating treaties and multilateral agreements for managing environmental challenges, states often create other actors, such as international organisations and bodies that monitor the implementation and enforcement of the processes. Some of these are:

- The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES);
- The International Union for Conservation of Nature (IUCN).

Customary International Law
The codes of conduct and norms that have become practices among state-actors are essential sources of rules and laws for the management of the global environment. For instance, under this arrangement, Principle 21 of the Stockholm Declaration which emphasizes "Good Neighbourliness" is an essential basis for the creation of international environmental law. Similarly, the responsibility of warning state-actors about icons that could cause environmental damages to exposed states is also a fundamental customary practice that is acceptable to all states.

International Judicial Decisions
The decisions of relevant courts in cases related to international environmental law are crucial to the development of the laws guiding environmental relationships among states. Some of the important courts in this regard include; The International Court of Justice (ICJ), the International Tribunal for the Law of the Sea (ITLOS), etc, and other regional treaty tribunals.

Self-Assessment Exercise
Outline the sources of international environmental law.

4.0 CONCLUSION

This unit focussed on one of the fundamental issues that bind the world- the environment. Damages to the environment that cause such reactions as; ozone layer depletion, greenhouse effects, etc. are of international magnitude and concern to all state-actors. Thus, the need for concerted efforts in managing the exploitation and exploration of the global environment resulted in the creation of international environmental law.

5.0 SUMMARY

The unit basically dealt with the features of international environmental law, which from all intents and purposes include the protection of the environment from damages, such that the benefits of the present would not jeopardise the future of the world. Also, the unit explains the methods of administering and enforcing the rules, which is part of the norms accepted by all states. Lastly, the sources of international environmental law are treated.

4 Tutor-Marked Assignment

1. List the six core areas that the United Nations Environment Programme covers.
2. List five norms of international environmental law.
3. List the natural resources and environmental quality managed by international environmental law.

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UNIT 4: International Criminal Law

Main Content

1.0 INTRODUCTION

International criminal law can be described as the branch of international law instituted to inhibit individuals from committing offences considered as grave misconduct and atrocities against their fellow men, and by extension it seeks to prosecute those found culpable of such offences. It is also described thus:

> Criminal law generally deals with prohibitions addressed to individuals, and penal sanctions for violation of those prohibition imposed by individual states. International criminal law comprises elements of both in that although its sources are those of international law, its consequences are penal sanctions imposed on individuals.

Principally, it deals with genocide, war crimes, crimes against humanity, as well as the War of aggression. This unit would attempt to put the whole gamut of issues related to international criminal law in perspectives. It would deal with the types of war crimes based on the dictates of existing laws and statutes and also explain the various instruments that have been used as instruments for implementing the law in the past.

1.0 OBJECTIVES

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

- Explain the history of international criminal law

- Explain the types of war crimes recognised by international criminal law

3. Explain the workings of at least two tribunals for the prosecution of war crimes.

3.0 MAIN CONTENT

3.1 History of International Criminal Law

The principle of prosecuting individuals held accountable for criminal activities in a war situation has a very long history, dating back to the pre- First World War era. However, the actual exercise of establishing a body instituted as an international crime tribunal to try accused war criminals came into being after the First World War. A very significant development at the time was the content of the Treaty of Versailles which recommended the setting up of an international war tribunal to try Wilhelm II of Germany. This however did not materialise because he was granted asylum in the Netherlands.

The need to try more criminal became more intense in the aftermath of the Second World War. This is because the level of destruction of property was massive, millions of human lives were lost, and also, the treatment of persons caught in the line of fire had become unacceptable to the international community. If the trend had been allowed to continue, the world would continue to degenerate into barbarism and bestiality. More importantly, the negative contributions of individuals to the various levels of criminality did not go unnoticed. Hence, the idea of individual criminal responsibility for serious breaches of international law gained ground in this period.

The end of the Second World War presented the opportunity to institute allegations against individual accused of war crimes and crimes against humanity under the Nazi regime. Thus, international tribunals were set-up to hear the cases of the individuals. The tribunals were set-up in Nuremberg, Germany and Tokyo, Japan to try both the German and Japanese military leaders accused of serious crimes during the war.

Overtime, the system of international criminal law continues to grow to meet the demands of the period. A significant effort in this direction was the United Nations Security Council's establishment of the International Criminal Tribunals for the Former Yugoslavia (ICTY) in 1993 and the International Criminal Tribunal for Rwanda in 1994 after the war in Bosnia and the genocide in Rwanda respectively. In an unprecedented move, the Rome Statute establishing the International Criminal Court was signed in 1998. Under this statute, the first arrest warrants were issued in 2005.

Presently, the system for the prosecution of international criminal activities is organised around the establishment of the following institutions; ad-hoc tribunals, internationalised or mixed tribunals, the International Criminal Courts and national courts (both military tribunals and national courts). In turning a perceived criminal act into an international crime, the prosecution has the advantage of universal prosecution, which allows the case to be heard in the law court of any state, even when there is no link between the state and the accused.

Self-Assessment Exercise
Summarise the history of international criminal law.

3.2 What are International Crimes?

In order that the law can take its course under perceived violations under international criminal law, an international crime is defined as

> an act universally recognised as criminal, which is considered a grave matter of international concern and for some valid reason cannot be left within the exclusive jurisdiction of the state that would have control over it under ordinary circumstances

Specifically, the 1949 Geneva Conventions provides the following as a list of international crime:

1. War Crimes
2. Crimes against Humanity
3. Genocide
4. Torture

3.2.1 War Crimes

This considered as all acts involving "grave breaches" in the process of armed conflict and all other massive violations of international humanitarian values in any form of conflict, whether international or non-international. Some of such atrocities may include:

1. Murder and the ill-treatment of civilian residents of an occupied territory;
2. Murder or ill-treatment of prisoners of war;
3. The wanton destruction of cities, towns or villages;
4. Any devastation visited on a people but not justified by military or civilian necessity.

3.2.2 Crimes against Humanity

These basically are all acts that denigrate and inflict pains on humans. Usually, it is an orchestrated attempt, either by a group or a government against presumed opponents to subdue and inflict eternal injuries on the consciousness of the victims. The perpetrators engage in broad and large-scale dehumanisation of the victim-population.

The Rome Statute of the International Criminal Court puts it more succinctly. In the Explanatory Memorandum, crimes against humanity are described as:

> particularly odious offenses in that they constitute a serious attack on human dignity or grave violation or a degradation of one or more human beings. They are not isolated or sporadic events, but are part either of a government policy (although the perpetrators need not identify themselves with this policy) or of a wide practice of atrocities tolerated or condoned by a government or a de facto authority

Some of the atrocities that fall under this category include:

a. Murder;
b. Extermination;
c. Rape;
d. Political, racial or religious persecution

It is however made clear in the statute that such offences would only be considered as crimes against humanity "if they are part of a widespread or systematic practice". In the case of isolated perpetration of such inhumane acts, the accused may be tried under international human rights laws.

3.2.3 Genocide

This act encompasses all attempts to destroy, in whole or in part, a national, ethnical, racial, or religious group (Funk, 2010). It is a deliberate attempt to wipe out a group under whatever pretext**.** The meaning of genocide is elaborated in Article 2 of the United Nations Convention on the Prevention and Punishment of the Crime of Genocide thus:

> any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such: killing members of the group; casing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life, calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; and forcibly transferring children of the group to another group.

Following the definition, genocide is believed to follow the pattern outlined below;

1. Classification
2. Symbolisation
3. Dehumanisation
4. Organisation
5. Polarisation
6. Preparation
7. Extermination
8. Denial

3.2.4 Torture

This is regarded as a violation of human rights, and when carried out in the course of war or armed conflicts, it is considered as a crime under international criminal law. Torture is outlawed under Article 3 of the 1949 United Nations Conventions and the 1998 Statute of the International Criminal Court.

It is basically an intentioned infliction of harm or pain on a person or people in order to either punish or extract information from them. It is also described as an aggravated form of inhuman treatment. The act of torture is put in proper perspectives by the 1984 United Nations Convention Against Torture, where it is described as:

> any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him, or a third person, information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination or any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It not include pain or suffering arising only from, inherent in, or incidental to, lawful sanctions.

2.1 Institutions for Prosecuting Violators of International Criminal Law

The atrocities of individuals during the First World War and the Second World War did not go unnoticed. Thus, ever since then, there had been calls for the establishment of a permanent international criminal court to prosecute individuals accused of breaching international codes of conduct in the periods of armed conflicts or war.

However, the establishment of such a court did not materialise because of the following reasons:

1. The cold-war tension between the east and the west bloc;
2. The system instituted by the *1949 Geneva Conventions* to punish grave breaches of international humanitarian law through national courts was not put in practice.

The conditions were altered with the establishment in 1993 and 1994 of the two ad-hoc international tribunal, for namely; former Yugoslavia and Rwanda respectively by the Un Security Council. In a similar tradition, such other tribunals have been set up for Cambodia, East Timor, Kosovo, and Sierra-Leone. Instructively, these tribunals are established with the consent of the state on whose territory the atrocities were committed. Also, the national legal aspect of the hosting states are included in the establishment of the ad-hoc tribunals and in the implementation of their judgements.

The process of punishing offenders or those breach international codes of conduct in the period of armed conflict got a further boost with the adoption of the 1998 Rome Statute for an International Criminal Court.

3.3.1 International Criminal Court

This court came into existence on the 1st of July, 2002 following the coming into force of its founding treaty, the Rome Statute of the International Criminal Court. It is established as a permanent international tribunal to prosecute individuals that have been accused the various crimes of armed conflicts or war crimes, as spelt out in the 1949 Geneva Conventions.

The court's mandate combines the prosecution of cases in violation of both international human rights law and international humanitarian law. It is restricted to prosecute crimes committed on or after the date of its establishment. According to Article 17 of the 1998 Rome Statute of the International Criminal Court:

> The Court is intended to complement existing national judicial systems and can exercise its jurisdiction only if national courts are genuinely unwilling or unable to investigate or prosecute such crimes.

The court's authority does not enjoy universal jurisdiction. Basically, the prosecution of cases is guided by the following:

1. If the accused is a national of a State Party or a State otherwise accepting the jurisdiction of the Court;

2. If the crime took place on the territory of a State Party or a State otherwise accepting the jurisdiction of the Court; or

3. The United Nations Security Council has referred the situation to the Prosecutor, irrespective of the nationality of the accused or the location of the crime.

Structure of the Court

The court is divided into four units; presidency, judges, registry

The Presidency: this office is responsible for the overall administration of the Court, with the exception of the Office of the Prosecutor, and for specific functions assigned to the Presidency in accordance with the Statute. The Presidency is composed of three judges of the Court, elected to the Presidency by their fellow judges, for a term of three years.

Judicial Divisions: consist of eighteen judges organized into the Pre-Trial Division, the Trial Division and the Appeals Division. The judges of each Division sit in Chambers which are responsible for conducting the proceedings of the Court at different stages. Assignment of judges to Divisions is made on the basis of the nature of the functions each Division performs and the qualifications and experience of the judge. This is done in a manner ensuring that each Division benefits from an appropriate combination of expertise in criminal law and procedure and international law.

Office of the Prosecutor: this is responsible for receiving referrals and any substantiated information on crimes within the jurisdiction of the Court, for examining them and for conducting investigations and prosecutions before the Court.

The Registry: this office is responsible for the non-judicial aspects of the administration and servicing of the Court. The Registry is headed by the Registrar who is the principal administrative officer of the Court. The Registrar exercises his or her functions under the authority of the President of the Court.

3.3.2 International Criminal Tribunal for Rwanda

This court was established in November 1994 through Resolution 955 of the United Nations Security Council for the purposes of prosecuting individuals culpable for the crimes of genocide and other such related offences that violate international law.

Its mandate reads thus:

> Recognizing that serious violations of humanitarian law were committed in Rwanda, and acting under Chapter VII of the United Nations Charter, the Security Council created the International Criminal Tribunal for Rwanda (ICTR) by resolution 955 of 8 November 1994. The purpose of this measure is to contribute to the process of national reconciliation in Rwanda and to the maintenance of peace in the region. The International Criminal Tribunal for Rwanda was established for the prosecution of persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda between 1 January 1994 and 31 December 1994. It may also deal with the prosecution of Rwandan citizens responsible for genocide and other such violations of international law committed in the territory of neighbouring States during the same period.

It is believed that the establishment and working of this tribunal has had implication for peace and justice on the continent of Africa. According to the ICTR, the relevance for peace and justice are:

Lessons Learnt: African countries must absorb the lessons of the Rwanda genocide in order to avoid a repetition of the ultimate crime on the continent. Weak institutions in many African countries have given rise to a culture of impunity, especially under dictatorships that will do anything to cling to power.

Evolution of Political and Legal Accountability: It is usually individuals in power or authority that can in practice commit genocide and crimes against humanity. This is the first time high-ranking individuals have been called to account before an international court of law for massive violations of human rights in Africa. The Tribunal's work sends a strong message to Africa's leaders and warlords. By delivering the first-ever verdicts in relation to genocide by an international court, the ICTR is providing an example to be followed in other parts of the world where these kinds of crimes have also been committed.

Cooperation of African Countries: Several countries in Africa have increasingly cooperated with the Tribunal in the discharge of its mandate. There appears to have been a progressive realization in these countries that they cannot allow fugitives from international justice in their domain.

Enforcement of Prison Sentences: The Tribunal prefers, to the extent possible, enforcement of its sentences in Africa, for socio-cultural reasons. This will also have greater deterrent effect in the continent. By providing jails for the Tribunal's genocide convicts, African countries would be demonstrating a serious commitment to the rule of law.

Political, Moral and Material Support: This essential for the court to perform its mandate. African countries and Governments should make the point that the lives of these victims are as important as those of victims of mass atrocities everywhere by giving a higher profile to the work of the International Tribunal for Rwanda. The Tribunal's work is providing important precedents for the future International Criminal Court and various national jurisdictions. It is making a fundamental contribution to international peace and justice in the twenty-first century

3.3.3 International Criminal Tribunal for the former Yugoslavia (ICTY)

This is the first war crimes court created by the United Nations, and also the first international war crimes tribunal after the Nuremberg and Tokyo tribunals.

This tribunal is also an ad-hoc court established by the United Nations Security Council in 1993 through Resolution 827 to prosecute the perpetrators of crimes considered to be serious crimes against humanity during the war years in former Yugoslavia. Expectedly, the court's jurisdictions are four, they are;

1. Grave breaches of the Geneva Conventions;
2. Violations of the laws or customs of war;
3. Genocide;
4. Crime against humanity

Specifically, the court was established to investigate and try individuals accused for such breaches as murder, torture, rape, destruction of property, enslavement and such other related crimes. In pursuing its mandate, the ICTY aims to render justice to the victims and deter future occurrence of such crimes.

According to the ICTY, the achievements include the following:

Holding Leaders Accountable: The tribunal holds leaders accountable for their actions irrespective of their positions. Hence, the tradition of impunity has been replaced by responsibility and responsiveness even in war situations. In fulfilling its mandate, the tribunal has indicted Heads of State, Prime-Ministers, government ministers and various leaders and stakeholders to the Yugoslav conflicts.

Developing International Law: With its activities since inception, the tribunal has contributed immensely to the development of international humanitarian law. The achievements of the tribunal contributed to the establishment of criminal courts for the Rwandan, Sierra-Leonean, and other such tribunals around the world.

Bringing Justice to Victims: Victims have witnessed the prosecution of the perpetrators of heinous crimes against them. The tribunal has indicted one hundred and sixty-one accused for crimes committed against thousands of people during the conflicts in Croatia, Bosnia and Herzegovina, Kosovo and the former Yugoslav Republic of Macedonia.

Giving Victims a Voice: The victims of the crimes have also had their days in court; they had the opportunity of relaying the horrendous and harrowing experiences they had. The testimonies are court transcripts for future references.

Self-Assessment Exercise
Explain the role of the international criminal court in combating international crimes.

4.0 CONCLUSION

The unit provides insight into the fundamentals of international criminal law. In the unit, we are made aware of the specific crimes that attract prosecution under international criminal court. Furthermore, explanations are provided regarding the institutions that implement breaches of international criminal law

5.0 SUMMARY

The unit commenced with the history of international criminal court. Here, we are made aware that there have always been means of prosecuting individuals that breach the code of conducts in the periods of war, however, the means were never really effective until the establishment of a permanent International Criminal Court through the Statute of Rome in 2002.

6.0 Tutor-Marked Assignments

1. Briefly explain the four international crimes enunciated at the 1949 Geneva Conventions.

2. Explain four achievements of the International Criminal Tribunal for Rwanda.

3. Briefly explain the structure of the International Criminal Court.

7.0 References/Further Reading

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Shaw, M. (2008). *International Law*. Cambridge: Cambridge University Press

Solis, G. (2010). *The Law of Armed Conflict: International Humanitarian Law in War.* Cambridge: Cambridge University Press.

See: www.icc-cpi.int

See: www.unictr.org

See: www.icty.org

UNIT 5: International Humanitarian Law

Main Content

1.0 INTRODUCTION

This unit deals with managing one of the essential characteristics of inter-state relations; war and conflicts. In the course of human history, war and conflicts have remained constant in inter-state relations, and this is basically because of the clashes of interests pursued by every state. In the pursuit of such national interests, alliances are formed and broken, and in the process, inter-state wars or conflict become the natural consequence.

With the knowledge of the fact that wars and conflict are inevitable in international relations, actors in the system continue to evolve mechanisms for managing wars and conflict. The reasons for this is to ensure that man does not become barbaric against fellow man, and partly because of the need to protect those that are not directly involved in the war, and those that are harmless in the course of the war.

The unit would examine the meaning of international humanitarian law and all the efforts to ensure its tenets are sustained.

2.0 OBJECTIVES

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

- Explain the tenets of international humanitarian law
- Present empirical cases of prosecution for war-crimes
-
- Present the various forms of conflicts under the purview of international humanitarian law.

3.0 MAIN CONTENT

3.1 Dynamics of International Humanitarian Law

International humanitarian law can simply be defined as the law of armed conflict or law of war and their effects. The goal of international humanitarian law is to limit the effects of war on people and property and to protect particularly vulnerable persons and civilians.

Incidentally, States have always been limited in the ways in which they conduct armed conflicts; some of these measures are adherence to national laws and bilateral treaties and the observance of customary rules. However, throughout history these limitations on warfare varied greatly among conflicts and were ultimately dependant on time, place, and the countries involved. Not until the 19th century was there a successful effort to create a set of internationally recognized laws governing the conduct and treatment of persons in warfare. The role of the International Committee of the Red Cross cannot be discountenanced in the development.

Henri Dunant (founder of the International Committee of the Red Cross) in the 1850s made remarkable efforts in helping with the emergence of the first universally applicable codification of international humanitarian law: the Geneva Convention of 1864. Afterwards, international humanitarian law evolved over the course of a century and a half. Specifically, The Hague Conventions of 1899 and 1904 limited the means by which belligerent states could conduct warfare.

With the passage of time though, the conventions had exceeded their usefulness because they could no longer match the brutality with which wars were conducted. World War I (1914-1918) witnessed the first large-scale use of poison, aerial bombardments and capture of prisoners of war. World War II (1939-1945) saw civilians and military personnel killed in equal numbers. The trend meant that the new international treaties on armed conflict were made in response to the many new methods of warfare.

Following World War II, the Geneva Conventions of 1949, as well as its two Additional Protocols of 1977, further limited the means of warfare and provided protections to non-combatants civilians, and prisoners of war. In the aftermath of the atrocities of the Holocaust, the Genocide Convention of 1948 outlawed acts that were carried out with the intention of destroying a particular group. The Charter of the United Nations stipulates that the threat or use of force against other states is unlawful, except in the case of self-defence.

In addition to these conventions, international humanitarian law has been developed and refined through several statutes and precedents laid down by international tribunals set up to try war criminals, as well as advisory opinions of the International Court of Justice.

International humanitarian law is also sometimes described as the "law of armed conflict" or the "laws of war". International humanitarian law can be defined as

> a framework of rules that restricts the means and methods of warfare and protects people who are not participating in the fighting, in order to limit the effects of armed conflict for humanitarian reasons.

According to Starke (1977), "laws of war",

> consist of the limits set by international law within which the force required to overpower the enemy may be used, and the principles thereunder governing the treatment of individuals in the course of war and armed conflict.

International humanitarian law does not regulate when or why a State may use force, or determine whether an armed conflict is legal or illegal, and the rules of international humanitarian law apply equally to all sides regardless of who started the conflict. We can therefore summarise the purpose of international humanitarian law in the following ways:

1. To protect persons who are not or are no longer taking part in the hostilities;
2. To restrict the methods and means of warfare employed
3. To resolve matters of humanitarian concern resulting from war.

International humanitarian law is made up of a body of treaties. Many of the rules set down in these treaties have become so widely accepted that they are now regarded as customary international law and binding on all States. The core international humanitarian law treaties are the four 1949 Geneva Conventions, concluded after World War II, which cover:

1. wounded soldiers on the battlefield;
2. wounded and shipwrecked at sea;
3. prisoners of war;
4. civilians under enemy control.

These four treaties have been universally adopted by all States. The Geneva Conventions have been supplemented by two Additional Protocols adopted in 1977 relating to the protection of victims of armed conflicts, and a third Additional Protocol adopted in 2005 specifying an additional emblem that may be used by organisations of the Red Cross. Additionally, some treaties exist to either prohibit or restrain the use of specific weapons. These include;

anti-personnel mines;

exploding or expanding bullets;

blinding laser weapons;

cluster munitions.

Other important international humanitarian law treaties regulate the types of weapons that can be used in armed conflict. These include;

the 1972 Biological Weapons Convention;

the 1980 Conventional Weapons Convention and its five protocols;

the 1993 Chemical Weapons Convention;

the 1997 Ottawa Convention on anti-personnel mines.

It is important to note that international humanitarian law operates on the basis of the "principle of distinction". This simply means that all belligerents focus their attacks strictly on military targets. It must be ensured that civilians and civilian objects are safe from the direct consequences of hostilities.

Also, and conscious of the facts that the civilian population may not be completely free from military assault, the spirit and letter of international humanitarian law demands that precautions are taken to limit cases of civilian casualties. In the event of fore-knowledge about collateral damage to civilian objects and huge deaths to the civilian population as compared to the military, international humanitarian law compels a cancellation or suspension of such operations.

International humanitarian law aims to limit the suffering caused by war by forcing parties engaged in a conflict to:

a. engage in limited methods and means of warfare;

b. differentiate between civilian population and combatants, and work to spare civilian population and property;

c. abstain from harming or killing an adversary who surrenders or who can no longer take part in the fighting;

d. abstain from physically or mentally torturing or performing cruel punishments on adversaries.

Self-Assessment Exercise
Explain your understanding of international humanitarian law.

3.2 Types of Armed Conflict

In order to avoid contradictions and to adequately interpret the law, the concept of armed conflict as it pertains to the application of international humanitarian law is defined and clarified by the various conventions and protocols.

In that context therefore, international humanitarian law categorises armed conflict into two, viz; international armed conflict and conflict of non-international nature. While the four Geneva Conventions of 1949 and 1977 Additional Protocol I concern international armed conflicts, Common Article 3 to the 1949 Geneva Conventions and the 1977 Additional Protocol II concern armed conflicts of a non-international character. Invariably, the four 1949 Geneva Conventions and Protocol I deal extensively with the humanitarian issues raised by such conflicts. The whole body of law on prisoners of war, their status and their treatment is geared to wars between States (Third Convention). The Fourth Convention states inter alia the rights and duties of an occupying power, i.e. a state whose armed forces control part or all of the territory of another state. Protocol I deals exclusively with international armed conflicts.

For purposes of clarity, Common Article 2 of the 1949 Geneva Conventions states that:

> In addition to the provisions which shall be implemented in peace-time, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.

Furthermore,

> The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

Internationalised Armed Conflicts

Under Protocol I of 8 June 1977, *wars of national liberation* must also be treated as conflicts of an international character. The relevant part of the article states that such conflict shall be treated as having international character if the people are engaged in a struggle “against colonial domination and foreign occupation and against the racist regimes in the exercise of the right of peoples to self-determination”.

A war of national liberation is a conflict in which a people is fighting against a colonial power, in the exercise of its right of self- determination. Whereas the concept of the right of self-determination is today well accepted by the international community, the conclusions to be drawn from that right for the purposes of

humanitarian law and, in particular, its application to specific conflict situations are still much debated.

If a state intervenes with its armed forces on the side of another state in a non-international armed conflict, it is generally agreed that this does not change the qualification of the conflict. An armed conflict confined geographically to the territory of a single state can, however, be qualified as international if a foreign state intervenes with its armed forces on the side of the rebels fighting against government forces.

