INR 212:
INTERNATIONAL LAW AND DIPLOMACY IN THE 20TH CENTURY

NATIONAL OPEN UNIVERSITY OF NIGERIA

COURSE GUIDE

INR 212
INTERNATIONAL LAW AND DIPLOMACY IN THE 20TH CENTURY

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Introduction

Welcome to INR 212: International Law and Diplomacy in the 20th Century.

This Course is a three Credit unit course for undergraduate students of International Relations. International Law and Diplomacy in the 20th Century introduces the students to the practice and usage of International law and Diplomacy in the Politics among Independent Nations in the 20th century. The course also teaches the students the requirements of a diplomat and functions of diplomatic missions on the use of International Law to manage international conflicts.

Course Aims

This course is meant to prepare the students of international relations to understand the changing nature of International Law and Diplomacy in a changing world due to proliferation of nations and other non state actors in international politics of the 20th century. Thus this course has been prepared to:

- Give the scholars the history of the emergence of international law and diplomacy.
- Highlight the historical changes in the 20th century.
- Explain the role of technology in diplomatic relations of the 20th century.
- Identify the impact of international organizations, viz European Union, United Nations, and African Union, on the use of diplomacy and international law as an instrument of peaceful co-existence in 20th century world politics.

Course Objectives

To achieve the aims set out above, INR 212 has overall objectives. In addition, each unit also has specific objectives. The unit objectives are stated at the beginning of each unit. You should read the objectives before going through the unit. You may wish to refer to them during the study of the unit to asses your progress.

Here are the wider objectives for the course as a whole. By meeting the objectives, you should see yourself as having met the aims of the course. On successful completion of the course, you should be able to:

a) State the origin of international law,
b) Identify the sources of international law,
c) Know the subjects of international law,

d) List the rights and duties of states under international law,
e) The nexus between international law and diplomacy,
f) Understand the questions of jurisdictions in international law,
g) Know the principles of jurisdiction,
h) Differentiate between law of treaties and conventions,
i) Define diplomacy,
j) State the origin of diplomacy,
k) Mention the functions of diplomatic mission,
l) List the qualifications and duties of diplomats,
m) Understand diplomatic immunities and privileges,
n) Explain the role of UN, EU, and AU. On the practice of modern diplomacy.
o) Understand diplomatic terminologies.

Working through this Course

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

Course Material

The major materials you will need for this course are:

- Course guide.
- Study units.
- Assignments file.
- Relevant textbooks including the ones listed under each unit.
- You may also wish to visit UN websites occasionally.

Study Units

There are 20 units of 4 modules in this course. They are listed below:

Module 1 The Concept of Diplomacy

Unit 1 The Concept and Practice of Diplomacy
Unit 2 Functions of Diplomatic Missions
Unit 3 Diplomatic Nomenclatures
Unit 4 Diplomatic Immunities and Privileges
Unit 5 Breach of Diplomatic Relations

Module 2 The Origin of International Law

Unit 1 The Sources of International Law
Unit 2 Subjects of International Law
Unit 3 Questions of Jurisdiction in International Law
Unit 4 The Law of Treaties
Unit 5 Settlement of International Disputes

Module 3 The Assumptions of Contemporary Diplomacy

Unit 1 International Law in Contemporary diplomacy
Unit 2 International Law as an Assumption of Diplomacy
Unit 3 International Law as Instrument of Diplomacy
Unit 4 International Law as a Result of Diplomacy
Unit 5 International Law as a Goal of Diplomacy

Module 4 International Law and Diplomacy in a Changing World

Unit 1 Diplomacy at the United Nations
Unit 2 International Law and Courts of Justice
Unit 3 The Roles of Regional Organizations in the 20th Century
Unit 4 The Changing Nature of Diplomacy
Unit 5 The EU and Developments in Diplomatic Methods

Textbooks and References

Certain books have been recommended in this course. You may wish to purchase them for further reading.

Assessment File

An assessment file and a marking scheme will be made available to you. In the assessment file, you will find details of the works you must submit to your tutor for marking. There are two aspects of the assessment for this course; the tutor marked and the written examination. The marks you obtain in these two areas will make up your final marks. The assignment must be submitted to your tutor for formal assessment in accordance with the deadline stated in the presentation schedule and the assignment file. The work you submit to your tutor for assessment will count for 30% of your total score.

Tutor-Marked Assignment

You will have to submit a specified number of the TMAs. Every unit in this course has a tutor marked assignment. You will be assessed on four of them but the best three performances from the (TMAs) will be used for your 30% grading. When you have completed each assignment, send it together with a Tutor Marked Assignment form, to your tutor. Make sure each assignment reaches your tutor on or before the deadline for submissions. If for any reason, you cannot complete your work on time, contact your tutor for a discussion on the possibility of an extension. Extension will not be granted after the due date unless under exceptional circumstances.

Final Examination and Grading

The final examination will be a test of three hours. All areas of the course will be examined. Find time to read the unit all over before your examination. The final examination will attract 70% of the total course grade. The examination will consist of questions, which reflects the kinds of self assessment exercises and tutor marked assignments you have previously encountered. And all aspects of the course will be assessed. You should use the time between completing the last unit, and taking the examination to revise the entire course.