The majority of today's armed conflicts take place within the territory of a state: they are conflicts of a non-international character, yet they qualify as international armed conflicts. A common feature of many such internal armed conflicts is the intervention of armed forces of another state, supporting the government or the insurgents. For the purposes of clarity, the 1907 Hague Convention IV defines occupation thus:

> Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised.

Also, there is the situation of occupation, which refers to the invasion of the territory of a sovereign state by another sovereign state. Article 2 of 1949 Geneva Convention IV on the issue of occupation reads in part:

> The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

In effect, a single incident involving the armed forces of two states may be sufficient to be considered an international armed conflict. However, the issue of border confrontations involving the members of the armed forces of two states may be difficult to be classified as an international armed conflict because of the confusion in determining whether or when the threshold is reached.

Non-international Armed Conflicts

In the perception of international humanitarian law, a non-international armed conflict is deemed to have taken place when there is a “protracted armed violence between governmental authorities and organized armed groups or between such groups within a State”. In a situation where a non-state armed group engages in a protracted armed violence with a state, and operates from across an international border, this is regarded as a non-international armed conflict, and treated as so.

In essence, a non-international armed conflict is deemed to have taken place when:

1. when non-state armed groups carry out protracted hostilities;
2. when the groups are organised.

For the purposes of applying international law to the adjudication of cases bothering on non-international armed conflicts, the substantive rules of international humanitarian law governing non-international armed conflicts are derived from Article 3 of the 1949 Geneva Conventions which obliges the parties to an internal conflict to respect some basic principles of humanitarian behaviour already mentioned above. Article 3 is binding not only on governments but also on insurgents, without, however, conferring any special status upon them.

Additional Protocol II of 1977 supplements Article 3 Common to the Geneva Conventions with a number of more specific provisions. This is a welcome contribution to the strengthening of humanitarian protection in situations of internal armed conflict. Protocol II has, however, a narrower scope of application than Common Article 3. It applies only if the insurgent party controls part of the national territory.

International and Regional Instruments for Protection

Without a monitoring body like international human rights law, and in order for the rules of international humanitarian law to be alive and respected, there are measures through which adherence to the dictates of international humanitarian law are ensured.

The Geneva Conventions and the Additional Protocols require the States party to adopt a number of measures in order to assure compliance with these treaties. Some of these measures have to be taken in peacetime, others in the course of an armed conflict.

Find below, three of the obligations of States in ensuring compliance with the rules of international humanitarian law:

1. **Instructions to and Training of the Armed Forces:** The complex set of obligations arising out of the Conventions and the Protocols must be translated into a language which is clearly understandable to those who have to comply with the rules, in particular the members of the armed forces, according to their ranks and their functions. Good manuals on humanitarian law play a decisive part in effectively spreading knowledge of the law among military personnel. Rules which are not understood by or remain unknown to those who have to respect them will not have much effect.
2. **Domestic Legislation on Implementation:** Many provisions of the Geneva Conventions and of their Additional Protocols imperatively require each State Party to enact laws and issue other regulations to guarantee full implementation of its international obligations. This holds particularly true for the obligation to make grave breaches of international humanitarian law (commonly called "war crimes") crimes under domestic law. In the same way, misuse of the red cross or the red crescent distinctive emblem must be prosecuted under domestic law.

3. **Prosecution of persons who have committed grave breaches of international humanitarian law:** Such persons must be prosecuted by any

State party under whose authority they find themselves. That State may, however, extradite the suspect to another State Party which is willing to prosecute him. Individuals accused of violating humanitarian law may also be tried by an international criminal court. The United Nations Security Council has established two such courts: the Tribunals for the former Yugoslavia and for Rwanda. On 17 July 1998, a Diplomatic Conference convened by the United Nations in Rome adopted the Statute of the International Criminal Court.

3.3 Relationship between International Humanitarian Law and International Human Rights Law

The concept, 'humanitarian' used loosely can be used as a synonym of 'human rights'. However, under international law, there are differences between them. Although both are concerned with the protection of the individual, the two bodies of law apply to different circumstances and possess slightly different objectives. The main distinction between the two bodies of law is that humanitarian law applies to situations of armed conflict, while human rights protect the individual in times of both war and peace. Humanitarian law aims to limit the suffering caused by war by regulating the way in which military operations are conducted.

Both systems of law are usually applied in the cases of armed conflicts and war. Compliance with the rules of both systems of law is required during as situation of armed conflict. However, the relationship between both systems of law is complex, primarily because of the cross-cutting nature of their application and the situations they are relevant to.

In order to prevent anomalies, international actors have adopted various approaches in dealing with the complex nature of the relationship between international humanitarian law and international human rights law. These approaches are:

1. The *Lex Specialis* Approach

This can be understood on the basis of the identification by the International Court of Justice, of three scenarios that establish the cross-cutting interaction between international humanitarian law and international human rights law. This is explained below:

> As regards the relationship between international humanitarian law and human rights law, there are thus three possible solutions: some rights may be exclusively matters of international humanitarian law; others may be exclusively matters of human rights law; yet others may be matters of both these branches of international law. In order to answer the question put to it, the Court will have to take into consideration both these branches of international law, namely human rights law and, as lex specialis, international humanitarian law.

In other words, the principle of *lex specialis* should be applied in the cases where there are contradictory provisions. Thus, based on the fact that international humanitarian law was specifically designed to be applied to situations of armed conflicts and war, it rules should be applicable over that of other laws or general rules in issues related to armed conflict.

2. The Complementary and Harmonious Approach

In this instance, the position of The Human Rights Committee is useful. According to the committee:

> the Covenant applies also in situations of armed conflict to which the rules of international humanitarian law are applicable. While, in respect of certain Covenant rights, more specific rules of international humanitarian law may be especially relevant for the purposes of the interpretation of Covenant rights, both spheres of law are complementary, not mutually exclusive.

This approach seeks to explain that both international human rights law and international humanitarian law are two branches of law that have a common objective of protecting persons, and therefore they should be harmonised and interpreted in a way that they complement and reinforce each other. Thus, they can be applied interchangeably such that, some cases, international humanitarian law will specify the current rules and their interpretation, and in other cases it will be international human rights law that would interpret existing rules. This exercise would take into cognizance, the branch of law that is more detailed and more adaptable to each situation.

In the final analysis, it is proposed that it is not proper to choose one branch of law over the other, instead efforts should be geared towards both simultaneous and harmonizing application.

3.4 Rules of IHL

1. Persons not taking part in hostilities shall be protected and treated humanely.
2. It is forbidden to kill or injure an enemy who surrenders or who is not participating in combat.
3. The wounded and sick shall be cared for and protected by the party to the conflict which has them in its power.
4. Captured combatants and civilians must be protected against acts of violence and reprisals. They shall have the right to correspond with their families and to receive relief.
5. No one shall be subjected to torture, corporal punishment or cruel or degrading treatment.

6. Parties to a conflict and members of their armed forces do not have an unlimited choice of methods and means of warfare.
7. Parties to a conflict shall at all times distinguish between the civilian population and combatants. Attacks shall be directed solely against military objects.

Self-Assessment Exercise

Explain some of the basic rules of international humanitarian law

3.5 Options for Implementation

For the purposes of implementing the rules of international humanitarian law, the ICRC recommends the following:

1. Measures must be taken to ensure respect for international humanitarian law: States have an obligation to teach its rules to their armed forces and the general public. They must prevent violations or punish them if these nevertheless occur. In particular, they must enact laws to punish the most serious violations of the Geneva Conventions and Additional Protocols, which are regarded as war crimes.

2. The States must also pass laws protecting the Red Cross and Red Crescent emblems.

3. Measures have also been taken at an international level: tribunals have been created to punish acts committed in two recent conflicts (the former Yugoslavia and Rwanda).

4. An international criminal court, with the responsibility of repressing *inter alia* war crimes, was created by the 1998 Rome Statute. Whether as individuals or through governments and various organizations, we can all make an important contribution to compliance with international humanitarian law.

4.0 CONCLUSION

The importance of International Humanitarian Law cannot be overemphasized, considering its importance in managing breaches and violation of the rules of engagement in the course of both international and non-international armed conflicts. The unit has presented in bold relief the major issues pertaining to the management of armed conflict in the modern world.

5.0 SUMMARY

The unit demonstrates the necessity for the management of armed conflict. Specifically, it explains the nature of international humanitarian law and draws the distinctions between it and international human rights law. Furthermore, the unit also presents the various typologies of armed conflicts.

4.2 Tutor-Marked Assignment

1. Explain the distinctions between international humanitarian law and international human rights law.

2. What are the obligations of states in ensuring compliance with international humanitarian law?

3. What are the differences between international armed conflict and non-international armed conflict?

7.0 References/Further Reading

Starke, G. (1977). *Introduction to International Law*. London: Butterworths.

See: The Geneva Conventions

Module 3: Evolution and Development of International Organisations

Unit 1: History of International Organisations

Unit 2: Approaches to the Study of International Organisations

Unit 3: Nature and Character of International Organisations

Unit 4: Brief Notes on Ten International Organisations

Unit 5: International Organisations Within the Context of International Law

Unit 1: History of International Organisations

Main Content

1.0 INTRODUCTION

The emergence of the concept of international organisation as an actor in the international system is one of the attempts by States to enhance communication, collaboration and cooperation in the international system. Basically, the idea behind the formation of international organisations is to ensure the pooling of ideas and resources in order to achieve common goals and objectives. These goals are variously defined by the specific organisations. The goals may include the attainment and consolidation of peace, or for the purpose of advancing economic development.

This unit would explore the basic issues related to the nature and character of international organisations as major players in international politics, by delving into the history, the types and their functions.

2.0 OBJECTIVES

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

- Understand the development trajectory of the concept of international organisation.

- Identify the main issues on the agenda of most international organisations

- Appreciate the importance of international organisations in the workings of the international system.

3.0 MAIN CONTENT

3.1 History

It is commonly accepted that the emergence of international organisations in its current format is traceable to the creation of the League of Nations, regarded as "the first period of collaboration" (Mangone, 1954). But according to Archer (2001), "the accounts of the rise of international organizations rarely begin historically in 1919 ...". At this point though, there was the necessity for collaboration and cooperation among actors in the system, hence the gathering at the Versailles Peace Conference by the triumphant side at the end of the First World-War. This also included participation by various national groups and non-government organisations desirous of a peaceful world, through negotiations and compromises and the elevation of issues of 'low-politics' to international relevance.

The most critical subject of the gathering was the intention to "create a new, permanent world organization that would deal with the problem of peace and security and with economic and social questions" (Archer, Ibid.). Archer's (Ibid.) summary of the gathering goes thus:

> They drew on almost a century of experience of peacetime co-operation between European states and some half-century of the work of the public international unions. Their activity was underpinned by the existence of private international associations, was foreshadowed in the Hague Conferences of 1899 and 1907 and in plans advanced before and during the war, and was moulded by the wartime experience of co-operation. The organizations they established- the League of Nations and the ILO being the leading ones- had structures determined by this background.

Specifically, the gathering was intended as a global coalition emerging from an intergovernmental meeting of heads of state and government focussed on confronting the challenges faced by international peace and security. The concern therefore was about coming up with a peace treaty and coordinating and managing inter-state relations, in order to ensure there was no possibility of the re-occurrence of the First World-War with its devastating effects on humanity.

Historically, the whole idea of setting-up international organisations for the purposes of tackling mutual challenges at a global scale did not arise until the Versailles Treaty in 1919 basically because the nature and character of the international system prior to that period did not permit

such seemingly grandiose association of states. The most important point to note in this respect is the fact that the system was Euro-centric in character. Thus, with the exclusion of the rest of the world, and Europe acting as the centre of international relations, frictions, and wars were the essential characteristics of the system. The competition for resources and territories among European powers was rife, and often led to wars. In such a confined environment, it was almost impossible to evolve an efficient system of tackling security challenges. This was not unconnected with the determination of each to protect its own sovereign interest.

Arising from the idea of protecting the sovereign interest, the dominant discourse of the era was the achievement of a unified Christian Europe. Despite the threat posed by the advancing Ottoman Empire, the gradual inability of the Papacy and the Holy Roman Empire meant that it was an impossible task to achieve the religious and political unification of the whole of Europe. The saving grace was a resort to the doctrine of a God-given natural law which supersedes that of humanity, and thus, provided the opportunity for the Christian political class and their subjects to savour the soothing effects of a religious collective.

The warm relationship did not linger for long before the thirty-year war (1618-1648) took place. Medieval Europe was visited with this spate of violence when philosophers of the time began to question the rationale for God-given natural law, and the various Christian princes began to contend for political relevance, thereby igniting various civil-wars. One of the fundamental challenges of the period was the complex nature of the relationship between Church and the Sovereign.

This was somewhat settled with the Peace of Westphalia, regarded as putting a substantive stop to the thirty-year war. The Peace of Westphalia in 1648 and the subsequent Treaty of Utrecht in 1713 defined the nature and character of the European state system, which was equally adopted by the rest of the world as the standard for the recognition of States. This system recognized the right of states with defined geographical boundaries, including more or less settled populations (territoriality), to have their own forms of government (non-intervention) and to conduct relations with one another on an equal legal basis (sovereign equality).

This was formerly by the gradual extinction of the natural law system as the legitimate and acceptable mechanism for guiding and conducting relations between and among states. In its place, was the emergence of the concept of international law which was founded on the practise of states voluntarily making mutual agreements based either on treaty or on custom. Accordingly, the Treaty of Westphalia demonstrates the immutability of the power of governments as the fundamental source of law, order and protection of rights in the international system.

The crucial turning point was the Peace of Westphalia, 1648, ending the Thirty Years War, which had torn apart late medieval Europe.

Despite the benefits of the Treaty of Westphalia, one of which was the emergence of the sovereign state system, it was still impossible to establish networks of

international organisations until the twentieth-century. It has been argued though, that the period lacked four main characteristics that would have provided the avenue for the creation of international organisations. These characteristics include the absence of:

1. the existence of a number of states functioning as independent political units;

2. a substantial measure of contact between these subdivisions;

3. an awareness of problems that arise from states' co-existence;

4. their recognition of 'the need for creation of institutional devices and systematic methods for regulating their relations with each other'.

Interestingly, the states operated as independent political units after the Treaty of Westphalia, which encouraged diplomatic activities in the form of trade and travels, and continued till the eighteenth century, but the form of association did not provide sufficient enabling environment for the formation of international organisations. The most prominent form of contact was warfare, which did not allow for the formation of organisations that could ensure peace and security. Research record shows that there were sixty-seven major wars between the period 1650 and 1800, in which major powers were solidly involved as belligerents.

While the European state system did not show significant steps towards the creation of an international organisation that could provide the platform for integrating sovereign states, the extra-European state system were not different in this respect. The feudal Chinese Empire and subsequent Manchu Dynasty, the Kautilya era and subsequent Mogul Empire in India, the Turkish Ottoman Empire, and others though engaged in trade, travels, alliances, some forms of diplomacy, but were all significantly engaged in wars. Like the European state-system, none of these systems established permanent institutions of international organisations.

In summary, the systems of the period, whether in Europe or elsewhere was characterised by the concept of 'Us against Them', in which each political unit attempted to exert powers over others. Relationship was almost always belligerent in nature, and warfare was characteristic of the period. This is however not to rule out the fact that some other forms of relationship, especially diplomacy equally took place. The Greek city-states are known to be at the fore-front of the diplomatic relationship of the period, and essentially established the platform upon which modern diplomacy has been built. However, all of these efforts did not lead to the formation of a permanent international organisation that would accommodate the membership of the various political units in the system.

We shall now turn to the fundamental issues that led to the creation of permanent international organisations.

Self-Assessment Exercise
Describe the character of the international system before the 20th century.

3.2 Peace and Security

The first attempt at creating an association of sovereign states committed to finding solution to the challenges of peace and security in the international system is arguably the Congress of Vienna, which took place between 1814 and 1815. This is described by Archer (Ibid.) in the following words:

> ... the Vienna Congress of 1814-15 codified the rules of diplomacy, thereby establishing an accepted mode of regular peaceful relationships among most European states. This was an important development in one of the key institutions governing interstate relations, turning diplomacy from a rather discredited activity to one that served the international system as well as the individual state.

The stage had been set for the transformation of the international system with both the American Revolution (1776) and the French Revolution (1789). These revolutions brought about changes in the role of the state as a political entity. Prior to the revolutions, the European system operated on the basis of fusion in the relationship between the state and the ruler. The existence of the state was tantamount to the existence of the ruler. Thus, the system was based on the King's parliament, King's court, King's army, King's peace, etc. With the revolutions, the state became the instrument of the popular will and no longer the property, instrument or trust of the Crown. This is clearly spelt out in the American Declaration of Independence, thus:

> Governments are instituted among Men, deriving their just Powers from the Consent of the Governed, that whenever any form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it.

Expectedly, the impact of the revolutions had reverberating effects on the conditions in European international relations. In the first place, Britain immediately became weakened by the independence of America; not only through the loss of colonial territories, but also human resources to the war of independence. This had negative psychological effects on the perception of the country, by both foes and allies. Secondly, the process of coming together by Austria, Britain, Prussia and Russia to halt Napoleon's match on Europe marked the beginning of the ideology of the balance of power system.

Before the Congress of Vienna, the tradition was such that states' met to sign peace treaties at war-end, in order to institutionalise prevailing conditions, and such that belligerents can begin a new era of peaceful relations. In contrast, the Vienna

Congress was a meeting in time of peace, so as to forestall the possibilities of war. As against previous practises, war was meant to be controlled before its occurrence.

Subsequently therefore, European Powers met after 1814 to discuss the issues of Greek independence and the conditions in the Italian peninsula in order to form a common front that would forestall the incidence of war. Again, in contrast to the former arrangements, the meetings for peace became a regular occurrence, drawing participants from many European countries. This was also not immune from facing challenges, one of which was the diplomatic struggle between Britain and the members of the Holy Alliance regarding the mechanism and methods for common action.

Archer (Ibid.) summarises the outcome of the meetings of the Congress thus:

> The states represented at the Congress of Vienna took opportunity of standardizing and codifying the rules of diplomatic practise and pronouncing on other problems in the international system, such as slavery. Their major contribution, however, was their mutual promise to ‘concert together’ against any future threat to the system.

In the final analysis, the congress system was a consultation of the Great Powers that focussed on resolving problems as they arose as against making efforts to pre-empt these problems at their regular meetings. It is argued that despite the existence of their various fora provided by the meetings, decisions about war and peace in the period were made in the chanceries of Europe. Though, the congress meeting was an improvement on traditional bilateral diplomacy because it allowed for a gathering of representatives of various governments with various interests- indeed, it was the beginning of multilateral diplomacy.

Bloy (2013) explains it thus:

> The Congress of Vienna was seen as the first of a series of Congresses which have been labelled as the "Congress System" although it was never a system. Diplomats felt that they should 'stick together' in peacetime to preserve the peace. It was a "gentlemen's agreement"- verbal, and there was no constitution; it was decided that when and where conflict could lead to international war, a congress would meet to talk it out first.

Others that follow the Congress of Vienna in quick succession include:

1818 Congress of Aix-la-Chapelle
1820 Congress of Troppau
1821 Congress of Laibach
1822 Congress of Verona

Aside of the Crimean War (1856), Schleswig-Holstein War (1864), the Seven Week War (1866) and the Franco-Prussian War in (1871) the various congresses in Europe ensured that the international system experienced a more than three decades hiatus of long-drawn international wars of immense proportions. Incidentally, efforts were made by the Great Powers to avoid conflicts in the following congresses; the Berlin Conference of 1878 after the Russo-Turkish War, attempted a more long-term settlement of the Balkan question; the Berlin Congress of 1884-5 agreed on the division of Africa; and the Algeciras Conference in 1906 temporarily relieved pressure over rival claims in North Africa.

It should be noted that though these efforts were geared towards maintaining international peace and security, the desire of each state to project and promote its national interests often still test the will of the system to persevere and avoid conflicts. Specifically, the Great Powers continued to aspire for the expansion of their empires, their alliances, military and material resources. Hence, the continued relevance and development of the congress system.

One of the major developments that tested the relevance of the congress system was the expansion of the international system, that transformed from the Euro-centric system to the global system of states. A factor pressing states in this direction was the internationalization of the European system. The six stages of international system change are:

1. The admission of the United States of America into the system
2. The recognition of the new Latin American states in 1823
3. The admission of the Ottoman Empire in 1856
4. The joining of the international system by Japan
5. The imposition of diplomatic relations on China by Britain in the mid-nineteenth century.
6. The decolonisation process in Africa.

The expansion of the system was a difficult time for European Great Powers throwing them into a dilemma of either recognising the importance of other extra-European powers and accommodating them, or ignoring them, and therefore expecting the possibility of crisis.

The substantive expansion of the international system became apparent with the Hague conference of 1898 that discussed the importance and necessity for disarmament. It was an opportunity to admit the newly recognised members of the international system into the system

and processes. The second Hague conference in 1907 had a higher number of attendees, and with such encouragement, it became glaring that global coalition against threat to international peace and security could be achieved.

One of the landmark steps taken in this direction was the establishment of a panel of arbitrators that would provide services on a regular basis, as the occasion demands. Secondly, the conference was able to adopt a convention for the Pacific Settlement of International Disputes. This also inspired the establishment of the Permanent Court of International Justice (PCIJ) and the latter-day creation, International Court of Justice (ICJ).

These new creations and awareness by the members of the international community did not prevent the outbreak of the First World-War. The war was a bitter lesson to the extent that the expansion of the international system, if not properly managed could lead to wars of immense proportions, which would be larger in magnitude than the experiences in Europe and other parts of the world before the creation of the international system. Thus, beyond the concert system of occasional meetings, the Great Powers believed a permanent institution composed of the members of the international community with the aim of maintaining international security could avert possible international wars in the future.

For this purpose, the League of Nations was created as an international organisation to manage the affairs of the international system, in order to prevent the incidence of war as experienced between 1914-1918. Unfortunately, the league failed to achieve its objectives, and thus, the world was thrown into another war between 1939 and 1945. Some of the weaknesses of the League of Nations include;

1. Absence of a standing military force;

2. Non-participation of the United States; exclusion of Russia and Germany;

3. Leadership was provided by weakened Britain and France.

At the end of the Second World-War, and after learning from the experiences of the failure of the League of Nations, the world rose in unison for the establishment of a permanent international organisation that would focus on the maintenance of international peace and security. Thus, at the San-Francisco Conference of 1945, the nations of the world created the United Nations Organisation. Accordingly, the Preamble of the UN Charter reads thus:
"WE THE PEOPLES OF THE UNITED NATIONS DETERMINED

- to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and
- to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and

- to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and
- to promote social progress and better standards of life in larger freedom,

AND FOR THESE ENDS

- to practice tolerance and live together in peace with one another as good neighbours, and
- to unite our strength to maintain international peace and security, and
- to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and
- to employ international machinery for the promotion of the economic and social advancement of all peoples,

HAVE RESOLVED TO COMBINE OUR EFFORTS TO ACCOMPLISH THESE AIMS

Accordingly, our respective Governments, through representatives assembled in the city of San Francisco, who have exhibited their full powers found to be in good and due form, have agreed to the present Charter of the United Nations and do hereby establish an international organization to be known as the United Nations".

In recognition of the weaknesses of the League of Nations, and in the determination to avoid such pitfalls in future, the triumphant side in the Second World-War established and international organisation that accommodates all nations of the world, a standing military force and reserves the rights to enforce its sanctions.

Self-Assessment Exercise
Trace the history of the emergence of the United Nations

3.3 Economic and Social Questions

The creation of permanent international organisations that focus on economic and social questions also have direct links with both the French and American revolutions. In making the state system more responsive to the desires of the mass of the people rather than the rulers, the revolutions created an era of egalitarianism and political liberalism inspired by the Christian ideals of social justice. These revolutions ensured that the ruling class (government) became more involved in the welfare of the citizenry, and indeed, did not limit such involvement to the local environment, but encouraged collaboration across boundaries.

According to Archer (Ibid.):

> During the nineteenth century, the states of Europe were, of necessity, fashioning new means for co-operation over the issues

of peace and conflict and were being faced with a growing need to co-ordinate action in the socio-economic areas of life.

Coupled with the consequences of the political revolution was the industrial revolution on the creation of international organisations. The industrial revolution positively aided the improvement of communication technology, which in no small measure improved the linkages among states, and indeed, citizens across boundaries. Furthermore, travel time was greatly reduced by the revolution in transport. As a result of these developments, representatives of states and delegates united to produce a common front in respect of the management of public life as it concerns international travels, communication, business relationships, welfare, and all other issues that have international dimensions.