Course Marking Scheme

The following table lays out how the actual course mark allocation is broken down.

Assessment	Marks
Assignments Best Three Assignments out of four marked	30%
Final Examination	70%
Total	**100%**

Course Overview and Presentation Schedule

Unit	Title of work	Weeks Activity	
	Course Guide		
	Module 1 The Concept of Diplomacy		
1	Concept and Practice of Diplomacy	Week 1	Assignment 1
2	Functions of Diplomatic Missions	Week 2	Assignment 2
3	Diplomatic Nomenclatures	Week 3	Assignment 3
4	Diplomatic Immunities and Privileges	Week 3	Assignment 4
5	Breach of Diplomatic Relations	Week 4	Assignment 5
	Module 2 The Origin of International Law		
1	The Sources of International Law	Week 5	Assignment 1
2	The Subjects of International Law	Week 6	Assignment 2
3	Questions of Jurisdiction in Int. Law	Week 7	Assignment 3
4	The Law of Treaties	Week 7	Assignment 4
5	Settlement of International Disputes	Week 8	Assignment 5
	Module 3 The Assumptions of Contemporary Diplomacy		
1	Inter. Law in Contemporary Diplomacy	Week 9	Assignment 1
2	Inter. Law as Assumption of Diplomacy	Week 9	Assignment 2
3	Inter. Law as Instrument of Diplomacy	Week 10	Assignment 3
4	Inter. Law as a result of Diplomacy	Week 11	Assignment 4
5	International Law as a Goal of Diplomacy	Week 12	Assignment 5
	Module 4 International Law and Diplomacy in a Changing World		
1	Diplomacy at the United Nations	Week 13	Assignment 1
2	International Law and Courts of Justice	Week 14	Assignment 2
3	The Changing Nature of Diplomacy	Week 14	Assignment 3
4	The Roles of Regional Organizations in 20th Century	Week 15	Assignment 4
5	The EU and Developments in Diplomatic Methods	Week 15	Assignment 5
	Revision	**1**	
	Examination	**1**	
	Total	**17**	

How to Get the Most from this Course

In distance learning, the study units replace the University lecture. This is one of the great advantages of distance learning; you can read and work through specially designed study materials at your own pace, and at a time and place that suits you best. Think of it as reading the lecture instead of listening to the lecturer. In the same way a lecturer might give you some reading to do, the study units tell you where to read, and which are your text materials or set books. You are provided exercises to do at appropriate points, just as a lecturer might give you an in-class exercise. Each of the study units follows a common format. The first item is an introduction to the subject matter of the unit, and how a particular unit is integrated with the other units and the course as a whole. Next to this is a set of objectives. These objectives let you know what you should be able to do by the time you have completed the unit. These learning objectives are meant to guide your study. The moment a unit is finished, you must go back and check whether you have achieved the objectives. If this is made a habit, then you will significantly improve your chances of passing the course. The of the unit guides you through the required reading from other sources. This will usually be either from your set books or from a reading section. The following is a practical strategy for working through the course. If you run into any trouble, telephone your tutor. Remember that your tutor's job is to help you. When you need assistance, do not hesitate to call and ask your tutor to provide it.

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

2. Organize a Study Schedule. Design a 'Course Overview' to guide you through the Course. Note the time you are expected to spend on each unit and how the Assignment relate to the units. Whatever method you choose to use, you should decide and write in your own dates and schedule of work for each unit.

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

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

5. Assemble the study materials. You will need your set books and the unit you are studying at any point in time. As you work through the unit, you will know what sources to consult for further information.

6. Keep in touch with your study center. Up-to-date course information will be continuously available there.

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

8. Review the objectives for each study unit to confirm that you have achieved them. If you feel unsure about any of the objectives, review the study materials or consult your tutor.

9. When you are confident that you have achieved a unit's objectives, you can start on the next unit. Proceed unit by unit through the course and try to pace your study so that you keep yourself on schedule.

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

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

Facilitators/Tutor and Tutorials

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

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

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

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

Summary

The Course Guide gives you an overview of what to expect in the cause of this study. The course introduces to you all that you need to know about the tactics of Diplomacy and International Law in contemporary international politics and also teaches you the basic requirements of a career diplomat.

MAIN COURSE

Course Code	INR 212
Course Title	International Law and Diplomacy in the 20th Century
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MODULE 1 THE CONCEPT OF DIPLOMACY

UNIT 1 CONCEPT AND PRACTICE OF DIPLOMACY

CONTENTS

1.0 INTRODUCTION

Diplomacy is the management of relations between sovereign states and other international actors. Diplomacy in other words is the means by which states through their formal and other representatives as well as other actors articulate, co-ordinate and secure particular or wider interests using persuasion, lobbying and at times employing threats or actual force. In this unit, it is important to understand the origin of the tact, the nature of the concept and also appreciate diplomacy and foreign policy as concepts in international relations.