The foremost international organisation that emerged from the series of negotiations that focussed on the socio-economic well-being of the citizens of the various states was the International Telegraphic Bureau (1868), which later became the International Telegraphic Union (ITU). This was closely followed by the creation in 1874 of the General Postal Union, which later became the Universal Postal Union. These were closely followed by the creation of the International Bureau of Weights and Measures in 1875, the International Union for the Publication of Customs Tariffs in 1890. With the emergence of the United Nations in 1945, the ranks of international organisations that focus on the socio-economic well-being of humanity became enlarged. In this category are UNESCO, WHO, ICAO, among numerous others.

4.0 CONCLUSION

This unit has focussed on the history of international organisations. The origin is traced to the Congress of Vienna which took place between 1814 and 1815, and the subsequent institutionalisation of the congress system of managing international peace and security. This effort is the precursor of the United Nations.

5.0 SUMMARY

In summary, we can conclude that the unit captures the development trajectory of international organisations. The importance of international organisations should not be lost on students of international relations, because international organisations have developed over the ages as one of the foremost non-state actors in the international system. The unit traces the development by bifurcating the focus into the security conscious and socio-economic conscious international organisations. In the final analysis, we can surmise that the United Nations and all the other forms of security-conscious international organisations are an improvement on the conference system, a task which the League of Nations could not achieve.

6.0 Tutor-Marked Assignments

1. What are the main achievements of the Congress of Vienna?
2. What are the weaknesses of the League of Nations?
3. What were the factors that prevented the creation of international organisations after the Treaty of Westphalia?

7.0 References/Further Reading

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See: American Declaration of Independence

See: United Nations Charter

Unit 2: Approaches to the Study of International Organisation

Main Content

1.0 INTRODUCTION

Like other social-science disciplines, the study of international relations is replete with scientific explanations for interpreting the various interactions that take place in the international system. Following in this tradition, International Relations scholars have based the explanation of the motives, interactions, characteristics and functions of international organisations on the theory of integration. However, there are various approaches to understanding the theory of integration. These approaches provide insight into the workings and *modus operandi* of international organisations. Some of these approaches would be discussed in this unit.

2.0 OBJECTIVES

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

- Explain the various approaches to the study of international organisation

  Link the approaches to the empirical workings of international organisation.

  Distinguish among the various approaches to the study of international organisation.

3.0 MAIN CONTENT

Integration as a concept in the discipline of international relations refers to a process by which state-actors consciously remove and de-emphasize barriers to free-trade and free-movement of people across national boundaries, thereby using economic and

cultural cooperation and collaboration as means of reducing tensions that could lead to international conflicts. The process of integration could be regional as well as global. According to Haas (1958):

> Political integration is the process whereby political actors in several distinct national settings are persuaded to shift their loyalties, expectations and political activities to a new centre, whose institutions possess or demand jurisdiction over pre-existing national states. The end result is a new political community, superimposed over the pre-existing ones.

In a similar tone, Deutsch (1968) submits that integration is "a relationship among units in which they are mutually interdependent and jointly produce system properties which they would separately lack". In other words, integration connotes a process in which participating states transfer their loyalties, expectations and political decision making power to a new centre. Deutsch (Ibid.) points out that four elements must be present as parts of the objectives for integration. These are:

1. maintaining peace;

2. attaining greater multipurpose capabilities;

3. accomplishing some specific tasks;

4. gaining a new self-image and role identity.

Despite the reinforcing roles that economic and social integration play in ensuring peace and deterring conflicts, there are yet different stages of establishing economic and political integration. Accordingly, Balassa (1961) defines economic integration as

> a process and as a state of affairs. Regarded as a process, it encompasses measures designed to abolish discrimination between economic units belonging to different national states; viewed as a state of affairs, it can be represented by the absence of various forms of discrimination between national economies.

There are six stages to attaining economic integration, these are:

1. Ad hoc cooperation
2. Free trade agreements: this aims to eliminate tariffs and all barriers to trade, in order to achieve trade liberalization.

3. Customs union: this functions to extend the free trade agreement with the requirement of harmonization of the external trade policies of the member states as well as imposes a common external tariff on imports from non member states. The free movement of labour and capital among its members-

states are not included. Statutorily, a customs union must meet the following requirements:

a. the elimination of substantially all tariffs and other forms of trade restrictions among the participating countries;

b. the establishment of uniform tariffs and other regulations on foreign trade with non-participating economies.

4. Common market: In addition to the elements of the customs union, a common market includes the free movement of labour, capital and other resources. The increased interdependence expected leads to a pressure for policy harmonization. It hinders member-states' ability to pursue independent economic policies.

5. Partial integration or Economic Union: This stage further strengthens the integration process by adding to the common market, the necessity for harmonizing key policy areas. It involves formally coordinated monetary and fiscal policies, labour market, regional development, transportation and industrial policies. These functions are coordinated by a supranational institution in order to be assured of uniform application of rules.

6. Full integration: As the last stage of the process, hitherto sovereign member-states would be required to formally hand over the major part of their decision making authorities, to be administered by the emergent new super-state, and the former states cease to be subjects of public international law.

Stages of Political Integration

Similar to the stages of economic integration, the stages of political integration commence with intergovernmental cooperation and concludes with full integration, which automatically leads to surrender of sovereignty by member-states. The stages include:

1. Ad hoc intergovernmental political cooperation: this is sometimes expressed through the provision of 'Good-Offices'.

2. Institutionalized intergovernmental cooperation: this is achieved through the setting-up of institutions or specialized agencies to harmonize policies on issues of common concern. Examples can be found in the Organisation for Security and Co-operation in Europe (OSCE) and also, the World Postal Union.

3. Institutionalized intergovernmental coordination: this stage is akin to creating a confederal arrangement wherein lies the existence of coordination and synchronization of activities among member-states. The North Atlantic Treaty

Organisation exemplifies this type of coordination within the security realm, in which the organisation coordinates the defence policies of member-states while equally undertaking joint military missions.

4. Partial or supra-nationalized integration: At this level, the member-states would have passed on the major areas of their sovereignty to a supranational authority which possesses its own autonomy and may follow and pursue policies without objections from member-states. Though the member-states remain formally sovereign, yet the policies of the supranational body overrides their policies in respect of the region, and to some extent, their domestic policies. The European Union is a typical example.

5. Full integration: Instructively, at this stage the member-states cease to be direct subjects of international law having handed over their sovereignty to the supranational entity, which could also be a state-actor, like the United States of America.

Finally, it should be noted that integration is on the one hand a process transferring political and or economic decision making power to a new supra-national entity. This process may pass through all the stages sequentially or begin at any one point. On the other hand, integration could also be a stage where former independent polities have handed parts or all of their sovereignty over to a supra-national body.

Let us now examine the various approaches to integration.

Self-Assessment Exercise
Explain the importance of economic integration to international peace and security.

3.1 Functionalist Thesis

The history of Functionalism as an approach to the study of integration can be traced to the issues that arose principally from the experience of the Second World War and a strong concern about the obsolescence of the State as a form of social organization. Functionalism primarily focuses on "the promotion of common interests and needs shared by states but also by non state actors in a process of global integration triggered by the erosion of state sovereignty and the increasing weight of knowledge and hence of scientists and experts in the process of policymaking". Accordingly, international integration is,

> the collective governance and interdependence between states develops its own internal dynamic as states integrate in limited functional, technical, and/or economic areas. International agencies would meet human needs. The benefits rendered by the functional agencies would attract the loyalty of the populations and stimulate their participation and expand the area of integration.

For functionalism to take place, be effective, efficient and meet the needs of participating states, the following assumptions must be in place:

1. That the process of integration takes place within a framework of human freedom;

2. That knowledge and expertise are currently available to meet the needs for which the functional agencies are built;
3.
4. That states will not sabotage the process.

Essentially, the objective of functionalism is to ensure that peace and security are maintained through a process which shifts focus from the issues of 'high-politics' to 'low-politics'. A situation in which concentration would be more on socio-cultural, technical and other mundane issues, instead of escalating highly political issues to the level of conflicts and confrontation.

Hence the aim of functionalism is to achieve global peace through functional cooperation by the work of international organizations (including intergovernmental and non-governmental organizations). This is conducted through activities that involve taking actions on practical and technical problems rather than those of military and political nature. Furthermore, functionalism tends to play down controversy in resolving political issues in order to stem the risk of escalation. Mitrany (1966) submits,

> ...a process and as a state of affairs. Regarded as a process, it encompasses measures designed to abolish discrimination between economic units belonging to different national states; viewed as a state of affairs, it can be represented by the absence of various forms of discrimination between national economies.

It is assumed that functionalism would provide the enabling environment for development which would in turn lead to "autonomous development" as a consequence of multiplication, expansion, and deepening of functional international organizations. In theory, the process would cascade into the formation of an international government. When this happens, the globe would turn into a federation in which all political units within the system would exercise some form of autonomy, but sovereignty would reside with the global government. This state of affairs is assumed to be capable of ensuring international peace and security.

In effect, functionalism stands as the theoretical basis for the establishment and proliferation of international organisations in the twentieth-century. These organisations continue to strive to protect common interests and objectives.

3.2 Neo-Functionalism

As an approach to state integration, neo-functionalism is the process of integrating actors (the various sector in the national economies of consenting states) in the prospects of achieving spill-over effects to further enhance the process of integration. Neo-functionalism believes there is reduction in the value of nationalism, which encourages the political and interest groups within the state to pursue a welfare state objective that can only be achieved through integration.

Though neo-functionalism focuses on regional integration, it nevertheless assumes that the concerned states would initially integrate in functional and economic areas, after which, in quick succession, states begin to experience increasing rates for more integration in other areas. This is the 'invincible hand' of integration called the spill-over. In essence, the successes and progress experienced in initial integration leads to integration in other areas and issues. Thus, despite the assumption that integration can be resisted, it becomes difficult to stop because of the benefits of cooperation.

In the neo-functionalist thinking, there are two types of spill-over effects that can be derived from integration; these are the functional and the political spill-over. The functional spill-over arises from the interconnectedness of various economic, industrial, technical sectors and issue-areas that emerged through integration. Similarly, political spill-over arises as a result of the extension of the basis of integration from a policy area to the other. This could include; the military, governance process, etc. In the end, the spill-over effects could lead into the formation of supranational governance models, as in the case of the European Union.

The most significant character of neo-functionalism is its non-normative nature; thereby investigating, describing and explaining the process of integration on the basis of the collection and interpretation of empirical data. According to the neo-functionalists, integration is a compulsory and inevitable as against the assumption of a desirable situation proposed by the political elites of member-states. This is so because of the believe that the interdependent nature of the international system compels states to collaborate and cooperate on matters and issues of mutual interests and concerns.

In summary, the neo-functionalists' assumptions on integration are:

1. Nationalism is being replaced by functional cooperation across boundaries;
2. There will always be spill-over effects across various levels of cooperation.

3.3 Rational Choice Institutionalism

This is a theoretical approach to integration, which focuses on the institutions created as a result of actors' penchant for cooperation and collaboration for mutual benefits and the protection of common interests. In coordinating the desire of state actor's in their quest for benefits arising from collaboration, institutions are established to bring

the desires to fruition. Rational Choice Institutionalism is therefore a theoretical approach to the study of institutions which presents actors as beneficiaries of institutions.

The origin of the approach is traceable to the study of congressional behaviour in the US of the late 1970s. The approach borrows largely from the analysis of classical economics theories to investigate and explicate the processes through which institutions are created, and how the political actors (decision-makers) that operate within those institutions behave, and subsequently, present the outcome of strategic interactions among the political actors. Arguably, the interpretation of the interactions is usually complex because of the constraints imposed by the rules within the institutional environment, and the motivating influences of the actors.

In effect, institutions create the rules that determine the decision-making process. Thus, institutions are "principles, norms, rules, and decision-making procedures around which actors expectations converge in a given issue-area". According to Rational Institutionalists:

> ... institutions as themselves being rationally chosen by actors who view the rules as facilitating the pursuit of their goals. Institutionalism claims that the international integration is an institutionalized process in which states incorporate multinational institution in their decisions and create common rules that integrate each other.

As a theory, Rational Choice Institutionalism provides intelligible explanation for the creation and establishment of institutions as a means towards achieving the reduction costs of collective activity which may not be achieved or achieved at a higher costs without the existence of such institutions. Since institutions are created to be enduring, there is a reduction in the possibilities of uncertainty, and therefore provides the opportunities of gaining from mutual exchange.

The assumption is that the coterie of political actors and decision-makers within the institutional setting are driven by their own fixed set of preferences which they aim to maximise. For this purpose, political actors are calculating and strategic in taking decisions by undertaking cost-benefit analysis of every situation and development. Institutions provide systematic coordination of the preferences of the actors by laying down the rules of the game, defining "the range of available strategies and the sequence of alternatives". Given this scenario, the actions and inactions of political actors are usually responses to their expectations of the behaviour of one-another. Instructively therefore, "the institutional environment provides information and enforcement mechanism that reduce uncertainty for each actor about the corresponding behaviour of others". Therefore, RCI is the focus on the methods by which the institutional environment acts as influences on the behaviour of political actors and how the interaction that arises determines policy positions.

The basic assumptions underlining the utility of this theoretical approach is the use of "methodological individualism", which focuses on the behaviour of each actor within the institutional environment. It is also important to know that the behaviour of decision-makers is presumed to be those of the states they represent, in other words, institutionalism assumes that the principal actors are the states. In the final analysis, RCI is applicable on the basis that states are rational, but are "subject however to significant "bounds" on rationality and any prevailing external constraints".

3.4 International Federalism

In applying this theoretical approach to the study of international organisations and institutions, international relations scholars have made efforts to explain that international federalism differs from federalism as a system of governmental structure practised within states. Accordingly, international federalism is explained thus:

> Federalism on a global level, as a system based on the principle of subsidiarity in which policy responsibility is shared between different levels of decision-makers in global institutions to ensure a collective effort for the common concern of peace, security and development while respecting and retaining the legitimate sovereign status of nation-states.

International Federalism is one of voluntary decisions by sovereign states to integrate. In the quest to create and establish cooperative relations aimed at achieving mutual development, security and fostering socio-cultural harmony, nation-states extend hands of fellowship to one-another to establish enduring political unions. In so doing, they create constitutions that provide common legal system and open the possibilities of the integration process in all areas of mutual endeavour.

Basically, international federalism exists on the reality of building and strengthening regional governance structures along federal lines. International federalism is the end-result of a regional integration process, and thus emerge as either a new state, as in the case of the USA and Australia, or a non-state actor, as in the case of the African Union (AU), Organisation of American States (OAS), Association of Southeast Asian Nations (ASEAN), Organisation for Security and Cooperation in Europe (OSCE).

According to the International Federalism approach, there are three main elements contributing to the formation of international federalism, these are:

1. The wish to counter a perceived threat (be that military, economic, societal etc) by expanding one's territory by peaceful means;

2. The wish to join a federation or territorial entity, to counter a perceived threat, and thus secure the survival of one's own state;
3. A common cultural basis.

Finally, the basic assumptions of the international federalism approach are;

1. Integration is an attempt to create a stronger unit than the individual member states before the integration;

2. Interests drive the process, not ideology;

3. An external 'kick' (threat, crisis) may be necessary to ignite a higher stage of Integration;

4. The attitude of the elites is important;

5. The participating states are democratic.

3.5 Inter-governmentalism

Inter-governmentalism is one of the foremost approaches that explains the process of integration. This approach is in contrast to neo-functionalism. This is because of the theory's rejection of the concept of spill-over effect and that supranational organisations are on equal level as national governments. Inter-governmentalism is premised on the assumption that governments control the level and speed of state integration, as such, any increase in power at supranational level, results from a direct decision by governments. In effect, the integrative actions of national government are consequences of subsisting domestic political and economic issues.

Intergovernmentalism became recognised as a theoretical approach in the wake of European integration in the 1960s. This was a period in which countries in Europe embraced collaboration in major areas, especially the industrial and technical. The cooperation of the period has metamorphosed into the European Union. Intergovernmentalism borrowed largely from the realists' perception of the state as power-seeking and national-interest protection political entity. Through the theoretical prism of intergovernmentalism, a convergence is established between the protection of national interest and the will of states to cooperate as the main motivation for integration.

For the purposes of theoretical explanations, intergovernmentalism assumes states and especially national governments as the basic actors in the integration process. Furthermore, the approach lays emphasis on the importance of institutions on international politics, and the significant impact of domestic political occurrences on government's positions and policies. Specifically, the approach hinges on the perception that while states cooperate in specific fields; military, technical, etc. sovereignty is adequately guided and retained. Furthermore, intergovernmental organisations exist on the basis that powers are not shared with other actors and take their decisions by unanimity, unlike the case with supranational institutions

3.6 Supra-Nationalism

As a theoretical approach, supra nationalism explains the process by which power is held and decisions are taken by independent appointed officials or by representatives elected by the legislatures or people of the member states of a union. The union is a type of multi-national confederation or federation where negotiated power is delegated to an authority by governments of member states. Invariably, member-states governments still have power, but they must share this power with other actors created from the union.

The existence of a supranational union is predominantly based on agreements between sovereign member-states, and to that extent, established by international treaties. Usually, the union is free to pursue its agenda, an agenda which is meant to be in the cumulative interests of member-states, and not that of a single member-state. Sometimes therefore, the positions of a supranational body may not necessarily fall in line with the policy positions of some of the member-states.

The relationship between the supranational union and member-states is also such that the body may only have legal supremacy over member-states in areas and competences that the member-state governments have ceded their powers and authority to the union. For the citizens of member-states; while retaining their national citizenship, they are also conferred with rights and privileges of the citizenship of the supranational union.

As against the situation with states in a federal super-state, sovereignty lies with the governments and people of member-states, although some part of the sovereignty may be shared with or ceded to the emergent supranational organisation. It is argued that member-states derive immense benefits from supranational association partly because such agreements encourage stability and trust as a result of binding clauses that would not permit the breaking of accords at will, without consultation. Furthermore, there are the mutual advantages of economies of scale, common external tariffs, non-protectionism, common positions on global issues, improved international trust, support for political development, among others.

Finally, the supranational union encourages democracy and equal representation in its activities. In effect, decisions are reached through majority votes, and as it happens in democracies, “the minority have their say, while the majority have their way”. Thus, member-states may be obliged to accept decisions against their will, however, in contrast to a federal arrangement, membership is voluntary, and therefore, states can opt out of the union at their discretion. This form of integration is difficult to come by in the present inter-state system, except for the case of the European Union and the South American Community of Nations.

Self-Assessment Exercise

What are the benefits of supra-nationalism?

4.0 CONCLUSION

This unit beams light on the scientific explanations for integration. The scientific approaches are useful in explaining the motives for and the character of integration.

5.0 SUMMARY

The unit explains the various level of interactions that can exist among states from the standpoint of the approaches presented by scholars in the field. This approaches explains the minimal level of integration and the highly complex forms.

6.0 Tutor-Marked Assignments

1. Differentiate between intergovernmentalism and supra-nationalism.
2. Highlight the basic assumptions of the international federalism approach.
3. Differentiate between functionalism and neo-functionalism.

7.0 References/Further Reading

Balassa, B. (1961). *The Theory of Economic Integration.* Illinois: Richard D. Irvin.

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Unit 3: Nature and Character of International Organisations

Main Content

1.0 INTRODUCTION

This unit would deepen our knowledge about international organisation as a prominent non-state actor in the international system. It provides illumination on the various categories of international organisations. Through the categorisation, we are able to get insight into the functions and roles they perform and by extension, they institutional structures and processes that distinguish international organisations from other non-state actors.

2.0 OBJECTIVES

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

- Acquaint yourself with the various types of international organisations
- Explain the functions and roles of international organisations.
- Explain the working processes of international organisations.

3.0 MAIN CONTENT

3.1 Types and Classification

The classification of international organisations can be undertaken through the following standpoints:

1. character and nature;
2. geographical and functional coverage;
3. the mandate of the organisation;

4. the focus of activities as it concerns functions such as economic, political, military social, administrative, judicial or legislative.

In broad terms, there are two types of international organisations, these are; (1). Inter-Governmental Organisations; (2) International Non-Governmental Organisations.

The major features of Inter-Governmental Organisations are:

(a) being based on a formal instrument of agreement between the governments of nation states;

(b) including three or more nation states as parties to the agreement;

(c) possessing a permanent secretariat performing ongoing tasks.

The major features of International Non-Governmental Organisations are:

(a) Usually an association of national professional organisations, civil-society organisations or like-minded individuals;

(b) committed towards the achievements of common specific goals;

(c) sometimes acts as a pressure-group in the pursuit of its agenda.

Self-Assessment Exercise
Distinguish between intergovernmental organisations and international non-governmental organisations.

3.1.1 Inter-Governmental Organisations (IGOs)

In simple terms, this type of international organisation can be described as an association of two or more states that functions through an institution or agency set up to promote, project and carry-out plans in common interest. The organisation is created by treaty for the purposes of pursuing common interest. Based on their treaty origin, IGOs are subject to international law and have the ability to enter into enforceable agreements among themselves or with states.

Essentially, IGOs are platforms for cooperation and collaboration for a more peaceful and secure world, and for deepening, economic and socio-cultural relations. Furthermore, the increasing globalisation and interdependence among state actors encourages deeper cooperation in the areas of health, climate, communication, among others. IGOs have therefore become beneficial for state actors. Some of the benefits derivable from membership in IGOs include:

1. Economic Benefits: an important benefit of membership in IGOs is the prospects of trade agreements. Member-nations of these organisations;

Organisation of Petroleum Exporting Countries (OPEC); Economic Community of West African States (ECOWAS); North American Free Trade Agreement (NAFTA), among others, are beneficiaries of favourable trade terms and arrangements.

2. Political Leverage: membership in IGOs provides leverage to both politically influential and non-influential countries. For instance, membership in the EU, ECOWAS, OAS, etc. give some measure of political clout to Portugal, Mali and Peru respectively.

3. Security: the issue of security is sacrosanct for most IGOs. Thus, member-nations participate and benefit from the prospects of regional or global security that IGOs assure. This is even more so in IGOs that have collective security mechanisms or mutual defence provisions in their statute.

Types (Geographical Location)

1. Global Organisations: this type of IGOs are open to membership across the world, albeit after meeting specific criteria as stated in the statute and other guiding instruments. Examples include; the United Nations, the Universal Postal Union, the International Monetary Fund, etc.

2. Regional Organisations: the membership of this type of IGOs are based on geographical considerations. Membership is restricted to countries within specific regions of the world. Examples include; the African Union (AU), the European Union (EU), Association of South-East Asian Nations (ASEAN), Arab League, etc.

Types (Mandate)

1. Economic Organisations: this type of IGO is set-up to promote the economic well-being of member-states. In most cases, the IGOs are focussed on free trade and the reduction of trade-barriers. This is common among international cartels, such as OPEC. This type of IGO could either be regional or global, as we have in the case of ECOWAS and IMF respectively.

2. Security Organisations: one of the foremost security-focussed IGO is North Atlantic Treaty Organisation (NATO). Based on collective security mechanism, NATO focuses on the security of member-states irrespective of their location. That explains the reason for the membership structure of NATO; the US, Turkey, and many European countries are members of NATO.

3. Socio-Cultural Organisations: some IGOs are focussed on promoting the cultural, linguistic, ethnic, religious or historical ties among members. Most often, these kind of IGOs are global, but they act as the umbrella organisation for member-states with similar historical origin. Examples include, the Commonwealth of Nations, Latin Union, Organisation of Islamic Cooperation.

Self-Assessment Exercise
What are the benefits of joining an IGO?

3.1.2 International Non-Governmental Organisations

International Non-Governmental Organisations (INGOs) are non-state actors, set-up without government representation or intrusion, yet covers range of issues and reach people across territorial boundaries. This type of organisations are focussed on resolving specific problems faced by humanity, but do not represent the views of governments nor have profit-motives.

In an attempt to understand the meaning of INGO, the World Bank's definition of NGO is apposite. According to the World Bank, NGOs are:

> private organizations that pursue activities to relieve suffering, promote the interests of the poor, protect the environment, provide basic social services, or undertake community development.

Essentially, the impact of an INGO is related to its aims and objectives, and this is defined by the primary purpose. The primary purpose can be split into two:

1. Operational Purpose: this category of INGOs aim to assist and encourage community-based organisations in the various countries where they have representations through their various projects and operations. For instance, CARE International is committed to the following ideals:

    (a) Strengthening capacity for self-help
    (b) Providing economic opportunity
    (c) Delivering relief in emergencies
    (d) Influencing policy decisions at all levels
    (e) Addressing discrimination in all its form

2. Advocacy-based: for this type of INGOs, the focus is to influence policy processes and policy-making that are related to issues of concern. An example is OXFAM International. The organisation has the following objectives:

(a) long-term programs to eradicate poverty and injustice
(b) deliver immediate life-saving assistance to people affected by natural disasters or conflict
(c) raise public awareness of the causes of poverty
(d) encourage ordinary people to take action for a fairer world
(e) press decision-makers to change policies and practices that reinforce poverty and injustice

3.2 Functions/Roles of International Organisations

The functions of international organisations (whether intergovernmental organisations or international non-governmental organisations) can be gleaned from the aims and objectives as set-out in the statutes or charter. As mentioned earlier, the functions can be driven by a wide-range of motives, which includes; economic, military, security, political, environmental, health or technical assistance, among others. In some cases, these functions are cross-cutting, especially among regional economic groupings. For instance, the Economic Community of West-African States' (ECOWAS) mandate is beyond pursuing the economic agenda of the West-African region, but also delves in confronting the security challenges of the sub-region through ECOWAS Monitoring Group (ECOMOG).

At this juncture, we would focus on the functions of specific international organisations (IGOs and INGOs) by highlighting their aims and objectives as enshrined in the charter or statutes.

Case-Studies (IGOs)

The Objectives of the African Union

1. To achieve greater unity and solidarity between the African countries and the peoples of Africa;
2. To defend the sovereignty, territorial integrity and independence of its Member States;
3. To accelerate the political and socio-economic integration of the continent;
4. To promote and defend African common positions on issues of interest to the continent and its peoples;
5. To encourage international cooperation, taking due account of the Charter of the United Nations and the Universal Declaration of Human Rights;
6. To promote peace, security, and stability on the continent;
7. To promote democratic principles and institutions, popular participation and good governance;
8. To promote and protect human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant human rights instruments;
9. To establish the necessary conditions which enable the continent to play its rightful role in the global economy and in international negotiations;
10. To promote sustainable development at the economic, social and cultural levels as well as the integration of African economies;
11. To promote co-operation in all fields of human activity to raise the living standards of African peoples;
12. To coordinate and harmonize the policies between the existing and future Regional Economic Communities for the gradual attainment of the objectives of the Union;

13. To advance the development of the continent by promoting research in all fields, in particular in science and technology;
14. To work with relevant international partners in the eradication of preventable diseases and the promotion of good health on the continent.

Southern African Development Community (SADC)

The objectives of SADC, as stated in Article 5 of the SADC Treaty (1992) are to:

1. Achieve development and economic growth, alleviate poverty, enhance the standard and quality of life of the people of Southern Africa and support the socially disadvantaged through Regional Integration;
2. Evolve common political values, systems and institutions;
3. Promote and defend peace and security;
4. Promote self-sustaining development on the basis of collective self-reliance, and the inter-dependence of Member States;
5. Achieve complementarity between national and regional strategies and programmes;
6. Promote and maximise productive employment and utilisation of resources of the region;
7. Achieve sustainable utilisation of natural resources and effective protection of the environment;
8. Strengthen and consolidate the long-standing historical, social and cultural affinities and links among the people of the Region.

Association of Southeast Asian Nations

As set out in the ASEAN Declaration, the aims and purposes of ASEAN are:

1. To accelerate the economic growth, social progress and cultural development in the region through joint endeavours in the spirit of equality and partnership in order to strengthen the foundation for a prosperous and peaceful community of Southeast Asian Nations;
2. To promote regional peace and stability through abiding respect for justice and the rule of law in the relationship among countries of the region and adherence to the principles of the United Nations Charter;
3. To promote active collaboration and mutual assistance on matters of common interest in the economic, social, cultural, technical, scientific and administrative fields;
4. To provide assistance to each other in the form of training and research facilities in the educational, professional, technical and administrative spheres;
5. To collaborate more effectively for the greater utilisation of their agriculture and industries, the expansion of their trade, including the study of the problems of international commodity trade, the improvement of their transportation and communications facilities and the raising of the living standards of their peoples;
6. To promote Southeast Asian studies; and

7. To maintain close and beneficial cooperation with existing international and regional organisations with similar aims and purposes, and explore all avenues for even closer cooperation among themselves.

Case Studies (INGOs)

CARE International

The functions performed by this organisation can be found in both its stated vision and mission. The vision is expressed thus:

> We seek a world of hope, tolerance and social justice, where poverty has been overcome and people live in dignity and security. CARE will be a global force and partner of choice within a worldwide movement dedicated to ending poverty. We will be known everywhere for our unshakeable commitment to the dignity of people.

Similarly, the mission is expressed in the following words:

> CARE's mission is to serve individuals and families in the poorest communities in the world. Drawing strength from our global diversity, resources and experience, we promote innovative solutions and are advocates for global responsibility.

The organisation's aspirations are fulfilled through the following:

1. Strengthening capacity for self-help;
2. Providing economic opportunity;
3. Delivering relief in emergencies;
4. Influencing policy decisions at all levels;
5. Addressing discrimination in all its forms.

Amnesty International

This is a foremost international organisation that is committed to the advocacy, promotion and protection of human rights and human dignity across the globe. The aims and objectives of the organisation include the following:

1. Stop violence against women;
2. Defend the rights and dignity of those trapped in poverty;

3. Abolish the death penalty;

4. Oppose torture and combat terror with justice;

5. Free prisoners of conscience;

6. Protect the rights of refugees and migrants;

7. Regulate the global arms trade.

Action Aid

This international organisation focuses on developmental issues, especially in the poor countries of Africa, Asia, Latin-America and the Middle-East. The organisation concerns itself with fighting poverty, diseases and squalor. Furthermore, it advocates for fairer international trade agreements. The aims and objectives of the organisation includes:

1. Aid and Debt: the organisation advocates for the cancellation of debt owed by developing countries;
2. Emergencies and Conflict: the organisation commits itself to providing relief materials and essentials especially in war-torn areas;

3. Women's Rights advocacy: the organisation fights for the rights of women;

4. Corporate Accountability: the organisation is concerned about the activities of multinational companies on host-communities, and campaigns for laws to compel corporate accountability;

5. Trade: the organisation campaigns for fairer trade regulations so that developing countries can equally take advantage of globalisation;

6. HIV and Aids: the organisation also lobbies for treatment of HIV/AIDS especially in the developing countries;

7. Education: the organisation provides funding for education.

3.3 Institutional Structure and Coordination of International Organisations

In general, the organic structure and composition of international organisations are peculiar to each organisation, the structure is usually informed by the functions and the relationship among members. These are usually stated in the constitutions, statutes or charter, as the case may be. However, some of the features are common, either in the case of intergovernmental organisations (IGOs) or international non-governmental

organisations (INGOs). The following features are common to all international organisations:

a. Membership

An important part of the constitutional provision is that original signatories could become members upon ratification or acceptance of the instrument, while other states may be accepted as members upon admission by a special majority vote of the competent organs of the particular international body. In some cases, the constitution defines the conditions under which such other states may be admitted to membership, such conditions must be met before the grant of membership, in accordance with the dictates of the International Court of Justice.

b. Conditions of Withdrawal by, or Expulsion and Suspension of, Members

This issue is at the discretion of the organisations concerned, because there are no coherent guideline or practise. In most cases, members are allowed to give a one-year written notice of intention to withdraw, however, each organisation has its peculiar clause as to the minimum period of time following admission to membership, when notice may be given, and as to whether the effectiveness of the notice depends upon the prior performance of financial or other obligations. In regard to the expulsion or suspension of members for failure to fulfil obligations, the former has lost relevance in contemporary international politics, while the latter is intended as a form of sanction to withhold the erring member's privileges, including voting rights, until duties and obligations are fulfilled.

c. Organs

For international organisations, there are three kinds of organs; principal, regional and subsidiary organs. The principal organ would most likely consist of:

a. A policy-making body, usually the 'Assembly' or 'Congress', which is a representation of all member states, with power to supervise the working of the organisation, and to control its budget, and more frequently, also with power to adopt conventions, and other measures, and to make recommendations for national legislation.

b. A smaller executive body or council, usually elected by the policy-making organ from among the delegates to it, and representative of only a specific number of member states.

c. A secretariat or international civil service staff. Most instruments of international organisations stipulate that the responsibilities of such staff shall be exclusively international in character, and that they are not to receive instructions from external authorities. To reinforce this position, such instruments generally contain undertakings by the Member-States to respect the international character of the staff and not to seek to

influence any of their nationals belonging to such organisations in the discharge of their responsibilities.

d. Regional and Subsidiary Organs

The guiding principle here is the drive for decentralisation of responsibilities in the management of the affairs of international organisations. This process of decentralisation come in various formats, such as:

a. Regional conferences

b. The appointment of advisory or consultative committees, either generally or for particular issues of concern.

c. The establishment of functional commissions or committees, dealing with specialised fields of action

d. Administrative conferences or formation of 'working-parties'.

e. Voting Rights

Most international organisations often attempt to display some democratic credentials in their decision-making processes, thus, the choice of voting by a majority of members as a requirement for the adoption of decisions and resolutions. It must however be noted that voting procedure tends,

> to reflect the power and interests of the subscribing nations, with particular reference to the extent to which individual nations will be affected by the organisation's activities or relied upon to execute its decisions.

Some decisions such as, admission of members or the amendment of the constitutions are approved on the basis of a two-thirds majority.

f. Reports by Member-States

The relevant sections of the constitution usually guarantees the supervision of reports by member states on the actions taken regarding the fulfilment of obligations and duties.

g. Budgetary Matters

In most cases, the constitution provides that the Secretary-General or any other executive head of the Secretariat, as the case may be, provides an estimate of the budget which is reviewed and passed by the policy-making body, and at time subject to intermediate examination by a budgetary committee of the organisation and the executive by the executive organ. In the final analysis, it is ensured that the total

amount is apportioned among Member-States in shares determined by the policy-making body.

3.3.1 Structure and Coordination of IGOs

Case-Study: The United Nations

For the foremost international organisation, the Charter established six principal organs that form the basis of the processes of the UN. These organs are; the General Assembly, the Security Council, the Economic and Social Council, the Trusteeship Council, the International Court of Justice and the Secretariat.

The Functions of the General Assembly include:

1. Consider and make recommendations on the general principles of cooperation for maintaining international peace and security, including disarmament;
2. Discuss any question relating to international peace and security and, except where a dispute or situation is currently being discussed by the Security Council, make recommendations on it;
3. Discuss, with the same exception, and make recommendations on any questions within the scope of the Charter or affecting the powers and functions of any organ of the United Nations;
4. Initiate studies and make recommendations to promote international political cooperation, the development and codification of international law, the realization of human rights and fundamental freedoms, and international collaboration in the economic, social, humanitarian, cultural, educational and health fields;
5. Make recommendations for the peaceful settlement of any situation that might impair friendly relations among nations;
6. Receive and consider reports from the Security Council and other United Nations organs;
7. Consider and approve the United Nations budget and establish the financial assessments of Member States;
8. Elect the non-permanent members of the Security Council and the members of other United Nations councils and organs and, on the recommendation of the Security Council, appoint the Secretary-General.

The Functions of the Security Council includes:

1. To maintain international peace and security in accordance with the principles and purposes of the United Nations;
2. To investigate any dispute or situation which might lead to international friction;
3. To recommend methods of adjusting such disputes or the terms of settlement;
4. To formulate plans for the establishment of a system to regulate armaments;

5. To determine the existence of a threat to the peace or act of aggression and to recommend what action should be taken;
6. To call on Members to apply economic sanctions and other measures not involving the use of force to prevent or stop aggression;
7. To take military action against an aggressor;
8. To recommend the admission of new Members;
9. To exercise the trusteeship functions of the United Nations in “strategic areas”;
10. To recommend to the General Assembly the appointment of the Secretary- General and, together with the Assembly, to elect the Judges of the International Court of Justice.

The Functions of the Economic and Social Council is to assist the United Nations and its various other organs in achieving the following goals, among others;

1. Social Development;
2. Sustainable Development;
3. Development Policy
4. Development Financing;
5. Capacity Development

The Trusteeship Council

> Under the Charter, the Trusteeship Council is authorized to examine and discuss reports from the Administering Authority on the political, economic, social and educational advancement of the peoples of Trust Territories and, in consultation with the Administering Authority, to examine petitions from and undertake periodic and other special missions to Trust Territories.

The International Court of Justice

This is the principal judicial organ of the United Nations which is charged with the responsibility of adjudicating international legal tussles. Accordingly, the role of the Court as stated in the UN Charter is as follows:

> The Court’s role is to settle, in accordance with international law, legal disputes submitted to it by States and to give advisory opinions on legal questions referred to it by authorized United Nations organs and specialized agencies

The Secretariat

This is the base for the administrative and bureaucratic activities of the United Nations. It is from the secretariat that the activities of the organisation is coordinated daily around the world. Specifically, the function of the secretariat is explained thus:

The duties carried out by the Secretariat are as varied as the problems dealt with by the United Nations. These range from administering peacekeeping operations to mediating international disputes, from surveying economic and social trends and problems to preparing studies on human rights and sustainable development. Secretariat staff also inform the world's communications media about the work of the United Nations; organize international conferences on issues of worldwide concern; and interpret speeches and translate documents into the Organization's official languages.

3.3.2 Structure and Coordination of INGOs

Case-Study: International Committee of the Red Cross

The structure of the ICRC is patterned in such a way that processes would not be arbitrary, and that integrity of decisions and mandate are maintained. The organisation is therefore governed by four main organs; the Presidency, an Assembly, an Assembly Council and a Directorate.

The decision making structure of the ICRC is outlined below:

The Presidency

The ICRC has a president and two vice-presidents. The president, who bears primary responsibility for the ICRC’s external relations, represents the ICRC on the international scene and, in close cooperation with the directorate general, handles the ICRC’s humanitarian diplomacy. At the internal level, he attends to the cohesion, smooth running and development of the organization.

The Directorate

The Directorate is the executive body of the ICRC, responsible for applying and ensuring application of the general objectives and institutional strategy defined by the Assembly or the Assembly Council. The Directorate is also responsible for the smooth running of the ICRC and for the efficiency of its staff as a whole.

The Assembly

The Assembly is the supreme governing body of the ICRC. It oversees all the ICRC's activities. It formulates policy, defines general objectives and strategy, and approves the budget and accounts. It nominates the directors and the head of Internal Audit. Composed of between 15 and 25 co-opted members of Swiss nationality, the Assembly is collegial in character. Its

President and two Vice-Presidents are the President and Vice-Presidents of the ICRC.

The Assembly Council

The Assembly Council is a subsidiary body of the Assembly. It prepares the Assembly's activities and takes decisions on matters within its competence, in particular strategic options relating to general policy on funding, personnel and communication. It serves as a link between the Directorate and the Assembly, to which it reports regularly. Composed of five members elected by the Assembly, it is chaired by the president of the ICRC.

4.0 CONCLUSIONS

This unit explains the nature and character of international organisations. It interrogates the basic issues that differentiates the various types of international organisations. Furthermore, the various structures and processes are also examined.

5.0 SUMMARY

In summary, the unit highlights the various types, the processes and the functions of the two broad categories of international organisations; the intergovernmental organisations and the international non-governmental organisations. By and large, the state and non-state actor dimensions of the composition appears to be the most fundamental difference.

6.0 Tutor-Marked Assignments

1. Are there differences between the structures of intergovernmental organisations and international non-governmental organisations?

2. Describe the two types of international organisations.

3. What are the major distinctions between the African Union and the International Committee of the Red Cross?

7.0 References

See: www.actionaid.org

See: www.amnesty.org

See: www.asean.org

See: www.au.int

See: www.care-international.org

See: www.icrc.org

See: www.sadc.int

See: www.un.org

Unit 4: Brief Notes on Ten International Organisations

Main Content

1.0 INTRODUCTION

This unit focuses on the empirical peculiarities of specific international organisations. In following the history of the organisations we would be familiar with their functions and roles. The unit would highlight different categories of organisations, from the regional to the global, and also intergovernmental or non-governmental. With excerpts from their web-sites, the students are provided with a compilation of the important history of our select international organisations.

2.0 OBJECTIVES

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

- Understand the history of specific international organisations
- Acquaint yourself with the prevailing conditions of specific international organisations.

- Understand the differences among the various categories of international organisations.

3.0 MAIN CONTENT

We are going to focus on the history of the various international organisations. We have taken samples from Africa, Asia, Europe and America. Similarly, various categories of international non-governmental organisations would be discussed, ranging from the ones focussing of health-issues to those focussing on human-rights.

Intergovernmental Organisations (IGOs)

3.1 African Union

The African Union is the successor organisation of the erstwhile Organisation of Africa (OAU) that was established by independent African States in 1963 to protect, promote and project the image of Africa to the rest of the world. This task was meant to be achieved by ensuring the emancipation of African States that were still under colonial control. Furthermore, the organisation had the multiple responsibility of working towards the attainment of peace and security, harmonious socio-cultural relations and the attainment of economic development for all parts of Africa. In summary, the objectives of the OAU were:

> to rid the continent of the remaining vestiges of colonisation and apartheid; to improve unity and solidarity among African States; to coordinate and intensify cooperation for development; to safeguard the sovereignty and territorial integrity of member-states and to promote international cooperation within the framework of the United Nations.

In African leaders' quest to better the lot of the peoples of the continent they continually evolved mechanisms and processes that would deepen the organisation's capability for action. These efforts culminated in the establishment of the African Union.

In the final analysis, the process of enhancing and expediting action on economic, political and socio-cultural integration and development of the continent was realised through the four Summits that led to the establishment of the African Union in 2002, these are:

- The Sirte Extraordinary Session (1999) decided to establish an African Union.
- The Lome Summit (2000) adopted the Constitutive Act of the Union.
- The Lusaka Summit (2001) drew the road map for the implementation of the AU.
- The Durban Summit (2002) launched the AU and convened the 1st Assembly of the Heads of States of the African Union.

Self-Assessment Exercise

What are the main features of the AU?

3.2 The European Union

The EU is an evolving international association of independent states that focuses on the economic, political and socio-cultural integration of the European continent. Presently, the Union is composed of twenty-seven member-states.

The origin of the EU is traceable to the post Second World-War era, aimed specifically at fostering cooperation among former belligerents. The first step was the formation of economic cooperation, the idea was underscored by the notion that economic ties would discourage conflicts and antagonisms because trade ensures interdependence among partners.

The immediate practical step was the creation of the European Economic Community in 1958 which paraded Belgium, Germany, France, Luxembourg and Netherlands as members. Afterwards, the European Economic and Steel Community was created to further deepen the economic ties and invariably the interdependent relationship among member-states.

Subsequently, the association began to transcend its economic beginnings and incorporate all other forms of cooperation spanning major policy issues, and also extending its membership to all of Europe. Thus, the economic association transformed into a union in 1993 and became the European Union.

In specific terms, the political objectives of the EU are:

4. Promotion of human rights globally;
5. Protection of human dignity
6. Protection of the rule of law;
7. Promotion of freedom, democracy and equality.

In broad terms, the economic objectives are:

1. The creation of a single market in Europe;
2. The development of its huge resources for the benefits of Europeans.

In its five decades of existence, the EU prides itself with the following achievements:

1. a century of peace, stability, and prosperity;
2. helped raise living standards;
3. launched a single European currency;
4. the abolition of border controls between EU countries;
5. reality of Europeans living and working in member-states without restriction.

The EU has grown to become one of the most influential non-state actors. The EU's positions on issues of global concern are usually sought in order to reflect such on policy decisions and implementations.

3.3 Organisation of American States

This organisation is regarded as the first regional organisation to be established. Its origin dates back to the period between 1889 and 1890 when the First International Conference of American States were held. At the conference, agreements were reached on modalities for the establishment of the International Union of American Republics which subsequently paved the way for the American tradition of institutionalising inter-state organisations.

The established tradition produced the Organisation of American States in 1948. As expressed in Article 1 of the Charter of the OAS, the organisation was established as:

> an order of peace and justice, to promote their solidarity, to strengthen their collaboration, and to defend their sovereignty, their territorial integrity, and their independence.

Presently, the organisation is made of thirty-five independent member-states, and has also granted permanent observer status to sixty-seven independent states across the globe, this is in addition to granting observer status to the European Union. It has remained the main inter-governmental political, judicial and social governmental forum in the Americas.

The OAS pursues its agenda on the basis of the following tenets:

1. promotion of democratic ideals;
2. pursuit of fundamental human rights;
3. maintenance of security;
4. pursuit of development agenda.

3.4 The League of Arab States

The Arab League came into existence in 1945 to serve as a platform through which independent Arab states in Asia and Africa can cooperate and collaborate for mutual political, economic and socio-cultural benefits. The League is composed of twenty-two members (although, Syria is currently on suspension following the nature of government's response to protests from civil society).

As a responsible international organisation, the League has severally committed itself to seeking solutions to conflicts, not just in the Arab world, but as well as other parts of the world. In specific terms, the Arab League has always been at the forefront of finding enduring solutions to the Arab/Israeli conflict, especially the seemingly unending feud between Palestine and Israel.

According to the Charter of the Arab League, the main objective of the organisation is:

> strengthening of the relations between the member-states, the coordination of their policies in order to achieve cooperation between them and to safeguard their independence and sovereignty; and a general concern with the affairs and interests of the Arab countries.

3.5 Association of Southeast Asian Nations

The association was established in 1967 with five members. Over the decades, membership has grown to ten. The objectives and purposes of the organisation can be captured in the ASEAN Declaration which states as follows:

1. To accelerate the economic growth, social progress and cultural development in the region through joint endeavours in the spirit of equality and partnership in order to strengthen the foundation for a prosperous and peaceful community of Southeast Asian Nations;
2. To promote regional peace and stability through abiding respect for justice and the rule of law in the relationship among countries of the region and adherence to the principles of the United Nations Charter;
3. To promote active collaboration and mutual assistance on matters of common interest in the economic, social, cultural, technical, scientific and administrative fields;
4. To provide assistance to each other in the form of training and research facilities in the educational, professional, technical and administrative spheres;
5. To collaborate more effectively for the greater utilisation of their agriculture and industries, the expansion of their trade, including the study of the problems of international commodity trade, the improvement of their transportation and communications facilities and the raising of the living standards of their peoples;
6. To promote Southeast Asian studies; and
7. To maintain close and beneficial cooperation with existing international and regional organisations with similar aims and purposes, and explore all avenues for even closer cooperation among themselves.

3.6 The United Nations Organisation

Since its creation more than five decades ago, the United Nations has remained the foremost international organisation. This is an august body, composed of a massive one hundred and ninety-three member-states. Established in 1945 as a mechanism to prevent a re-occurrence of the magnitude the world experienced in the Second World-War.

The Charter is the treaty that established the organisation. However, there is a timeline of events that led to the writing of the Charter and the signing of the treaty. This is summarised below:

12th June 1941- The Declaration of St James' Palace

14th August 1941- The Atlantic Charter

1st January 1942- The Declaration of the United Nations

October 1943- Moscow and Tehran Conferences

1944-145- Dumbarton Oaks and Yalta Conferences

1945- San Francisco Conference

The purpose of the organisation is to maintain international peace and security, through, facilitation of friendly relations among nations, promotion of social progress, better living standards and the protection of fundamental human rights.

The main purpose of the organisation can be summarised thus:

- To keep peace throughout the world;
- To develop friendly relations among nations;
- To help nations work together to improve the lives of poor people, to conquer hunger, disease and illiteracy, and to encourage respect for each-other's rights and freedoms;
- To be a centre for harmonising the actions of nations to achieve these goals.

The organisation continually evolves to meet the challenges of a changing world. In this respect, some of the issues tackled by the organisation on a regular basis include:

1. Issues of sustainable development
2. Environment and refugee protection
3. Disaster relief
4. Counter terrorism
5. Disarmament and non-proliferation of weapons
6. Promotion of democracy
7. Human rights
8. Gender equality and the advancement of women
9. Good governance regime
10. Economic and social development
11. International health
12. Clearing landmines
13. Expanding food production

International Non-Governmental Organisations (INGOs)

3.7 The International Committee of the Red Cross (ICRC)

This organisation was established in 1863 as an international non-governmental organisation to cater for the needs of persons caught in the middle of armed conflict and strife. The organisation pursues its objectives by encouraging the development of International Humanitarian Law and ensuring that the provisions of the law are respected by governments and belligerents. Over the decades, the ICRC has diligently played its role as a neutral intermediary among combatants.

From the experiences gained in providing assistance to vulnerable persons, wounded soldiers and prisoners of war during the First and Second World-Wars, the ICRC became even stronger in the post-1945 period and has continued to shape the debates on International Humanitarian Laws, and all other matters concerning safety and protection of peoples during conflict situations.

A landmark achievement was recorded through the efforts of the ICRC in 1949 when member nations of the United Nations agreed to a revision of the Geneva Conventions of War. The conventions focussed on the following areas:

1. Protection for the wounded and sick on the battleground;
2. Assistance to victims of war at sea;
3. Protection for prisoners of war;
4. Protection of civilians under enemy control.

Lastly, further achievements were recorded in the work of the ICRC in 1977 when two important protocols to the Conventions were adopted by members of the United Nations. These protocols are; conduct of international conflicts and conduct of internal conflicts.

3.8 Medecins Sans Frontieres (MSF)

This organisation is described as “an international, independent, medical humanitarian organisation that delivers emergency aid to people affected by armed conflict, epidemics, natural disasters and exclusion from healthcare”.

The organisation came into existence in 1971 with the sole aim of providing healthcare and medical assistance to people in dire need of such without considerations for race, gender, religion or political ideology. Deriving its strength on the basis of humanitarian principles, the non-profit, international non-governmental organisation is committed to its avowed neutrality, focuses on needs and works within the limits provided by international humanitarian law.

The organisation is equally concerned about stimulating research into causes and prevention of neglected diseases. Furthermore, the organisation fights for the poor to have access to drugs and medications, especially for the treatment of HIV/AIDS.

3.9 Greenpeace

This is an international non-governmental organisation that focuses on the sustenance of the environment for the common good of humanity. The goal of the organisation is to "ensure the ability of the earth to nurture life in all its diversity". The organisation began as a movement against the proliferation of nuclear-weapons and its impact on nature in the late 1960s and early 1970s.

Arising from of the impact of the use of nuclear weapons on the environment, a group of environmentalist formed an organisation called "Don't Make a Wave Committee" in 1969 to campaign against the use of nuclear weapons. In 1971, the organisation protested against the testing of nuclear devices in Alaska. The protest was effected by sending a chartered ship called "Phyllis Cormack" from Vancouver, Canada to the United States. The ship was subsequently renamed Greenpeace, and this name was eventually adopted by the organisation to carry out its programme throughout the world.

The organisation focuses its campaign on global environment issues. Some of the core areas of interest for Greenpeace are:

1. Campaign against global warming;
2. Deforestation;
3. Ozone-layer depletion;
4. Overfishing;
5. Nuclear armaments;
6. Commercial whaling.

Self-Assessment Exercise
What is the main objective of the Greenpeace Movement?

3.10 International Federation for Human Rights

International Federation for Human Rights is an international non-governmental organisation founded in 1922 with the sole aim of protecting human-rights. Accordingly, the mandate of the organisation "is to contribute to the respect of all the rights defined in the Universal Declaration of Human Rights". In this respect, the organisation is active in:

1. efforts towards the protection of victims and vulnerable peoples;
2. prevention of human-rights violations;
3. campaigning for sanctions for violators.

4.0 CONCLUSION

In this unit, we discussed the conditions of ten existing international organisations, in order to put the various theoretical postulations in proper perspectives. We focussed on both international governmental organisations and international non-governmental organisations.

5.0 SUMMARY

In summary, the unit examines real-life conditions. The first set of international organisations examined are the intergovernmental organisations, while the rest of the units examined the international non-governmental organisations. Similarly, and attempt is made to focus on organisations from each of the continent, and also on the foremost international organisation. In the final analysis, it is discovered that, the structural processes and procedures of the IGOs are similar irrespective of the location of the organisation. This is equally true of the INGOs.

6.0 Tutor-Marked Assignments

1. Distinguish between the focus of the International Committee of the Red Cross and the African Union.

2. Highlight the main purposes of the United Nations.

3. Highlight five of the purposes of the Association of Southeast Asian Nations.

7.0 References/Further Reading

See: www.asean.org

See: www.au.int

See: www.europa.eu

See: www.fidh.org

See: www.greenpeace.org

See: www.icrc.org

See: www.lasportal.org

See: www.msf.org

See: www.oas.org

Unit 5: International Organisations within the Context of International Law

Main Content

1.0 INTRODUCTION

As subjects of international law, international organisations are endowed with rights and compelled to have obligations in international law. Furthermore, the fact that they are legal entities and personalities and they also deal within legal entities and personalities, their internal and external conducts become subjects of legal scrutiny. In effect, international organisations, whether, inter-governmental organisations or international non-governmental organisations have roles to play within the context of international law.

This unit would examine the various role-plays that international organisations can perform within the context of international law.

2.0 OBJECTIVES

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

- Appreciate the value of international organisations as relevant actors within the context of international law.

- Identify the specific roles played by international organisations within the context of international law.
- Acquaint yourself with the characteristics of international organisations within the context of international law.

3.0 MAIN CONTENT

3.1 Executive, Judicial and Legislative Processes of International Organisations

In similarity to the role of constitutional law which controls and determines the rights, powers, functions and duties of the State, the legal processes of international organisations are also conditioned by international constitutional law which spell out the details of the roles, functions and duties of international organisations to the international community, irrespective of each organisation's reach; whether global or regional, and in spite of their stated objectives, whether, economic, political or military.

It is significant to appreciate that the underlining principles for establishing international organisations is that the organisations represent some kind of instrumentality through which visions are associated in a common purpose of improving the welfare of peoples.

The legal structure of international organisations can be as varied as possible. According to Starke (1977),

> ... they may be true corporate entities, collectivities of States functioning through organs taking decisions, or loose associations meeting only in periodical conferences, sometimes largely hinging on an element of continuity represented by a secretariat or secretarial Bureau.

The author provides three characteristics of international organisations within the context of international law, thus:

1. The functions of certain international institutions may be directed primarily to inspiring co-operation between States, i.e., so called "*promotional"* activities, and only in a secondary degree to the carrying out directly of any necessary duties, i.e., so-called "*operational*" activities.

2. Even so far as they are “operational”, international institutions are as a rule empowered only to investigate or recommend, rather than to make binding decisions.

3. In most instances, international institutions are but little removed from an international conference, in the sense that any corporate or organic decision depends ultimately on a majority decision of the Member States, i.e., the agreement of the corporators.

Within the scope of international law, there are ample differences between the constitutional structure of international organisations and the structure of states constitutions especially with regards to executive, legislative and judicial functions. Whereas, the Government wields enormous power over the State, but there is the lack of a central executive organ that parades such power within the international community. Instead, such international executive functions are dispersed among the various international organisations, thereby making it impossible to have a central international body with enormous administrative and executive powers comparable to the powers of the Government of a State.

International organisations however possess separate and different responsibilities; for instance, taking the United Nations as an example, that explains the reasons for the existence of International Labour Organisation, World Health Organisation, etc. Thus, in the United Nations arrangement, the executive powers for conducting the affairs of specific areas of human endeavours lie with the specialised agencies. This same arrangement is replicated in other intergovernmental organisations, such as the African Union, European Union, Association of Southeast Asian Nations, and the Organisation of American States.

Under similar circumstances, the international legislative and judicial functions are performed by a wide-range of international organisations. While the UN General Assembly performs international legislative functions, the International Court of Justice, and other international tribunals conduct global judicial activities. Similarly, one of the organs of the African Union is the African Court on Human and Peoples’ Rights which serves as the legal institution for hearing cases under the auspices of the AU.

Self-Assessment Exercise

Explain the differences between the constitutional structures of international organisations and the structure of states’ constitutions.

3.2 Influences of International Organisations on International Law

The influence of international organisations on international law can be viewed from the perspectives of the relations established and maintained by international

institutions. These relations usually extend beyond the frontiers of international organisations as subjects of international law, but also connects other subjects of international law, especially States. Hence, the following relationships also have the tendencies of leading to the formation of new rules of international law. They are:

1. Relations between States and international organisations

2. Relations between or among international organisations

3. Relations between international organisations and individuals.

It must however be noted that limits are placed on the activities of international organisations to the extent stated in the provisions of their constitutional powers. This means that it is only the functions within the express terms of an organisation's constitution that the organisation can effectively undertake under international law.

The question of whether international organisations possess legal personality under international law or municipal law becomes pertinent. The international legal personality of international organisations is assured if we take our cue from Article 104 of the UN Charter which states that the organisation within the territory of each of its member-states should enjoy "such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes". On the other extreme, there is no finality on the recognition of international organisations under municipal law, as such, while States have been known to grant or withhold the privilege of legal personality as dictated by their municipal law, the constitutions of most international organisations are said to compel member-states to recognise them as personalities under municipal law.

In the absence of a world legislature, international organisations continue to establish legislative arms which further enhances their status as subjects of international law because the outcome of the various conventions of the legislative arms form part of the body of rules of international law. The African Union prides itself with the establishment of the Pan-African Parliament, which seats at the core of the legislative duties of the organisation. Find below, excerpts from the Pan-African Parliament:

> The permanent seat of the Parliamentary Parliament (PAP) is in Midrand, Johannesburg, Republic of South Africa. PAP was inaugurated on 18 March 2004. The establishment of PAP was inspired by a vision to provide a common platform for African peoples and their grass-roots organizations to be more involved in discussions and decision-making on the problems and challenges facing the continent. The ultimate aim of PAP is to

> evolve into an institution with full legislative powers, whose Members are elected by universal adult suffrage. At present it exercises advisory and consultative powers. PAP currently has 230 Members

In the case of the United Nations, the absence of a world legislature is replaced by the powers vested on the General Assembly, the Economic and Social Council and the International Law Commission to promote the preparation of Conventions. The UN Charter states the powers and functions of the General Assembly thus:

> The General Assembly (GA) is the main deliberative organ of the UN. Decisions on important questions, such as those on peace and security, admission of new members and budgetary matters, require a two-thirds majority. Decisions on other questions are by simple majority.

Similarly, the function of ECOSOC is mainly to generate ideas on establishing appropriate mechanisms for establishing relevant rules of international law. The UN Charter explicitly states:

> The Economic and Social Council (ECOSOC), established by the UN Charter, is the principal organ to coordinate the economic, social and related work of the United Nations and the specialized agencies and institutions.

However, none of the contents of the Charter is more explicit or befitting than that relating to the International Law Commission. In Article 1, Chapter 1 of the Statute of the International Law Commission, the object of the Commission is stated thus:

> Commission shall have for its object the promotion of the progressive development of international law and its codification". Article 15 of the Statute makes a distinction "for convenience" between progressive development as meaning "the preparation of draft conventions on subjects which have not yet been regulated by international law or in regard to which the law has not yet been sufficiently developed in the practice of States" and codification as meaning "the more precise formulation and systematization of rules of international law in fields where there already has been extensive State practice, precedent and doctrine.

In furtherance of the role played by international organisations in the processes of international law, we shall also look at this subject from the role of treaty relations. It

is incumbent upon international organisations to make proviso for treaty-making functions in their constitutions, because of its importance to the performance of their functions. There is a significant rise in the number of international organisations that have entered into treaties with States and other subjects of international law. While the ability to perform this exercise does not relegate the status of State as the primary subject of international law, it only serves to emphasize the importance of other political entities in establishing the rules of international law.

Self-Assessment Exercise
Describe the influences of international organisations on international law.

4.0 Conclusion

This unit serves to re-emphasize the somewhat symbiotic relationship that exists between international organisations and international law. Basically, international organisations are subjects of international law, but they also reinforce the effectiveness of international law by being creations of treaties, and also through their constitutional provisions, charters of statutes.

5.0 Summary

As the last unit of the module, the unit focussed on the relationship between international organisations and international law by explaining the roles that international organisations play in the making of international law. Specifically, the unit explains the international law dimension in the executive, judicial and legislative processes of international organisations. Secondly, it also explains the basic influences of international organisations on the rules of international law.

6.0 Tutor-Marked Assignments

1. Explain the three main types of relationships that can influence the rules of international law.

2. What are the three main features of international organisations within the context of international law?

3. Briefly explain how the legal processes of international organisations affect international law.

7.0 References/ Further Reading

See: Statute of the International Law Commission

See: Statute of the Pan-African Parliament

See: UN Charter

Starke, J. (1977). *Introduction to International Law.* London: Butterworths.

Module 4: International Co-operative Approaches to Economic, Social and Cultural Development

Unit1. Concept, Theories and Approaches of International Development.
Unit2. Global Economic Development Initiatives in the 20th and 21st Centuries
Unit3. Continental Initiatives for Tackling Development Issues and Challenges in Africa.
Unit4. Regional Economic Communities in Africa
Unit5 Cultural Organizations for Fostering World Peace and Social Development

Unit 1: Concept, Theories and Approaches of International Economic Development

1.0. Introduction

Hitherto we have dealt with international law and organizations from the prisms of international efforts in promoting peace and mutual relationship, preventing of feuds and resolving unavoidable conflicts amongst the nations of the world at the political level. In the units in this module we shall again discuss some organizations

already mentioned in the preceding chapters with emphasis on their economic roles and attempt to focus on new ones from the angle of economic and cultural initiatives undertaken by them. These are initiatives geared towards ensuring global understanding of which if lacking international relations will be a mirage. Thus, our searchlight is now beamed on economic and social development organizations that have promoted and continue to promote international understanding and relations.

Establishment of global economic and social organizations is anchored on the generally shared belief among scholars and practitioners that one of he surest ways to achieve political, economic and social security in the world is to ensure that development of all peoples of the world is guaranteed in a way that human welfare and good living conditions of everybody in all nooks and crannies of the world is improved and assured. It is also a truism that international development can only be achieved through partnership of all civilizations and cultures of the world. Thus, after the partitioning of Africa by European nations in late 19th century, there arose an increasing awareness that cut-throat competition among powerful nations that dominated the 19th century would only produce the super rich and the super poor and widen the latitude of suspicion among cultures. More so, the outbreak of the 1st and 2nd world wars was a pointer to the danger of exploitative tendencies among nations. As an antidote to this egoistic trend, co-operation through economic and social cultural organizations was a paradigm shift for strengthening international relations and accelerating global development. This partnership has enabled co-ordination of development efforts and fostering of a conducive as well as supportive global economic and social environment. The organizations formed from the partnership are also narrowing the gap between industrialized nations and developing countries as they have played up commonality of interests among nations of the world in solving myriad of problems that transcends national and territorial boundaries.

This unit presents the main social scientific steps which have underpinned international development. It follows the historical evolution of dominant and alternative theories which seek to explain economic, social and political transformation in the global community over a period of time critically analyzing the

premises upon which development is achievable. The discourse emerges within complex international political and economic contexts and goes on to explore how international government and non-governmental actors and institutions engage with development issues seek to shape development debates and to translate theory into workable strategies and frameworks.

2.0. Objectives:

Students will gain familiarity with the major economic and political issue of development and underdevelopment. The unit will enable students to analyse the theory and practice of development in objective and critical manner. It will promote an understanding of the diversity and complexity of interactions amongst political, economic and social actors involved in development.

In a nutshell at the conclusion of this unit you should be able to:

1. Give relevant definitions of development
2. Properly describe the concept of under-development
3. Explain some theories of development
4. Highlight reasons for global cooperation for development
5. Differentiate between internationalists and integrationists approaches to global development.

3.0. Main Content

Development is a perceptual concept which relates to how man is able to utilize abundant human and materials resources in his environment to satisfy his physiological, affectionate and mental needs. And like a ball it has many sides from which individuals and scholars can rightly or wrongly assume that a human society is developing or not. However, there have been developed over the years some indices of development. These indices range from elements of political, economic, cultural, educational, physical and social progress.

Discourse on development is at the front burner of international politics and relations because of its importance to global peace as lack of it will create a world that is lopsided and laden with suspicion and envy. It is thus important that all nations of the world co-operate to forge developmental agenda through well co-coordinated initiatives that will benefit the present humanity without sacrificing the future of its offspring. Development of all people of the world is a surest way of achieving global peace and security.

3.1. Concept of Development.

Njoku [2008:7] opines that development means the general and continuous improvement of man's quality of life here on earth physically, mentally, spiritually etc. According to him physical development which is mostly noticeable in any society includes the improvement of the quantity and quality of man's nourishment, clothing, shelter and general environment for which economic, scientific and technological advancements are indispensable. Mental indices entail human intellectual and skill-based properties while spiritual entails better understanding and improvement of man's relationship with the rest of nature and humanity.

Development viewed from another angle may be measured from social change which has taken place within a period of time and which has enhanced man's access to better living condition. This change may be economic during which the wealth, income and purchasing power of a society markedly increased. From the political sphere it may reveal some elements of liberation of the human mind, increased political participation and improved ideological orientation. Development thus encompasses all facets of human life and it is described so when the changes are positive and progressive in ways that are beneficial to human existence.

Development has also been defined as the systematic use of scientific objectives and requirements relating to better utilization of man's environment for his needs. Development is also defined as the process of economic and social transformation that is based on complex cultural and environmental factors and their interactions. Western-filter perspective sees development at an orderly change towards

realization of capitalist economic and western democratic political structure while it describes under-development as a condition which portrays persistence of internal factors of pre-capitalist structure. This perspective is narrow as it sees development as an exclusive preserve of western dictated model.

Probably a better way is to define development from the prisms of international concerns. International development or global development refers to the development of greater quality of life for humans. International development is thus composed of institutions and policies that arose after the two world wars. These institutions focus on alleviating poverty and improving living condition across the globe. International development encompasses provision of foreign aids, governance, healthcare, education, poverty reduction gender equality, disaster preparedness, infrastructure, human right promotion and environmental sustainability.

International development seeks to proffer and implement long term solutions to problems of underdevelopment by helping countries create necessary capacity needed to harness and engage sustainable programmes to solve their problems. Thus, development has taken place when it has engaged the unique cultural, political and geographical features of a society in solving its perceived underdevelopment. International development on its very meaning is geared towards colonies that gained independence and considered under-developed. It is envisioned that the governance of the newly independent states should be constructed so that inhabitants enjoy freedom from poverty and hunger which are indices of under-development. **What is then underdevelopment?**

Under-development is a condition or a process characterized by deterioration or even stagnation in the quality of life of man as a result of setbacks in the economic, social, political, technological and cultural progress of a given society. Under-development results from failure of man to harness abundant human and material resources within and outside his reach to better his lots. It is a condition of perpetual want, lack and insufficiency. Therefore to say that development has taken place in a society some features must be noticeable. Development features can be summarized thus:

- Something new or more advanced is produced
- Stronger milieu for human existence is perceptible.

- Changes affect the society in a continuing situation.
- Changes are not short-lived solution to a problems, they are sustainable
- Development engages both human capabilities and materials resources.
- Development situation is not static or complacent with any situation
- It is institutionally propelled

3.2. Theories of Development.

A theory is a statement of an idea or belief about something arrived at through assumption and in some cases a set of facts, propositions, or principles analysed in their relations to one another and used, especially in science, to explain phenomena [Encarta, 2004]. Thus, for any theory to be useful in academic discourse and practical life situation, it must explain or suggest ways of explaining why a subject has certain features.

There are many theories in the field of development as a general discipline and international development for specific applications. We will attempt to deal with some of them in relation to economic and social development as they are useful in international relations, laws. organizations and integration.

[a] Constructivist Theory.

The constructivists posit that the international system exists when states conscious of certain common interests, conceive themselves to be bound by a common set of values in their relations with one another, and share in the working of common institutions [Barker, 2008: 83]. Constructivists are also of the view that rules of international law and relations are inspired by the social [gregarious] nature of man; his material and moral environments. Thus, in bring about development man's social environment is central and crucial. They believe that international system is sustained largely by social relationships which are mutually beneficial and reinforcing. They submit that national interest is seen to be socially determined and best served when driven by shared understanding and an expectation of co-incidence of interests with other nations. Thus, it is argued that internationally shared common interests not

advancements of national interest can guarantee peace and security and that this understanding can be promoted through jointly owned organizations. These school of thought proponents have canvassed for the setting up of bilateral commission, multilateral institutions and international governmental organizations.

b. **The Realist Theory and Games Theory**

Theory, the realists indigenizes the formulation of national interests such that interests change as a result of interaction. The argument is that no nation should have unbent interests whose consequences may be damaging to the global community. Thus, contact with other nations of the world naturally requires adjustment of interests to accommodate other nation's interests and this could only be achieved through diplomatic relations and political maneuvering

c. System Theory

This theory simply states that the interest of the state is affected by its membership of international organizations. Like in international law where being a signatory to a convention, treaty or agreement binds one to its observance, membership of international social and economic organizations, binds one to the observance of rules, customs and agreements of such organizations. It is posited that international organizations will help in achieving common standards of development goals, practices, rules and prohibitions in a way that a nation's development agenda will not endanger the entire human specie. These account for why building of nuclear plants which has positive and negative uses is highly regulated as a global agenda.

d. The Western –Filter Perspective

It is variously called the bourgeois school, the conventional theoretical school or orthodox school of thought. It comprises evolutionary, structural- functionalist, modernization and liberal theories. It is based on social scientific concern with the

problem of order. Development is conceived as an orderly progression of society from an original state to some desired destination usually pre-determined. The determined destination is the Western Model already possessed by the great economies. It requires casting aside the yoke of tradition and assuming western values and attitudes and by so doing transforming the indigenous structures like those obtainable in the West [Njoku, 2008:33].

Probably the exponents of the theories in this category are largely responsible for the formation of Millennium Development Goals, Marshall Plans, Long and Short Term Development Plans and very recently in Nigeria Vision 20-2020. Rather than perceiving development as an accidental phenomenon that comes through historical evolution, this school believes in promoting models obtainable in developed countries among developing economies. It also emphasizes institutional promotion of ideals of development through global co-operative efforts and initiatives from the West. The major strands of the Western-Filter perspective are:

a) The Linear-stages approach- Development means transforming of developing economies from peasant subsistence agricultural modes to modern industrial forms through massive injection of capital form the West. The United Nations' Official Development Assistance [ODA] emanated from this perspective. Pioneer protagonist of this model was W.W. Rostow in his book "The Stages of Economic Growth: A Non-Communist Manifesto. The school of thought also gains currency from developing countries leaders in their clamour for technology transfer, direct foreign investments, external borrowings from industrialized economies and debt forgiveness in the early years of 21st century.

b. Traditional Economic Measurement of Development in terms of change in Gross National Product [GNP]. This was the target of the United Nations first Development Decade [1960-1970]. It also entails restructuring of production and employment such as manufacturing and service sectors i.e. heavy industrialization of nation's urban centres resulting in centre-pheri-pheri dictionary

c. The modernization Perspective: This is a state-centric approach which blames backwardness of nations on certain pathological constraints of respective countries.

These include economic shortcomings in terms of capital formation and industrial growth, measured on the basis of GNP. It is argued that persistence of traditionalism and isolationism, traditional attitudes and institutions stemming from the past, may hinder development if they are not in tandem with modernity. Modernization is therefore perceived as the process of change towards those types of social, economic and political systems that have developed in Western Europe and North America which presumably have universal application. Thus, the modern society is seen by these theorists as the industrialized, democratized, bureaucratized and rationalized society [Njoku, 2008:37].

d. Structuralism school which falls into the Western-Filer category argues that unless trade is regulated and the movement of capital is controlled, international irregularities will persist. They thus insist that international capitalist system can be reformed and regulated through foreign aid, trade protection or import substitution, favourable access to the Northern market and attraction of foreign investment. Invariably, this school of thought also subscribes to the establishment of international organizations to pursue development agenda and ensure that development is achieved through ethical practices.

e. The Marxist school of thought. The Marxist argues that unless developing countries are relieved of their ties to the apron-strings of industrialized nations there cannot be any genuine development. They insist that there should be a total disengagement from the capitalist system for the subordinate role of developing countries and the third world to end. The dynamics of the international market, they say, sustains dependency syndrome resulting in an uneven and disarticulated process.

The practical implication of this theory is far from being realistic in global system whereby the gap between the rich nation and the poor nations is still wider. The West and some rich countries until recently continued to call the short because of their economic power, technological advancement and political hegemony. Quite recently China and the Economic Tigers of the East are also joining the big economies and are able to challenge some inequalities. The developing countries still groan under the excruciating influence of Bretton Woods economic policies which most terms favour the Northern hemisphere.

f. Hegemonic Theories- Proponents of this theory argue that for stability of development and institutions of global international public good to prevail and relevant, there must be a hegemonic power that is able to enforce certain rules of behavior. It is argued that hegemon in that instance can afford the short-term costs of achieving the long-run gains which also happens to be in its national interests [Nabudere, 2004]. This theory informs the preservation of the leadership of World Bank and International Monetary Fund by the West to the exclusion of others. It is believed that the West has the human capacity as well as financial power to inject necessary expertise and fund to the running of the institutions. Specifically, today, the United States has this hegemonic power which presumably has led to the dollarization of global economy end the failure of the global community to implement the proposed creation of International Reserve Currency.

This hegemonic power has also positioned America as world police in any country where her economic interests are threatened. The Persian war and the AFRICOM project in the Gulf of Guinea are meant to protect American interest in oil importation. Scholars have cited various instances of American display of hegemonic power as exploitative rather than developmental to global economy.

g. Institutionalized Stability Theory- It is argued by this theory that the model of institutionalized hegemony which explains the functioning of multilateral arrangements based on the co-operation of a number of core countries to overcome market failure is preferable to the hegemonic power model [Keohane, 1980].

This theory proposes collective participation of key actors in development tasks and economic activities. The promotion of multinational companies is germane to sharing of power in international development according to this theory.

h. The Liberal Theory

The liberal theory is driven by global economic interests. A liberal theorist, Lasaki, for example, seeks for a formula which can remodel the liberal state in such a way as to bring about the intended socio-economic changes in a peaceful way. Although the theories so far discussed are useful in painting scenarios in international economic and

social development, no single theory is sufficient to explain in practical terms operations of the international, continental or regional organizations for economic and social development that will be discussed later in this unit.

Self-Assessment Exercise (SAE)

Examine the relevance of four theories to global economic development.

3.3. Internationalist and Integrationist Approaches to Global Economic Development

Hitherto, we have dealt with theories of development in general terms. In this sub-section we are going to look into two major perspectives in global economic relations among nations of the world. These are the internationalist and the integrationist. These two schools have informed formation of economic organizations either at international or regional levels and also help in shaping their functions.

Internationalist Approach to Global Economic Development.

Internationalists are scholars and practitioners who believe in achieving global economic development through multilateralism or succinctly put through multilateral relationships among nations of the world. They insist that world leadership is not held by a single individual country. It is argued that some formal and informal interdependence between countries with some limited supranational power given to international organizations controlled by those nations via intergovernmental treaties and institutions are necessary. However, they argue that most power resides with the national governments. Thus, the establishment of international economic organizations is to ensure adequate co-ordination of global economic activities in a way to ensure equity and fair-play in inter-governmental relations.

The general practice and belief of this school is called Internationalism. Internationalism is a movement which advocates a greater economic and political cooperation among nations for the theoretical benefit of all. It claims that nations

should cooperate because their long-term mutual interests are of greater value than their individual short term needs.

Internationalism is by nature opposed to ultra nationalism, jingoism realism and national chauvinism. Internationalism teaches that the people of all nations have more in common than they do differences, and thus that nations should treat each other as equals. Internationalism is not necessarily anti-nationalism, as in the people's republic of China and Stalinist countries. In the 21st century, internationalism is most commonly expressed as an appreciation for the diverse cultures in the world, and a desire for world peace. People with this views believe in not only being citizens of their respective countries, but of being citizens of the world. Internationalists feel obliged to assist the world through leadership and charity. Contributors to the current version of internationalism include Albert Einstein, who believed in a world government, and classified the follies of nationalism as an infantile sickness.

International Organizations and Internationalism

For both inter-governmental organizations and international non-governmental organizations to emerge, nations and peoples have to be strongly aware that they share certain interests and objectives across national boundaries and they could best solve their many problems by pooling their resources and effecting trans-national cooperation, rather than through individual countries' unilateral efforts. Such global consciousness is termed internationalism i.e. the idea that nations and peoples should cooperate instead of pre-occupying themselves with their respective national interests or pursuing uncoordinated approaches to promote them. Internationalists also advocate the presence of an international organization, such as the United Nations, and often support a stronger form of a world government.

Integrationist Approach to Global Economic Development

It is argued that less developed countries should go beyond greater trade with one another and move in the direction of economic integration. Economic integration occurs whenever a group of nations on the same region join together to form an economic union or regional trading bloc by raising a common tariff wall against the

products of non-member countries while freeing internal trade among members [Todaro & Smith, 2003:613]. The practice also involves all attributes of a custom Union [common external tariffs and free internal trade] plus the free movement of labour and capital among the partner states.

Economic integration among countries at regional level provides the opportunity for industries that have not yet been established as well as for those that have to take advantage of economies of large scale production to have expanded markets. It prevents duplication of industries which results in wasted scarce resources. Consumers also get products to buy at a reduced rate. It creates economic condition for accelerating joint development efforts within these regions. It can also provide buffer against negative effects of globalization while still permitting the dynamic benefits of intra-union specialization and greater equality among members.

Integrationist perspective gave birth to such regional bodies like European Union, North American Free Trade Agreement [NAFTA], Southern Cone Common Market [Mercosur], the Andean Group, South African Development Community [SADC], Eeconomic Community of West African States (ECOWAS), Latin American Integration Association [LAIA], Common Market for Eastern and Southern Africa [COMESA] and Association of Southeast Asian Nations [ASEAN].

Advantages of International Economic Integration

- Promoting of strategic partnership based on mutual political, social and economic benefits.
- Checking extreme or atavistic nationalism by the elites of a state
- Guaranteeing the interests of other states in the global community
- Preventing acting in narrow national interests to the exclusion of the global community.
- Streamlining economic and strategic competitions to cater for common interest of contiguous states
- Reducing cut-throat competition for national resources and expansionist tendencies such as witnessed in the partitioning of Africa during colonial rule

- Replacing state-centric pursuit with global shared interests and paradigms in the pursuit of equity and justice on sharing wealth.
- Recognizing peculiar cultural and economic endowments of each of the member countries.

From the foregoing, it is obvious that regional integration affects growth through interregional technology diffusion symbolized by knowledge spillovers generated at home and spreading to the partner countries. Spillovers flow from the leader to the follower. Following integration, the lagging country has access to a bigger stock of the knowledge that fosters an increase in its rate of growth and extends the diversity of its products. Trade in goods or in FAT – and flows of ideas are two faces of the same coin. The phasing out of barriers to trade together with product imitation can foster growth and convergence in the member countries. However, in order to avoid eventual trade and investment diversions the non-member should try to join the integrated zone [David-Pascal, 2004].

In a world with two similar, developed economies, economic integration can cause a permanent increase in the worldwide rate of growth. Starting from a position of isolation, closer integration can be achieved by increasing trade in goods or by increasing flows of ideas. Integration can also increase the long-term rate of growth if it encourages the worldwide exploitation of increasing returns to scale in the research and development sector.

4.0 Conclusion

In this unit we have presented development as a systematic change in the utilization of human and material resources which improves the quality of life of a people in any given society. It is also presented as a condition of progress which positively brings better or enhanced living standards to humans. Although scholars have defined development in different ways, we have come to the conclusion that development is holistic; touching and making man to enjoy a better relationship with his social, economic and political environment.

International development which is the thrust of this module is seen in this unit to be concerned with enhanced quality of life for humans irrespective of their place of

birth, station in life, race or colour. Thus, throughout human history efforts have been made to institutionalize bodies, organizations and committees to propel development in all the nooks and crannies of the universe. Efforts to make the under-developed and the developing countries catch-up with the developed economics is on-going as development is perceived globally as a major key to world peace.

5.0 Summary

This unit introduced the concept of development in its general form and in its particularistic use in the realm of international politics and international relations. In this unit we have learnt the different meanings of development as propounded by scholars. They all agree that development enhances man's quality of life. As an antithesis to development, we have also briefly captured the meaning of under-development as a condition of retrogression and incapacitation to utilize both natural and human resources to better human lots. In addition, we have dealt with the concerns of international development as an all-embracing phenomenon to cater for global interests rather than national or individual interests. This concern led us to the examination of different theories of development, features of development as well as facets of development in the economic, social and environmental areas.

Internationalist's and integrationist's thoughts have been seen as premises for the establishment of global, continental and regional economic organizations which represent human co-operative approaches to social, economic and political development. The organizations are established to wrest humans from hunger, poverty, want and deprivation.

6.0 Tutor Marked Assignments [TMAS]

1. Examine three definitions of development with reference to their features.
2. Discuss four general theories of development
3. 'Internationalists and Integrationists perspectives affect the formation of multilateral and bilateral economic organizations worldwide.' Discuss.

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UNIT 2: Global Economic Development Initiatives in the 20th and 21st Centuries

1.0. Introduction

Human quest for development is as old as man. From the Stone Age to the stage of technological advancement it has been the concern of man to better his living condition by exploring and exploiting his envir2onment. Whatever is achieved in development has come through conscious efforts of humans and they span centuries. However, in this unit we want to concern ourselves with international development efforts from the late 19th century till date. It will thus be revealed in this unit that the movement for economic development is from exploration to exploitation; from

nationalism to internationalism, from liberalization to globalization and more recently from individualism to co-cooperativeness.

2.0. Objectives

At the conclusion of this unit, learners should be able to:

1. Trace the history of international development initiatives

2. Define and explain some concepts in global economic practice

3. Highlight United Nations role in bring about development in the global

Community

- 4. List some international development organizations and their functions

3.0. Main content

Co-operation at bringing about development internationally is a continuous effort which has passed through certain stages. The role of international organizations in given flesh to this co-operative approach is enormous. From the United Nations and her affiliate bodies, multilateral economic institutions and multilateral agreements the world has moved from economic jingoism to liberalism and globalization. Economic development of the nations of the world is now used to pursue peace agenda rather than to insulate individual states as was the practice in the early stage of development.

3.1. Brief History of International Development Initiatives

Historically, global concern for international development may be focused from attempts at different stages at globalizing world economy which are traceable to different historical epochs. These include:

1. Berlin Conference of 1884/1885 which led to the partitioning of Africa among European powers

2. World Economic Conference of May, 1927 which recommended a general reduction in tariff, adoption of non-discriminatory policy and elimination of quantitative restriction

3. Establishment of Bretton Word Institution [International Bank for Reconstruction and Development and International Monetary Fund] pioneered by the United States in 1944. The institutions core philosophic assumptions include private enterprise, multilateralism, Industrial and agricultural development of world economy by Western experts. They also exercised the right to issue world currency. Thus, at this stage and till date dollarization of world monetary policy was at the centre stage of foreign exchange.

4. Establishment of neo-colonial system runs by transnational corporation [INTCS]. This era further entrenched the hegemony of United States of America after the 2nd World War and fall of colonialism. The period also witnessed the fall of Britain and other European powers in global economic dominance.

Although international relations and international trade have existed for many hundreds of years, the idea of international development came up after the Second World War. In the early part of the 20th century concepts used to describe economic relations in the global community included:

- Political and economic liberalism and the significance of 'free markets'
- Social evolution in extremely hierarchized environment
- Marxist critiques of class and imperialism
- Anti-colonial take on cultural differences and national self-determination

5. Post World War II- The second half of the 20th century has been called the era of development and it was said to have begun on January 20, 1949 when Harry S. Truma made his inaugural address. Features of the era included among others.

- The need for reconstruction in the immediate aftermath of World War II
- The evolution of 'colonialism' 'colonization' into globalization and the establishment of new free trade policies between the so called 'developed' and 'underdeveloped' nations
- The start of the cold war and the desire of the United States and its allies to prevent the Third World from drifting towards communism.

6. Launching of the Marshall plan in the 1950s in the form of modernization theory espoused by Walt Restow and other American economists.

7. Cold-War Era- Competition of the West and the Eastern blocs for the domination of developing countries economy. The gradual collapse of Western Europe's empires further lent credence to international development.

8. Efforts of such bodies as International Labour Organization [ILO], UNICER, UNDP in the 1970s led to the concept of Human Development.

9. Era of Globalization – 1970s – 1990s. Block importation of natural resources by developed economies and exportation of technology and technical know-how to less developed economics.

10. Era of Millennium Development Goals and Human Development Approaches.

11. Era of Public-Private Partnership and promotion of Corporate social Responsibility. The aim of this era is to integrate international development with the process of economic globalization.

An Overview of Some Economic Practices over the Years Colonialism

Colonialism is the establishment, exploitation, maintenance, acquisition and expansion of colonies in one territory by people from another territory. It is a set of unequal relationships between the colonial power and the colonist and between the colonies and the indigenous people. Though colonialism was a political practice of subjugating a people to external rule it had elements of economic practice which

created a periphery capitalist economy. This is often termed as exploitation colonialism as economic practice associated with colonialism promoted a class of comprador bourgeoisie-chosen middle class professionals, bureaucrats and merchants [to serve as intermediaries between foreign interests and indigenous polity] and economy and power relations that ensured domination of the colonized peoples' economy to international a capitalism [Gravin, 1980:34-37].The period of colonialism spread between 1500s to the mid 1900s. It was a decision to strengthen the home economy of the colonists at the expense of the indigenous colonized people

Features of colonialism include

1. Mercantilism which resulted in exploitation of natural resources especially raw materials of the colonized people.
2. Trade restrictions which tied the colonies to the apron strings of the colonialists.
3. Dependency syndrome which necessitated looping up to the colonial masters for economic direction
4. Exploitation of indigenous labour and materials for the development of colonialists' metropolis
5. Settlers acted as the link between the natives and imperial hegemony to bridge the commercial gap between the colonist and the colonized.

Neo-colonialism

Neo-colonialism refers to the theory that former or existing economic relationship created by former colonial powers were or are used to maintain control of the former colonies which results in dependencies even after independence is gained. In a nutshell, neo-colonialism is the practice of using capitalism, business globalization and cultural imperialism to influence a country's domestic life style. Neo-colonialism was **coined** by former Ghanaian President, Kwame Nkrumah, to describe the socio-economic and political control that can be exercised economically,

linguistically, and culturally by former colonial masters over the newly independent states. It was the domination praxis [social, economic, cultural] of the internal affairs of the developing countries. Colonial powers were seen to continue to apply existing and past international economic arrangements with their former colonies and continue to maintain control over their domestic economic affairs. It entailed disproportionate involvement of modern capitalists business in the economy of developing countries, whereby multinational corporations continue to exploit the natural resources of the former colony. Neo-colonialism used foreign capital to exploit the resources of a state rather than use it for the development of the less developed part of the world. Neo-colonialism increased the gap between the rich and the poor countries of the world because investment was usually directed at developing the centre of the world [the West] at the expense of the periphery [the third world].

Liberalism

Liberalism is a belief in the value of social and political change in order to achieve progress. Economic liberalism is the ideological belief in organizing the economy on individualist lines in a way that the greatest possible number of economic decisions is made by individuals and not by collective institutions or organizations. Market economy and private property are dominant features of economic liberation. It promotes free market economy whereby government regulations and interventions are minimally tolerated in order to remove private monopoly.

Adam Smith who promoted economic liberalism opined that if everyone is left to their own economic devices instead of being controlled by the state then the result would be harmonious and more equal society of ever-increasing prosperity. Economic liberalism is supportive of government activity to promote competitive markets and social welfare programmes to address social inequalities that result from free-market economy. It is envisaged that in an economic liberal state there will be equality of opportunity to the extent that individuals can become socially mobile. Thus, the poor has the opportunity of becoming rich if he is able to grapple the opportunity at his disposal to better his lots.

Globalization

Globalization has been described as the process of international integration arising from the interchange of world views, products, ideas, and other aspects of culture. It is a process that has generated further interdependence of economic activities globally. It is an international network of social and economic systems. Ronald Robertson [1992] defines globalization as the compression of the world and the intensification of the consciousness of the world as a whole.

In 2000 international Monetary Fund [IMF] identified four basic aspects of globalization as trade and transactions, capital and investment movement, migration and movement of people and the dissemination of knowledge. Thus, globalization relates to a multilateral political world and to the increase of cultural objects and markets between countries. The term implies transformation from seclusion to inclusion of all peoples of the world in development platform which emphasizes the interests of humans in general. It has also facilitated international trade in goods and services across borders and to destinations hitherto difficult to reach. Trade, foreign direct investment, portfolio investment and income fluidity are major features of globalization.

Globalization has lent a helping hand in the search for commitment to globally shared interests through its deterritorialisation of the world [Agwu, 2009:479]. Globalization and international integration have played very crucial roles in the pursuit of internationally shared interests through subtle diplomacy.

Advantages of Globalization

- State and non-state actors operate across and outside state boundaries
- Territoriality and supra-territoriality co-exist in complex situation to bring desirable change and development to countries of the world.

- Independent roles of both transnational entities, corporations, non-governmental organizations, inter-governmental organization and regions are streamlined into development efforts of states.
- Emphasis is placed on international interests while national interests are de-emphasized.
- Incorporation of actors whose interests transcend the confines of territoriality or regime hegemony is encouraged.
- In terms of economic, social, industrial, cultural, educational and even infrastructural consideration global power is increasingly diffused [Zakaria, 2008:5]

Disadvantages of Globalization

- Promotion of economic homogenization
- Forceful consensus on predominance of capitalism
- Economic immolation of weak countries or dependency on finished products of advanced economies due to availability of products through free trade.
- States are gradually being taking off the centre stage of world economy while supranational organizations are taking over.

Self-Assessment Exercise (SAE):

Endeavour to trace the historic experiences of colonised peoples of the world in the 19^{th} and 20^{th} centuries.

3.2. United Nations Roles in Driving Global Economic Development

Many of the economic development activities in the global community have been significantly affected by conscious efforts of the United Nations in the last 68 years. United Nations has greatly been responsible for shaping and directing transformational agenda that have affected better living standard for the homo-sapiens worldwide. The body as the global centre for conscious-building has set priorities and

goals for international co-operation to assist countries in their development efforts and to foster a conducive and supportive global economic environment [U.N. 1998]

A series of International Development Decades have been set by the United Nations from 1961 as listed below

1961 - First United Nations Development Decade [1961-1970]

1969 - Declaration on Social Progress and Development stresses the Inter-dependence of social and economic development

1970 - The International Development Strategy for the Second United Nations Development Decades [1971-1980] with calls for promoting economic co-operations on a just and equitable basis

1974 - A special session of the United Nations calls for the establishment of New International Economic Order

1980 - The International Development Strategy for the Third United Nations Development Decade [1981-1990] with emphasis on global negotiation

1990 - At a special session, the General Assembly adopts the Declaration of International Economic Co-operation, in particular the revitalization of Economic Growth and Development of the Developing countries. It subsequently adopts the International Development strategy for the Fourth United Nations Development Decade [1991-2000] which singled out four priority areas, poverty, hunger, human resources and institutional development, population and the environment.

Apart from setting development decades as shown above, the United Nations has set up other agenda like the Industrial Development for Africa, development and promotion of the human rights, Beijing Forum on Gender Equality and the Millennium Development goals. The United Nations system has also been promoting

economic development through policy formulation, advice for governments on their development plans and programmes, setting of international norms and standards and by mobilizing funds to carry out programmes of development worldwide. Through its offices, agencies, programmes and its family of specialized agencies the United Nations has touched on the economic development of nations. For example, the Economic and Social Council [ECOSOC] of the United Nations is saddled with the responsibility of co-coordinating her economic and social work. The United Nations has other bodies like the Department of Economic and Social Affairs [DESA], Official Development Assistance and United Nations Development Programme. Other affiliates are the World Bank, International Monetary Fund, International Development Association and International Finance Corporation [IFC]

Also, various agencies of the United Nations system monitor and assess developments. These include Food and Agricultural Organization, United Nations Development Programme and United Nations Industrial Development Organization {UNIDO] that assist developing countries governments in attracting investments and securing grants and loans for development projects. In the same vein, the United Nations Conference on Trade and Development [UNCTAD] assists government, government agencies as well as Non-governmental Organizations to improve knowledge of trend in foreign direct investment, trade, technology and development. Information is also disseminated to policy-makers and investors on global trend in technology and innovative practices. Thus investment promotion and technology diffusion in developing counties have been progressive through the agencies of the UN.. International Trade Centre UNCTAD/WTO [ITC] works with developing countries and countries in transition to set up trade promotion programmes, to expand their exports and improve their import operations [U.N., 1998:142].

International Fund for Agricultural Development {IFAD] finances agricultural development projects that alleviate rural poverty and improve nutrition in the developing world. International Labour Organization is concerned with setting and monitoring of international labour Standard in the workplace. Likewise, the International Telecommunication Union [ITU] has been helpful in harmonization of

national telecommunication policies. By and large, the United Nations is striving daily to fulfill its mandate of co-operation in solving international economic, social, cultural and humanitarian problems, and in promoting respect for human rights and fundamental freedoms.

3.3. Some International Economic Development Organizations.

International Organizations are transnational organizations created by two or more sovereign states [Akinbobola, 1999:344]. However, for the purpose of this unit, international economic development organizations will be limited to only international bodies whose formation is multilateral and whose spheres of influence is universal.

United Nations Conference on Trade and Development [UNCTAD]

United Nations Conference on Trade and Development was established in 1964 as a permanent intergovernmental body. It is the principal organ of the United Nations General Assembly dealing with trade, investment, and development issues. It has its headquarters in Geneva, Switzerland. Its aim is to "maximize" the trade and investment and development opportunities of developing countries and assist them in their efforts to integrate into the world economy on an equitable basis. In the 1970s and 1980s, UNCTAD was closely associated with the idea of a New International Economic Order [NICO]. UNCTAD areas of work focus on:

- African development as the least developed economies
- Globalization and development
- International Trade and Commodities policy drive.
- Investment and Enterprise promotion
- Technology and logistics know-how dissemination

UNCTAD is working hard to promote policies at national, regional and international levels that are conducive to stable economic growth and sustainable development. It examines the trends, challenges and prospects of world economy,

undertakes studies in the requirement for successful development strategies and on debt problems of developing countries.

UNCTAD provides technical support to developing countries in their efforts to integrate into the international financial system. In this area, for example, UNCTAD's 2013 Economic Development in Africa Report entitled "Intra-Africa Trade: Unlocking Private Sector Dynamics" focuses on how to strengthen the private sector to boost intra-African trade. The report also highlighted challenges posed by non-implementation of regional trade agreements and provides new insights into how to enhance implementation of existing regional agreements. Thus, it is reshaping the global economic development architecture in which South-South co-operation must play a growing role.

United Nations Development Programme [UNDP]

The United Nations Development Programme [UNDP] is the United Nations system's largest source of grant funding for development and is the main body coordinating United Nations development assistance. It was established in 1960 and has offices in 177 countries with its headquarters in New York. UNDP's mission is to help countries to develop their own national capacity to build sustainable human development. Development that is both people centred and respects the environment. UNDP activities give top priority to poverty eradication, environmental regeneration, job creation and the advancement of women. It supports and promotes sound governance and market development. It supports rebuilding war torn societies and alleviates sufferings during humanitarian emergencies.

UNDP is central to efforts to create United Nations Houses in many countries to provide common premises and pool facilities for United Nations agencies and programmes in the field. It is also working with the World Bank and United Nations Environment Programme in managing Global Environmental facility. It is also sponsoring fight against HIV/AIDS scourge. UNDP equally supports a wide range of economic programmes and projects at International and national levels.

United Nations Development Programme is credited for being partners with people at all levels of society to help build nations that can withstand crisis, and drive sustainable development. By and large UNDP advocates for change and connects countries to knowledge, experiences and resources to help people build a better life. As an executive board of the United Nations General Assembly it mobilizes voluntary contributions for its activities.

In 2010, UNDP budget was approximately 5 billion USD. The UNDP works internationally to help countries achieve the Millennium Development Goals {MDGS]. It provides expert advice, training, and grant support to developing countries. It also publishes annual Human Development Report since 1990 to measure and analyze developmental progress globally. In a nutshell, UNDP links and co-ordinates global and national efforts to achieve the goals and national development priorities lay out by the host countries. Its five developmental challenges are democratic governance, poverty reduction, crisis prevention and recovery, environment and energy and HIV/AIDS prevention and reduction.

The World Bank

The World Bank was established in 1945. The World Bank today has other affiliate institutions: The International Bank for Reconstruction and Development [IBRD] established in 1945; The International Finance Corporation [IFC] established in 1956; the International Development Association [IDA], established in 1960; and the Mutilateral Investment Guarantee Agency [MIGA], established in 1988.

The World Bank is an international finance institution that provides loans to developing countries for capital programmes. It is owned by 188 members' countries. The task of the World Bank is to reduce poverty around the world by supporting the economies of poor countries with the aim of improving people's living standards. The affiliates of the World Bank provide economic growth by providing repayable loans to finance development projects in more than 100 countries of the world.

The World Bank also expands markets to help integrate marginalized population into the local economies with the aim of reducing poverty. However, the

bank does not give grants, it gives loans. Apart from loans, the World Bank and its affiliates give technical assistance and policy advice to developing economies. Under its article the World Bank can lend directly to only member Governments, but is works closely with local communities, non-government organizations [NGOs] and private enterprises by offering technical assistance and customized services.

It also works in close collaboration with other agencies of the United Nations system and actively seeks to establish additional partnerships in areas where private sector is making rapid inroads. While the World Bank, International Bank for Reconstruction and Development, International Development Association give loans to only governments, on the other hand, International Finance Corporation invests in private sector enterprises. The Multilateral Investment Guarantee Agency [MIGA] an affiliate of the World Bank also facilitates private sector investment in developing countries.

World Bank also supports projects in the area of sustainable development such as reforestation, pollution control, and land management. It also invests in sanitation, water and agriculture. It has an annual publication which is called World Development Report.

International Monetary Fund [IMF]

IMF was established at the Bretton Woods Conference in 1944. IMF headquarters is in Washington DC, United States but has country offices worldwide. The country offices are responsible for the surveillance of its member's economies and provide policies advice which has helped to improve their economies. Succinctly put, the IMF describes itself as an organization of 188 countries, working to foster global monetary co-operation, secure financial stability, facilitate international trade, promote economic growth through high employment and sustainable economic growth, and reduce poverty around the world.

Highlights of the objectives of setting up IMF include

- Facilitating of International monetary corporation

- Promoting of exchange rate stability and orderly exchange arrangements
- Assisting in the establishment of multilateral system of payments and elimination of foreign exchange restrictions
- Assisting members by temporarily providing financial resources to correct maladjustments in their balance of payment.

  IMF financial role consists of providing temporary credits to members experiencing balance of payment difficulty. It also offers concession and assistance to low income member countries through its enhanced structural adjustment facility.

The new challenge to IMF is to promote and implement policy that reduces the frequency of crises among the emerging markets countries, especially the middle income countries that are open to massive capital outflows.

International Fund for Agricultural Development [IFAD]

IFAD has its headquarters in Rome, Italy. The mandate of IFAD is to combat hunger and rural poverty in the low income food-deficit regions of the world. It is a multilateral financial institution established in 1977, following a decision of the World Food Conference in 1974. It also has the objective of ensuring that poor rural people have better access to and skills and organization they need to take advantage of:

- Natural resources i.e. access to land, water and conservation practices
- Improved agricultural technologies and effective production services
- A broad range of financial assistance
- Transparent and competitive markets for agricultural inputs and produce
- Opportunity for rural farm employment and enterprise development
- Local and national Policy and programming processes

Since starting operation in 1978, IFAD has invested US12.0 billion, AM7.5 billion in 860 projects and programmes that have reached some 37 million poor rural people as at 2013.

IFAD mobilizes resources and funds to improve food production and ensure better nutrition among the poor in the developing countries. It also lends money on highly concessional terms to developing countries. It mobilizes funds from external donors for its projects. It gives loans and grants to institutions engaged in food production, research activities and food processing.

In summary, IFAD's goal is to empower poor rural women and men in developing countries to achieve higher incomes and improved food securities. It is an advocate of the rural people.

The World Trade Organization [WTO]

The World Trade Organization established in 1995 has the mandate of overseeing international trade. It replaced the General Agreement on Tariffs and Trade [GATT]. The three main objectives of WTO agreement are:

- To help trade flow as freely as possible
- To achieve further liberalization gradually through negotiation
- To set up an impartial means of setting trade disputes

In its operation the organization ensures non-discrimination, free trade, competition and has extra provisions for less developed countries. It also reduces protectionism.

Other International Economic Development Organizations

United Nations Industrial Development Organization [UNDO]

International Atomic Energy Agency [IAEA]

World International Property Organization [WIFO]

International Telecommunication Union [ITU]

Universal Poster Union [UPU]

United Nations Environment Protection [UNEP]

4.0. Conclusion

The world has passed through many economic epochs. From exploitation to cooperation the world is becoming a better place for humanity. The United Nations has been instrumental to global economic development in many ways in the 20th and 21st centuries. Through her numerous programmes and agencies, it has lifted the living conditions of millions of people especially in developing countries. Her efforts are on-going in the pursuit of a better today and a sustainable future.

5.0. Summary

In this unit we have dealt with some important milestones in economic history. We have touched on the evils of colonialism and neo-colonialism as eras of global economic retrogression in developing economies. The turning points are the periods of nationalism, liberalism and globilisation which followed the 2nd World War and the fall of the Berlin wall. More rewarding is the interventions of the United Nations through her agencies and programmes. United Nations has been helpful in widening economic horizons of developing economies. The grassroots people are benefiting from other affiliates of the United Nations.

6.0. Tutor Marked Assignments:

1. Discuss the assertion that the establishment of Bretton Wood Institution was a milestone in global economic history.
2. Examine the roles of the United Nations in economic development of the world since its establishment.
3. List four international finance institutions and discuss their contributions to improved living condition of man.

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Unit 3: Continental Initiatives for Tackling Development Issues and Challenges in Africa

7.0 References/Further reading

1.0 Introduction

Most African countries are said to be underdeveloped. Various reasons have been advanced for which include colonial experience and attendant evils. The experience of colonialism, economic, exploitation and imperialism in Africa, notwithstanding today it is now a beacon of growth and economic opportunity. This status is sequel to the liberalization of most African countries domestic economy after independence. International investors and multi-national companies are flocking into different states of Africa. This sporadic increase in global business patronage of Africa arises from the fact that governments of various countries are working hard to increase infrastructure investment and intra-African trade through multilateral and bilateral relations. These are in from of economic organizations at both continental and regional levels. These bodies articulate development need of Africa and proffer strategic plans to achieve them with assistance from international organizations earlier discussed.

Today, efforts are being accelerated through these initiatives to achieve economic, expansion and well moderated globalization in Africa with guided policies aimed at ensuring human welfare, sustainable development, and eradication of poverty, fair trade and reduction of crippling indebtedness.

2.0 Objectives

At the end of this unit students should be able to:

1. List causes of underdevelopment in Africa.
2. Examine efforts being made to tackle under-development issue through a number of continental bodies; both local and foreign.
3. Discuss the present features and future of African economic Organizations.

3.0 Main Content

Africa is a continent of abundant human and materials resources; however, these resources remain largely untapped due to her present state of economic development. Most of the nations in Africa are classified as belonging to the

developing nation category because hunger, wants, poverty, diseases and illiteracy are still prevalent in most states. In acknowledgment of the prevailing socio-economic inadequacies of Africa, African nation governments have undertaken integration approaches since the last century and have opened their doors to global organizations that are considered useful in actualizing the dream of becoming a developed continent.

3.1 Causes of Underdevelopment in Africa

Underdevelopment in Africa is a subject of global discourse. Underdevelopment is a state of inability of a nation to use to their full socio-economic potential resources at her disposal with a result that there is a wide disparity between the rich and the poor and unhealthy balance of trade [Frank, 2005]. Thus, the term underdevelopment refers to the situation of a country or region usually characterized by inadequate development indices which include low level of economic productivity and technological sophistication.

Many reasons have been adduced for underdevelopment in Africa by different scholars. However, we intend to adopt the ones highlighted by Norway's Ministry of Foreign Affairs. First, it is noted that geographically and demographic conditions of Africa account for most crises. The agricultural revolution and the use of iron tools came to sub-Saharan Africa later than to other parts of the world with about 1000 years lag. The continent as a whole is said to be inhospitable to agriculture. It is also a home to a number of indigenous diseases that afflict both humans and animals.

Africa's demographic history has been characterized by low density of population in the rural areas and continuous migration from rural to urban settings. There are also geographical obstacles to communication both internally and with the rest of the world. In addition, the Continents Rivers with their large water falls have not provided a navigable route to the interior for development to take place, in contrast to the rivers of Europe and Asia that have been put to use for transportation.

Since independence of most of African states, lack of political stability accounts for many of the development problems in post-colonial Africa. As a result of political instability there is usually policy summersault, lack of accountability, corruption and lack of direction. National endeavours have been hampered by internal conflicts and civil wars, and at worst a form of anarchy, as seen in the Congo, Nigeria,

Liberia, Sierra-Leone, Cote de' Voire, Congo, Sudan have all experienced imaginable destruction of human lives due to civil war and internal political crises. Civil wars and internal crises have made ethnicity one of the worst challenges to development in Africa. Ethnicity override all other forms of loyalty with a ferocity that defies belief. Thus, people take advantage of tribal instinct as opposed to collective interest in the pursuit of national development agenda.

Slave trade and colonialism also accounted for greater laxity of African continent in development because both phenomena are deep in exploitation both in theory and practice. The cruelties of slave trade and colonialism have left deep scares in the African psyche to the extent that inferiority complex is in imbued in the mind of average Africans. This was a millennium in which African labour played a key role in building up the Atlantic system. African labour contributed immensely to the development of Europe and America in the 19th century. There was also unguided exploitation of African raw materials which were used to develop metropolitan Europe and Americas. Colonialism also left African in the political and economically irrational and dysfunctional states because of imposition of western values that are alien to Africa basil Davidson sum up the state of the affairs in the title of his book titled "The black man's body: Africa and the cause of the nations state".

After independence, state controlled economic with a high level of professionalism took on a particular and unfortunate form in Africa. The state became gate keeper state and only acquired both of their revenue from custom duties, concession to foreign companies, visas, foreign exchange control, and foreign aid. This situation is worsened by contestation for ideological space between west and eastern blocs during the cold war era. African economic shuttled in between capitalism and communism as a result of confusion vision of African leadership.

African leaders priority as often been to typing political control the flow of the resources, develop personal network and perpetuate themselves in power while abandoning nation building are well-functioning public institution. This has led to 'patrimonial rule' or 'personal rule' whereby state resources are disposed to perpetuate regimes rather than develop the state. This became an obstacle to the development of modern institution and enterprises. Where these institutions are put in

place, political patronage underlines the choice of leadership and the management team.

Economic liberalization and globalization have led to what scholars termed a new scramble for African that is irrational in economic term. Capital flow, foreign direct investment grants and aids to Africa and remained largely uncoordinated. This lack of coordination had led to sharp practices and corruption which are inimical to economics progress. This has also resulted in huge external debt and unbalance of trade in African states fluctuation on the prizes of raw materials and surge in oil prices after 1973 have led to unguided spending spree of African leaders. Consequences of these are artificially high exchange rate, unbridled printing of money and over optimistic loans from . abroad. Thus, social frustration and weak government structure further prevent people from taking advantage of their globalize economic environment.

The growth of fundamentalism, terrorism, illegal immigration, internationalism and trans border crime and spread of epidemic diseases institute major hindrances to development in Africa.

3.3 Global Interventions in African Development: Roles of Foreign Continental Economic Organizations

International organizations had earlier been described as transnational organizations whose membership includes two or more nations or sovereign states. In such organization the interests and policies of member states are prescribed and guided by their representatives. Ordinarily, it is expected that they will operate within the geographical confines of member states, however, nowadays in order to spread the culture, political and economic ideologies of member states they operate in other nations especially in the third world.

List of continental organizations that work in Africa include:

- European Union [EU]
- African Union [AU]
- Union of South American Nations [UNDUR]
- Caribbean Community [ARICOM]

- Central American Immigration System [SICA]
- Arab League
- European Free Trade Association [EFTA]
- Eurasian Economic Community [EAEC]
- Association of Southeast Asian Nations [ASEAN]
- Central European Trade Agreement [CEFTA]
- North American Free Trade Agreement [NAFTA]
- South Asian Association for Regional Co-operation [SAARC]
- Pacific Island Forum [PIF]

Although some scholars see their presence in Africa as a form of imperialism, yet the level of development of African states could not make governments reject their presence in their states. In this respect, the roles of such organizations are equated to that of international governmental organizations [IGO's] offering support in the area of global development. For charity let us consider the roles of three of them in Africa.

European Union

The European Union [EU] is an economic and political union of 28 member states that are located primarily in Europe. Members of the European Union are Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlanda, Poland, Romania, Slovenia, Spain, Sweden and United Kingdom. Its political headquarter is in Brussel. It was established with the Treaty of Paris in 1952, Treaty of Rome, 1958, Merger Treaty 1967, Treaty of Maastukht, 1993 and Lisbon treaty, 009. Members of the union have aggregated per capital income of $34,023 which makes them rich economies of the world. The common currency of members state is Euro [EUK] used mostly for trade in the Eurozone though individual state has it sown currency.

European Union operates system of super national independent institution and intergovernmental negotiated decision by the member states. Institution of EU include European Unions the court of Justice of the European Union, he European central Bank, the court of Auditors and the European Parliament. The creation of the single market and the corresponding increase in trade and general economic activity

transformed EU into a major trading power across the globe. It is sustaining economic growth by investing in transport, energy and research while also seeking to minimize the environmental impact of further economic development in different countries of the world. EU is thus a responsible institution in the global community by working for a healthy and sustainable environment for the future generation.

European Union activities in Africa have tremendous impacts on the socio-economic lives of the people. The Africa-EU strategic partnership was established in 2007 at the second Africa-EU summit as an overarching political relationship though EU activities predates this partnership. The strategy for Africa is the European Union's response to the challenge of getting Africa back on the track of international development. EU activities include management of the environment, lending technical support, issuing loans and grants to needy African countries. They have offices in some African states. Also offer peace facility to Africa by getting involved in negotiating peaceful settlement of conflicts, getting involved in demobilization, disaronament and reintegration of ex-combatants.

European Union's achievements in Africa include finding solutions to everyday problems battling against global forces to maintain European Union member states economic presence in Africa, ensure equilibrium and generate jobs. It has also helped to restore hope to people suffering natural and man induced disasters in Liberia, Sierra Leone, Congo, Sudan, Nigeria and others.

Organization of American States [OAS[

Organization of America states promotes social and economic development in the western hemisphere through co-operation OAS came into being in 1948 with the signing in Cogota, Colombia, of the Charter of the organization. Its logo is democracy for peace, security and development. It thus, promote economic, military and cultural co-operation among its members.

Membership of OAS comprise of America and 20 Latin American nations. As the world oldest regional body its has served as a platform for improving human living conditions not only in the Americas but also in many developing countries.

The deepest roots of the Organization of American states are found in the ideals of Simon Bolivar, the Liberator. Thus, OAS offers scholarships to all peoples of the world including Africans irrespective of race, colour, sex or belief.

The Organization of American states has a council on Foreign Relations which assists developing nations to overcome their domestic economic challenges. The regional offices oversee plan, coordinate IOM activities within Africa.

Arab League

Arab League is a union of Arab-speaking African and Asian. The league of Arab states is what commonly called the Arab League. It is a regional organization of Arab countries in around North Africas the Horn of Africa, Southeast Asia. It was founded in Cairo on 22nd March, 1945 with six member Arab League has 22 members as at 2013. The League's main goal is to draw closer the relations between member state and coordinate collaboration between them, to safeguard their independence and sovereignty, and to consider in a general way the affairs and interests of the Arab countries.

Arabic League has played important role in coordinating Arab economic life. Towards the realization of better economic life for Arabs it has established Arab Telecommunications Union [1953], the Arab Postal Union [1954] and the Arab Development Bank [1959] later known as "Arab "Financial Organization. The Arab common market was established in 1965 and is open to all Arab League member countries.

The Arab League maintains delegation at the African Union in Addis Ababa, Ethiopia. They also set up Arab Bank for Development in Africa, Arab Fund for Economic Unity, Organization of Arab Petroleum Exporting countries and many others which have contributed to economic development in Africa by virtue of the fact that some of her members are in the African continent. Many Africans who are not members of the League have also benefited from her largess in terms of scholarship, trade relations and loans. It is widely acknowledged by scholars that Arab unity is central to the creation of a new world order as will the division in the Arab ranks.

The Arab League countries are rich in resources, with enormous oil and gas resources in certain member states. Arab League holds investments in non-member African countries running into billions. Also with phenomenal growth in Telecommunications such companies like Orascom and Etisalat have expanded their frontiers to other African countries. For example, Etisalat is a major player in Nigeria telecommunication industry.

Self Assessment Exercise (SAE):

Reflect on the various ways by which the global community is helping Africa to develop

3.3. African Initiatives for Combating Underdevelopment

African leaders do not fold their arms since gaining independence from white rule. They have been making spirited efforts to come together to confront economic challenges. We shall now consider some of the cooperative economic development bodies that have arisen as a result of these efforts.

The African Union

The African Union is the key actor in both political, social and economic integration of Africa. Thus, most of the continental economic organizations in Africa are affiliates of the Union. In fact, organization of African Unity which later transformed to African Union gave birth to many of these continental economic bodies. Suffice to state that the African Union was born out of the ideology of Pan-Africanism as a tool designed to change the development of the African people. In light of this, Union sees the need to pursue agenda that will result in speedy economic integration of Africa in order to improve the people's well being. Economic integration and regional co-operation Development objectives of AU are:

- Ensure the implementation of the Abuja treaty establishing the African Economic Community [AEC], through co-ordination and harmonization of activities of the RECs, which are pillars of the AEC.

- Follow-up the implementation of the relevant African Union Assembly Declaration on integration, especially the syota-Declaration on the acceleration of the integration process.
- Identify ways and means of rationalizing the activities of the REGs,'
- Follow up and monitor the integration process in Africa.

The Division undertakes various activities and programmes, and has regular publication. The Status of integration on Africa [SIA] is an annual report which contains information on the activities and progress made by each Regional Economic Community [REC]. These RECs include ECOWAS, COMESA, ECCTS, SADC CEUSAD, EAC, IGAD and UMA. The division also holds scheduled meetings with Regional Economic Commissions twice yearly to establish a co-ordination mechanism for regional and continental efforts for the development of Africa and ensure multilateral negotiations. In its bid for proper co-ordination, the African Union recognized eight regional economic commissions at the meeting of Heads of state and government on 2nd July, 2006.

African Union also has well established divisions under her department of Economic Affairs that take care of Africa Development. These are Economic Integration & Regional Co-operation Division, Economic Policies and Research, Private Sector Development/Investment & Resources Mobilization Division and Statistics Division.

Let us consider some concrete efforts made through economic bodies.

The New Partnership for Africa's Development

NEPAD is the planning and coordinating technical body of the African Union, aiming to eradicate poverty and create sustainable growth. NEPAD is a merger of two plans for the economic regeneration of Africa. The millennium Partnership for the Africa Recovery Programme [MAP] and the OMEGA plan for Africa. The two programmes were merged in March 2001 at a summit in Suite, Libya and named it NEPAD in 23 October, 2001. Its secretariat is based in Midrand South Africa as a programme of A.U.

The primary objectives of NEPAD are to eradicate poverty, promote sustainable growth and development; integrate Africa in the world economy, and accelerate the empowerment of women. The states participating in NEPAD are to establish African Peer Review. Mechanism to promote adherence to NEPAD objectives and declaration.

Proper integration of NEPAD into the AU structure is still on-ongoing. NEPAD works with the African Regional Economic Communities in the co-ordination and resource mobilization for African development .Many African states Including Nigeria have established national NEPAD structures responsible for liaison with the constitutional initiatives on economic reform and development programmes. NEPAD also partners with UN Economic commission for Africa (UNECA), African Development Bank, Development Bank of Southern Africa, Investment Climate Faculty, Office of the UN under-Secretary General and Special Adviser on Africa and The Industrial Development Corporation (IDC) Sponsor of NEPAD.NEPAD is also relating with International organization like the world bank, G8, European Union Commission UNECA and as well as the private sector.

The eight priority areas are political, economic, and corporate governance, agriculture, infrastructure, education, education, health, science and technology, market access and tourism and environment. In achieving these goals, its giant strides include setting up agenda like:

- The comprehensive African Agriculture Development Programme
- The NEPAD Science and Technology Programme
- The e-school programme
- The launch of Pan African Infrastructure Development Fund (PAID)
- Capacity building for continental institutions
- Involvement in the Turbulent Manuscript Project

Bye and large, the initiative is halting the marginalization of Africa in the globalization process and enhancing its full and beneficial integration into the global economy. Though the body is young, it must strive to live up to its principles which include

- Good governance, as basic requirement for peace

- African ownership and leadership in all sectors of the economy
- Anchoring development on African people and resources
- Partnership between and among African people
- Acceleration of regional and continental integration
- Building competitiveness of African countries and continent
- Forging a new international partnership
- Linking all partnerships to the Millennium Development Goals

African Development Bank

African Development Bank is a regional multinational development bank, engaged in promoting economic growth. The logo is building today a better a tomorrow and it was founded in 1964. The African Development Bank Group

- The mission is to promote sustainable economic growth and reduce poverty in Africa
- Shareholders are 53 African countries (regional member countries) and 24 non – African Countries)

The African Development Bank Group (AFDB) is a multilateral development finance institution established to contribute to the various efforts made by African government s to alleviate poverty, hunger and disease.

The African Development Bank is similar to the World Bank in that it lends money and gives grants to African countries for development projects. AFDB headquarters is officially in Abidjan Cote D'ivoire, however, due to recent events in Cote D'ivoire it was temporarily taken to Tunis, Tunisia but it is now back in Abidjan.

AFDB is concerned about regional integration in Africa as a long term strategy by transforming African agriculture, natural resources and human potentials for better living conditions. AFDB Group is engaging these development tasks through its constituent institutions namely, the African Development Bank, The African Development and The Nigeria Trust Fund (NTF). AFDB is the largest financier of clean energy on the African continent with $4.5billion in energy projects. In 2012 the volume of Bank Group operations was UA 4.25Billion compared to UA 5.72Billion in 2011. At the ADB window, come borrowers reach their prudential limits, while some

ADF only countries front – loaded resources and exhausted their allocations. Selectivity and focus continue to reflect the lending outcomes with infrastructure leading at about 50percent of total but much higher if infrastructure related interventions in other sectors are include. Energy was the dominant sub-sector followed by transport and water and sanitation followed by the social sector.

African Economic Community (AEC)

African Economic Community is an organization of African Union states co-coordinating grounds for mutual economic development among the majority of African states. The goals of the organization are creation of free trade areas, customs union, a single market, a central bank and a common currency. It is to establish an economic and monetary union.

Many Economic Communities in Africa form the pillars of AEC as they subscribe to and patronize the organization. These include among other ECOWAS, East African Community and Economic Community of Central Africa. Founded through the Abuja treaty signed in 1991 and entered into force in 1994, AEC is envisioned to be created in six stages.

1. 1994-1997 – creation of regional blocs in regions where such do not yet exist.
2. 1999- 2007 – strengthening of Intra-REC integration and inter-REC harmonization.
3. To be completed in 2017, establishing of a free trade area and customs union in each regional block.
4. To be completed in 2019, establishing of a continent-wide customs union (and thus also a free trade area)
5. To be completed in 2023, establishing of a continent-wide African Common Market (ACM)
6. To complete in 2028, establishing of a continent-wide economic and monetary union (and thus also a currency union) and parliament.
7. End of transition periods 2034 at the latest.

From the foregoing, it could be seen that AEC is a fledging organization with very optimistic goals for economic development of Africa. It is hoped that all hands will be on deck to ensure the realization of its targets.

4. O. Conclusion

The discourse in this unit revealed that Africa is not on her own in her cooperative efforts in tackling her economic challenges. The entire world community is helping Africa through continental economic organizations. This stems from the realization of the fact that global economic development is a necessity for peace. African governments have also come together to form economic associations that are galvanizing the development process and linking Africa to the global economy as equal players.

5.0. Summary

This unit has identified the state of development in Africa and concluded that it is abysmally poor. Some of the causes of under-development are traced to colonialism, imperialism, lop-sided globalization, internal wars and crises, bad leadership and cultural attitudes. However, the unit acknowledged global interventions in African plights through multilateral, international and foreign organizations deriving from the fact that global economic development is a precursor to global peace. We have also discussed some worthy African initiatives in integrating Africa economically. These initiatives though have teething problems but are capable of taking Africa to the next level.

6.0. Tutor Marked Assignment

1. What are the historical and contextual causes of underdevelopment in Africa?
2. In what ways has the global community intervened in solving African economic problems
3. Mention four economic organizations borne out of African initiatives and discuss their objectives and achievements.

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Unit4. Regional Economic Communities in Africa

1.0. Introduction

The new trend in global economic relations is the coming together of countries within a politically acknowledged region to come together to pursue common economic interests to foster development. Africa has five regions of such. These are West Africa, Southern Africa, Eastern Africa, North Africa and Central Africa. However, in economic relations and formation of regional bodies they overlap as we shall see later in this unit.

2.0. Objectives

In this unit we shall endeavour to achieve the following:

1. List some regional economic communities in Africa
2. Discuss the objectives of some regional economic communities in Africa
3. Examine the achievements and challenges of regional economic Communities in Africa

3.0. Main Content

There are multiple regional blocs in Africa which are known as Regional Economic Communities (RECs). Memberships of these RECs are overlapping in several cases i.e. a country belonging to more than one of the RECs.

The RECs in Africa have primarily trade interests which are further supported by political and economic co-operation. Some of the Regional Economic Communities in Africa are:

- Community of Sahel Saharan States(EEN-SAD)
- Common Market for Eastern and southern Africa (COMESA)
- East Africa Community (EAC)
- Economic Community of Central Africa States (ECCAS/CEEAC)
- Economic Community of West African States (ECOWAS)
- Intergovernmental Authority on Development (IGAD)
- Southern African Development Community (SADC)
- Great Arab Free Trade Area (GAFTA) (also includes most Middle East States)
- Economic Community of the Great Lakes Countries (ECGLC)
- Indian Ocean Commission (COI)
- Liptako-Gourima Authority (LGA)
- Mano River Union (MRU)

We shall consider the founding, membership, objectives and achievements of four of these communities with focus on global economic development across regions of Africa.

3.1. Economic Community of West African States.(ECOWAS)

ECOWAS is a regional integration Organization among contiguous states of West Africa. Sixteen West African Countries formed this regional integration body with a treaty signed on May 28, 1975, however Mauritania withdrew in December 2000. Membership covers Anglophone and Francophone west African states. ECOWAS was established to promote co-operation and integration in order to create an economic and monetary union for promoting economic growth and development in West Africa. The main objective of ECOWAS is promoting economic growth and development in West Africa. Recently it has also undertaken the objective of ensuring peace in the West African region.

ECOWAS is known as Communicate economique des E'tats del'Afrique in French and Communidade Economic dos Estados da Africa Ocidental in Portuguese. The headquarters of ECOWAS is in Abuja, Nigeria. Official Languages of translation are French, English and Portuguese.

The fifteen members of the organization are Benin, Burkina Faso, Cape Verde, Ivory Coast, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo. Aggregate per capital income of these states is put at US$2,500 and Gross Domestic Product of $402.454Billion in 2012.

ECOWAS's mission is to promote economic integration across the west African region and for its efforts in achieving this, it is considered as one of the pillars of the African Economic Community. The Organization is also striving to achieve collective self sufficient for its member states by creating a single large trading bloc through an economic and trading union. It has also established ECOMOG to serve as peacekeeping force in Liberia, Sierra Leone and Cote D'ivore in the region. ECOMOG has helped in ensuring peace.

Two institutions implementing ECOWAS policies are the ECOWAS Commission and the ECOWAS Bank for Investment and Development formerly known as Fund for Co-operation.

ECOWAS is a collaborating with the other economic bodies and regional groupings in Africa to develop a common plan of action on trade liberalization and macro economic policy convergence. It is also working hard to enhance trade and common customs declaration. There has also arisen from ECOWAS a group of six countries that plan to introduce a common currency, the ECO by the year 2015. The group is known as West African Monetary Zone. A Trans- ECOWAS project was also established in 2007 with a plan to upgrade railways in this zone.

ECOWAS Passport has also been introduced among members and citizens of West African States in ECOWAS need not carry visa to travel across those countries. ECOWAS is also supporting national governments economic policies to alleviate poverty, hunger and disease in West Africa.

Self-Assessment Exercise (SAE):

Critically assess the role of ECOWAS in the formation and implementation of West African economic agenda.

3.2. Southern African Development Community [SADC]

Southern African Development Community is an intergovernmental body et up among sovereign states in the Southern region of Africa. SAAC came into existence in 1980 as SADCC and SAAC in 1992. It is headquarter is in Gaborone, Botswana. The working languages are English, French and Portuguese.

There 15 member states which are Angola, Botswana, Democratic Republic of Congo, Lesotho, Malawi, Mauritius, Madagascar Mozambique, Namibia, Seychelles, [currently suspended] South Africa, Swaziland, Tanzania, Zambia and Zimbabwe. Population of the member states is estimated at 277 million people youth a GDP of US$75.5 billion in 2010.

SADC is set up to further socio-economic co-operation and integration as well as political and security co-operation among the member states. SADC is an offshort of the liberation struggle in the Southern African region which gained currency in 1960s and 1970s. The immediate forerunner of the political and security co-operation leg of today is SADC was the informal frontline states [FLS] grouping. Today, political and security co-operation is institutionalized in the organ on political , defence and security [OPDS].

SADC has 26 legally binding protocols dealing with issues such as defence development, illicit drug trade, free trade and movement of people SADC has Free Trade [FTA] which consists of 11 members of the organization. In October, 2009 SADC joined with the common market for the Eastern and Southern Africa and the East African Free Trade Zone. It is also working closely with African Union to bring social economic and political growth to the African continent. It also has declarations to fight against HIV/AIDS and food insecurity in the area.

SADC has principal bodies such as

- The summit comprising heads of states or heads of government
- Organ on political Defence and Security

- Council of Ministers
- SADC tribunal based in Windhck, Namibia
- SADC National Committees [SNCIS]
- Secretariat

3.3. East African Community [EAC].

The vision of East African Economic Community is a prosperous, competitive, secure, stable and politically united East Africa. The mission to widen and deepen economic, political, social and cultural integration in order to improve the quality of life of the people of East Africa through increased competitiveness, value added production, trade and investment. The East African Community is an inter government organization comprising Republics of Kenya, Uganda, Burundi, Tanzania and Rwanda. It is known as Jumiyau ya Africa ya Mashariki in Swahili its imaya frainca while English is the official language of business. Its motto is one people, one destining. EAC headquarters is in Arusha, Nairobi. It was established in 1967, dissolved in 1977 and re-established in July, 2000. The aggregate GDP of member states is put at US$224.7 billion while ht per capital income is US$1500.

Members of the organization are all around the Great Lakes region in Eastern Africa. The EAC is an integral part of the African Economic Community and it is also collaborating with Southern Africa Development Community [SADC] and the common market of Eastern and Southern Africa [OMESA] to establish an expanded free trade area. It is also perceived as a precursor to the establishment of the East African Federation a proposed federation of its five members into a single state. It already established its own common market in 2010 where goods, labour and capital within the region are exchanged freely. Though it aimed at having a common currency by 2010, this has not become a reality as at 2013. It is most likely that Southern Sudan may become a member in the nearest future. The key aspects of the custom union established in 2005 are

- Common external tariff in imports from third countries
- duty free trade between the member state
- common customs procedures

It is envisaged that could be long term benefits in a progressively expanding regional market of EAC

As there are signs of developing a business culture oriented to making profits through economics of scale and not on protection. The free movement of people in the EAC countries is set to improve with the introduction of "third generation" I.D. cards which identifies the holder as a duel citizen of their home country and of "East Africa".

3.4. Economic Community of Central African States [ECCAS/CEEAC]

Economic Community of Central African states otherwise known as Communaute Economique de Etats ded" Afrique in French was established in 1985. It has its headquarters in Libreville, Gabon. Its working languages are French, Spanish and Portuguese. It is an economic community for the promotion of regional economic cooperation in Central Africa. ECCAS is also a pillar of African Economic Community and has ten member states which are Angola, Burundi, Cameroon, Central African Republic, DR Congo, Chad, Equatorial Guinea, Gabon, Republic of the Congo, and Sao Tome and Pricipe.

ECCAS aims include collective autonomy, raising standard of living of its populations and manufacturing economic stability through harmonious co-operation. It was preceded by the Customs and economic Union of Central African [UDEAC from its name in French, Union Boveniere et Economique del Afrique Centrale] in 1964. ECCAS was established in 18th October, 1983 by the UDEAC members, however, it began functioning in 1985.

Through the activities of ECCAS, the Economic and Monetary Community of Central African [EMAC] has emerged having Cameroon, Central Africa Republic, Chad, Republic of Congo, Equatorial Guinea and Cabon as members. It is aimed at promoting economic integration among countries that share a common currency, the CFA frame. The ultimate goal of ECCAS is to establish a central African common market. Five priority fields of the ECCAS are:

- To develop capacities to maintain peace security and stability which are essential prerequisite for economic and social development
- To develop physical, economic and monetary integration

- To develop a culture of human integration and
- To establish an autonomous financing mechanisms for ECCAS

The structure of the ECCAS includes conference of Head of state and Government council of ministers, secretariat general court of justice and consultative commission, the Technical Organs of the council are the Central African Early Warning System. The Defence and Security Commission and The Central African Multinational Force.

4.0 Conclusion

African states continue to realize their unimpressive level of development and thus continue to make relentless efforts in co-operating, collaborating and integrating with international community and themselves to form formidable economic base for Africa. The target has been the development of culture of competitiveness, common market, common currency and free trade zones to galvanize development. In light of this, many economic communities, monetary unions and free trade zones have been formed. These organizations are working with African Economic Community as the pillars of development initiatives.

5.0 Summary

We have highlighted some of the strategies put in place by the African Union as well as regional economic organizations to promote integration of African states as key players in global economic arena.

6.0. Tutor Marked Assignments

1. Examine the roles of African leaders in the global economic arena.
2. Discuss African Unions strategies for developing African economy.
3. List four regional organizations in Africa and expatiate on their relevance to the emancipation of African economy from stranglehold of foreign economies.

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Unit5. Socio-cultural Organizations for Fostering World Peace and Social Development

Content

1.0 Introduction

Human beings are the greatest tools of any diplomatic policy. Thus, for any international relations to be fruitful it is important that cultures of the relating states are put in the front burner. Thus gaining knowledge of the culture of a people is a powerful tool for getting at them in bilateral relations. In light of this, a free flow of knowledge and idea needs the backing of cultural and bilateral agreements between sovereign states. Nations of the world do co-operative through social and cultural organizations which are established for the purpose of international relations.

2.0 Objectives

This unit will further discussion on international co-operative initiatives to develop the global community for it to become a better place to live in. It focuses on socio-cultural aspects of development. At the end of this unit, you should be able to

1. Explain the meaning and dimensions of socio-cultural development.
2. Appreciate how cultural diplomacy is used in international relations as the use of ‘soft power’ or ‘smart power’.

3 List and explain the functions of some international organizations for fostering socio-cultural harmony, understanding and global peace.

3.0 Main Content

Anthropologists and sociologists often assume that human beings have certain social tendencies and that particular human social behaviours have non-genetic causes and dynamics [i.e. they are learned in a social environment and through social interaction [Andrey, 2004]. On the other hand, psychologists have argued that human behaviours have both genetic and social environmental constituents which they call nature-nurture interaction. The latter school posits that there are different aggregates of inmate tendencies or instincts which also shape human leaving of behaviours in his social environment. Irrespective of the debate, one fact is clear, social behaviour is an on-going process that is not predetermined.

For the purpose of this module, we shall examine the theory of modernization as an offshoot of evolutionary theory which sees social behaviour as a process. Suffice to say that evolutionary theory states that an evolution like process leads to social progress and different societies have reached different stages of development often predicated on technologies, social structures and values of such societies. This is why the theory of modernization is said to relate closely to the dependency and development theory [Piotr, 2002]. It combining the previous theories of socio-cultural evolution with practical experiences and empirical research, the theory states that:

- Western countries are the most developed, and the rest of the world [mostly former colonies] is in the earlier stages of development, and will eventually reach the same level as the Western World.
- Development stages go from the traditional societies to developed ones.
- Third world countries have fallen behind with their social progress and need to be directed on their way to becoming more advanced.
- It is also posited that developed countries can and should help those less developed, directly or indirectly.

Thus, global co-operative initiatives and efforts to integrate global communities into a well developed social environment with diversity properly accommodated are premised on the modernization theory.

Conversely it is argued that clash of civilization [cultures] can be tackled through the frank admission of its reality and a deliberate promotion of cross-cultural understanding, in which all civilizations [cultures] will learn to defend the values of pluralism, and in which the radicals will stop exploiting religion and ethnicity as a sword while moderates will not use it as a shield [Manji, 2005 cited in Agwu, 2009:506]. Manji goes further to posit that the acceptance of reality and the rejection of the culture of denials will lead to an authentic introspection and a genuine understanding between civilizations.

The term socio-culture refers to the combination or interaction of social and cultural elements. While social factors are related to the interaction of people, culture is defined as 'the collective programming of the mind which distinguishes the members of one state form another,. Culture is to human collectivity what personality is to an individual [Hoftede, 1980]. Thus, nations are often described not only by their sovereignty but also by common cultural traits which are shared by a people. This is why it is possible to have nations within a sovereignty state like we do in Nigeria. The argument is that a nation is better described by its cultural homogeneity in terms of language, values, beliefs, and ways of clothing, feeding and shelter. What is then known as culture?

3. 1. Meaning of Culture

Merrit [1993] defines culture as "the values and practices that we share with others that help define us as a group, especially in relation to other groups. In light of the definition above, it is clear that culture influences to some or great extent an individual's social interactions with others from the some or different cultures.

There are different levels of cultures which include national culture, industry culture, organizational culture and professional/occupational culture. All these cultural levels influence our relations either at inter-personl or group level. For this module, we shall concern ourselves with national culture and how it is used in international relations. What is then a national culture?

National culture is the aggregate of values, beliefs, behaviours and practices that define the way of life of a sovereign state in a particular geo-political entity. This definition is apt in describing culture in a country where there are many nations with

different cultural traits that are not easily absorbed by one dominant culture. For example in Nigeria there are over 300 ethnic groups each claiming to have her own culture. However, it is possible to talk of national culture in Nigeria by limiting ourselves to bureaucratic, political and governance beliefs, values, norms and practices within the precinct of the state. Hofstede [1999] classification of national culture will help us further to understand the concept within the limit of a state. His classifications are:

- Individualism vs. collectivism. The importance of group membership and cohesiveness of the group overshadows individual achievements and ego in a collectivist society.
- Power Society: This refers to inequality in human relationships. It is a measure of interpersonal power or influence between boss and subordinate as perceived by the less powerful of the two, the subordinates. It is a case of decisiveness of the leaders and submissiveness of the followers.
- Uncertainty avoidance: People want to avoid uncertainty and therefore abide by the rules of a society which eventually become cultural norms. Uncertainty avoidance tends to seek clarity and order in a society and may be intolerant to differences or inflexible toward uncertainty.

Thus, it is argued that the degree of individualism, power distance and uncertainty avoidance found in a culture can affect social interactions among the people. We may understand the concept of culture better if we know its elements and their applications to human rights.

Elements of Culture and Socio-cultural Rights

Elements of Culture

There are seven non-material elements of culture which we shall consider one after the other briefly.

[1] **Language** – language is a set of symbols used to assign and communicate meaning. It enables us to name or label the things in our world so we can think and communicate about them. People who share the same language have understandable referents in their physical world of the sounds they produce.

2. **Norms**: This is the rule of behaviour shared by a group of people in order to ensure orderly, stable, predictable interactions which will ensure a peaceful society.
3. **Values**: These are anything whether concrete or abstract that members of a culture aspire to or hold in high esteem. They are things considered to be of great worth which are cherished, achievable and adorable.
4. **Beliefs and Ideologies**: Beliefs are the perception outcome of what is true. They are the facts accepted and cherished by a group of people about their cosmological environment.
5. **Social Collectives**: These are symbolic social constructions which may be in form of institutions, communities, organizations and groups that have existed over the years with a people.
6. **Statuses and Roles**: This has to do with a slot or position assigned to individuals within a group or society. They tell us what people are and how they fit into the group as well as the roles expected of them within the group. Roles are norms specifying the rights, and responsibilities associated with a particular status.
7. **Cultural Integration:** This refers to how interconnected, complimentary and mutually supportive the various elements of culture are.

As earlier noted, the seven elements discussed are referred to as non- material culture. Since culture as a total way of life of a people, we also need to know of other cultural properties like food, dress, building, artefacts and symbols which are called material culture. Every society has its culture and we protect this culture through proclamation of rights. These rights have cultural, political, economic, social and traits. Let us consider social and cultural rights

Socio-Cultural Rights

International organizations have endeavoured to draft conventions designed to protect certain economic, social or cultural rights and these drafts have been entrenched through international instruments. Social and cultural rights are rights that are aimed to guarantee individuals a dignified, appropriate life style. They cover a wide range of different domains including:

- The right to work
- The right to a free choice of work
- The right to good working conditions.
- The right to strike and the right to form and join trade
- The right to social security.
- The right to an appropriate standard of living [including food, housing and adequate social service and medical care]
- The right to a family
- The right to health
- The right to education
- The right to cultural identity and the right to take part in cultural life.

International and regional instruments that have helped to achieve

And formalize these rights include:

* The 1948 Universal Declaration of Human Rights
* International Convention on Economic, Social and Cultural Rights [ICESCR], 1966.
* UN Committee on Economic, Social and Cultural Rights [CESCR]

Self-Assessment Exercise (SAE):

Discuss the importance of culture in human and international relations

3. 4. Global Organizations for Cultural Harmony and Understanding

Some international organizations whose conventions helped in promoting social and cultural rights are:

- ❖ International Labour Organization
- ❖ United Nations Educational, Scientific and Cultural Organization [UNESCO]
- ❖ United Nations International Children's Endowment Fund
- ❖ The World Health Organization
- ❖ The United Nations Centre for Human Settlements
- ❖ Non-governmental Organisations

We shall now consider three of these organizations with reference to their roles in fostering cultural harmony globally.

United Nations Educational, Scientific and Cultural Organization [**UNESCO]**

United Nations Educational, Scientific and Cultural Organization was founded in 1946. UNESCO was founded to encourage international peace and universal respect for human heritage and rights by promoting collaboration and co-cooperativeness among the different cultures of the world. Among other factors, it was assumed that new international functional organizations would mean the end of power politics and usher in a new era of international collaboration [Cordell Hall, 1943 cited in Morgenthau, 1968: 36]. It is equally founded on the belief that wars are construed in the mind of man and that defence of peace should also be constructed in the mind of man. This could be achieved through building of the blocks of peace in the intellectual, moral and cultural solidarity of mankind. It is equally argued by the United Nations that the wide diffusion of culture and education of humanity for justice, liberty and peace is indispensable to the dignity of man and constitute a sacred duty which all nations must fulfil in the spirit of mutual assistance and concern. The formation of UNESCO is thus, to be understood as another effort geared towards attaining international order through promotion of intellectual, scientific and cultural heritage of man.

Morgenthau [1968:348] states that the purpose of UNESCO is to contribute to peace and security by promoting collaboration among the nations through education, science and culture in order to further universal respect for justice, for the rule of law and for the human rights and fundamental freedoms which are affirmed for the people of the world without distinction of race, sex, language or religion. By the Charter of the United Nations the purpose of UNESCO will be to:

Collaborate in the work of advancing the mutual knowledge and understanding of peoples, through all means of mass communication and to that and recommend such international agreements as may be necessary to promote the free flow of ideas by word and image;

- Give fresh impulse to popular education and to the spread of culture;
- By collaborating with members, at their request, in the development of educational activities;

- by insulting collaboration among the nations to advance the idea of equality of educational opportunity without regard to race, sex or any distinctions, economic or social.
- by suggesting educational methods best suited to prepare the children of the world for the responsibilities of freedom.

- Maintain, increase and diffuse knowledge:

- By assuring the conservation and protection of the world's inheritance of books, works of art and monuments of history and science and recommending to the nations concerned the necessary international conventions;
- By encouraging cooperation among the nations in all branches of intellectual activity, including the international exchange of persons active in the fields of education, science and culture and the exchange of publications, objects of artistic and scientific interest and other materials of information.
- By initiating methods of international cooperation calculated to give the people of all countries access to the printed and published materials produced by any of them.

Articles I, II, III & IV state in concrete terms how to achieve UNESCO objectives as follow:

Article I states that;

[1] Each culture has a dignity and value which must be respected and preserved.

[2] Every people have the right and duty to develop its culture.

[3] In their rich variety and diversity and in the reciprocal influences they exert in one another, all cultures form part of the common heritage belonging to all man kind.

Article II states that:

Nations shall endeavour to develop the various branches of culture side by side and as far as possible, simultaneously as to establish a harmonious balance between technical progress and the intellectual and moral advancement of mankind.

Article III states that:

International cultural co-operation shall cover all aspects of intellectual and creative activities relating to education, science and culture. This article states in broad terms

the aims of international cultural co-operation either at bilateral, multilateral, regional or universal to include:

- Spreading of knowledge, stimulation of talent and enrichment of cultures
- Development of peaceful relations and friendship among the people
- Contributing to the application of the principle set out the United Nations Declaration.
- Enabling everyone to have access to knowledge to enjoy the arts and literature of all peoples sharing in advances made in science in all parts of the world and in the resulting benefits.
- Raising the level of the spiritual and material life of main in all parts of the world.

United Nations Children Endowment Fund (UNICEF)

. United Nations Children Endowment Fund is an inter-government organization established in 1946. ECOSOC is the parent organization of UNICEF. It is working with governments, local communities and other partners in over 160 countries to provide children with healthcare, nutrition, education and safe water and sanitation. Its headquarters are located in New York, Copenhagen and Florence. UNICEF works for child protection survival and development especially in developing countries within the framework of the convention on the Rights of the Child. UNICEF also provides relief and rehabilitation assistance in emergencies. Ii has staff in 190 countries, 84 per cent of whom are in the field. Its major publications include The State of the World's children and the Progress of Nations

UNICEF spearheaded the world summit for children in 1990. It was held at the UN headquarters in New York and about 150 leaders of countries attended. Governments worldwide have written the summits objectives into their policies and plans, ensuring that they will continue to make determined efforts to improve their children's welfare.

Through UNICEF's efforts in partnership with other governmental and non-governmental organizations remarkable progress has been made in areas of reduction of infant mortality rates, better nutrition for children, improved enrolment in schools

and general literacy. It has also been instrumental to the fight against diseases such as epitasis, polio, guinea worm, diarrhoea, measles and others through immunizations in co-operation with The World Health Organization. It has also brought about improvement in breast feeding, access to safe water and early childhood development. It is also supplying antiretroviral drugs to combat HIV/AIDS.

In view of its numerous achievements UNICEF won the Nobel Prize for Peace in 1965 and Prince of Asturias Award of Concord in 2006. It now focuses on the achievement of Millennium Development Goals through deployment of funds gathered form sponsorships, donations, contributions and promotions. UNICEF also works directly with companies to improve their business practices, bringing them in line with obligations under international law, and ensuring that they respect children's rights in the realms of the market place, workplace and the community. It produces a lot of documentaries to reveal the plight of children in the global arena and also does a lot of researches on the child through UNICEF Innocent Research Centre and the Girl Stars Project.

Non-Governmental Organizations [NGOs]

Non-governmental Organizations are legally instituted corporations created by natural or legal people that operate independently of government. They are not also conventional outfits for profit businesses and are non-criminal in agenda setting. They pursue wider social aims that have political aspects but are not openly political organizations or partisan in their outlook.

Non-governmental Organizations are scattered all over the world. We have those who have presence across borders that are called International Non-governmental Organizations [INGOs]. These who operate within the border of a country are called [NNGOs] National Non-Governmental Organizations. Those who operate in limited areas of a country say a region or state are referred to either Regional Non-governmental Organizations. All the NGOs are classified as belonging to the Civil Society Organization. United states has an estimated 1.5 million NGOs, Russia has 277,000 NGOs, India has 3.3million NGOs while Nigeria also has over 46,000 NGOs as at 2009.

Activities and objectives of NGOs vary. These may range form human rights to environmental development. Their orientations determine their classifications. These include charitable, service, participatory, empowering or community based. In a nutshell what NGOs do is to promote the social, economic, political and cultural development of a nation by creating awareness, providing technical assistance, funding projects, collaborating with local communities to engage in development projects, advocating for good governance culture, monitoring the entire polity and providing help during emergencies. They are partners in progress with government in bringing about better living conditions at the grassroots.

A list of NGOs working in Nigeria include

1. Red Cross
2. Save children Fund
3. Action Aid International Nigeria
4. Action Health Incorporated
5. Alliance for Africa
6. Boys Scout
7. Boy Brigade
8. Girls Guild
10. Lion Club
11. Rotary International
12. Real Women Foundation
13. Business and Professional Women, Nigeria
14. Family Health International
15. Breast Cancer Association
16. Foundation for skills Development
17. WAI Brigade
18. Association for Reproductive and Family Health
19. BBC Media Aid
20. Man 'O' War

Some of he NGOs are called Voluntary Organizations or Civil Society Organizations. Whatever they are called, essentially their general aim is to collaborate with government and people to improve living conditions.

4.0 Conclusion

The cultural organizations we have discussed so far point out how transformation of standards and loyalties can be brought about for the attainment of global interests and needs. These organizations are autonomous of and independent of national governments thought they owe their existence to the agreements establishing them among member states. The organizations care for common needs that are evident and latent to development. The organizations have helped the growth of such positive and constructive common work, of common habits and interests making frontier lines meaningless by overlaying them with a natural growth of common activities and common administrative agencies as predicted by David Mitrany in 1946.

5.0 Summary

We have discussed in this unit, the values of socio-cultural development through international co-operation. We have mentioned the fact that socio-cultural development entails recognition of the intrinsic values in the ways of life of a group of people and the need to accord them respect. It is noted that national cultures have also been built into the mainstream of international diplomacy for peace and understanding. We have also highlighted the directive principles, functions and achievements of such bodies like UNESCO, UNICEF and Non-Governmental Organizations. And we have come to the conclusion that global peace is better guaranteed through that collaboration not only at political level but also at social, economic and cultural levels.

6.0 Tutor Marked Assignments

1. Define culture and discuss the non-material elements of culture

2. In what ways has UNESCO been useful in fostering world peace?

3. Examine the roles of UNICEF in improving the welfare of the child.

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