2.0 OBJECTIVES

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

- define diplomacy with an understanding of the tricks of international relations
- explain the origin of diplomacy in relations among nations
- understand the nature of diplomacy in the 20th century
- differentiate between foreign policy and diplomacy.

3.0 MAIN CONTENT

3.1 Understanding Diplomacy

Joseph Stalin had paid his respects to the art of diplomacy in these words:

- A diplomat's words must have no relation to actions otherwise what kind of diplomacy is it? Words are one thing actions another. Good words are a mask for the concealment of bad deeds. Sincere diplomacy is no more possible than dry water on wooden iron (Norman, 2007:83)

Stalin here expressed the traditional attitude of modern dictators towards diplomacy, namely, that it is a means of concealing a nations real aims and providing a smoke screen for actions of a vastly different character. He infant took a cynical view of the art of diplomacy.

Diplomacy is the totality of the strategies through which an independent state relates to other independent states and other international organizations in order to achieve its national interests. Under normal circumstances a governmental international relation is conducted through negotiations. This is what is called Diplomacy.

Sometimes a government may need to manage its international relations by applying different forms of pressure. How successful this pressure proves depends on the national, economic and military power the nation has otherwise it will be making mere noise.

But in most cases governments prefer to keep this power in reserve rather than exercise it explicitly with the intention to apply it when necessary. If applied skillfully at the right time, persuasive argument may achieve a better result than the pressure backed by threat. The reason is that such pressure may be resisted and plunge such nation into war. Diplomacy is therefore intelligent tactful conduct of relations among governments of sovereign states. It is concerned with the management of relations between states and between states and other actors. From a state perspective diplomacy is concerned with advising, shaping and implementing foreign policy.

3.2 Definition of Diplomacy

No general definition of diplomacy can be satisfactory or very revealing. The Oxford English Dictionary calls it "The management of international relations by negotiation" or "The method by which these relations are adjusted and managed".
However, Quincy Wright defined diplomacy in the popular sense as "The employment of tact, shrewdness, and skill in any negotiation or transaction" and in the more special sense used international relations as the art of negotiation, in order to achieve the maximum of group objective with minimum of costs, within a system of politics in which war is a possibility" Wright. (1952:158).

This definition indicates that the term diplomacy is used to describe both the methods used by agents conducting the foreign affairs of a state and the objectives which such agents seek to achieve. In the first instance, it is almost equivalent to the term negotiation, implying methods of persuasion rather than coercion and is therefore contrasted with war. Negotiation, however, under conditions where physical coercion is practically impossible, as in business or domestic government is not usually called diplomacy.

Secondly, diplomacy is almost equivalent to foreign policy and implies devotion by its practitioners to the national interest of their respective states. It is therefore, contrasted with international relations which implies that it is an end superior to the national interests of the state.

Foreign policy however, conducted without respect for such basic principles of international law as pacta sunt servanila, (a person cannot be a judge in his own case) cannot effectively utilize negotiation but becomes war, either hot or cold, and so is not diplomacy.

Thus diplomacy, though contrasted with both war and law, implies the existence of the first as a possibility, and of the second as a potentiality. It is characteristic of the society of nations where war is possible and law is imperfect. The essence of diplomacy therefore is flexibility, adaptation to continually changing conditions.

3.3 The Origin of Diplomacy

The art of diplomacy is as old as the existence of human communities. Sending of emissaries to open negotiation was a common practice

among primitive nations. In many cases their reception and treatment were regulated by custom.
The Greek city states frequently dispatched and received with due accreditation, those who presented their cases openly before the rulers or assemblies to whom they were sent. By the 15th century, the principle and method of Greek City states have developed. As the middle age proceeded, the sovereignty of individual states, presentation of credentials began to be required if an ambassador wanted to be received by a sovereign power. At the beginning of 16th century, the practice of accreditory diplomatic envoys had started spreading to other countries of Europe in the atmosphere of alliances and dynastic struggle for power. It was only when the treaty of Westphalia of 1648 established a new order of relationship in Europe that classical diplomacy in Europe began.

The sovereignty and independence of individual states was established as the principle in which the classical diplomacy was conducted by the members of the ruling class who had more in common with each other than with majority of their own people. It was conducted according to well defined rules and conventions. It was then a personal and flexible type of diplomacy.

In post revolutionary Europe, acceptance of an established monarchical order gave way to emphasis on liberty and individual rights. This was in the spirit of the slogan of the French revolution of 1789 which reverberated throughout Europe. The slogan was liberty and equality. Henceforth, diplomacy was exercised not in the interest of a dynasty but the nation as a whole.

After the First World War, demand grew for open diplomacy that will be accessible to public scrutiny. In the wake of the new emphasis on the sovereignty of the people, the electorates claiming to control the government wanted to know what agreement was being made with their name. For example US refused to be a member of the League of Nations in spite of the role played by their president Woodrow Wilson.

Nowadays the openness of agreements guaranteed in principle by the United Nations rule that all agreement concluded by member states must be registered and their texts deposited with the Secretary General. The irony is that negotiations conducted under public eye undermine the process of negotiation. By true nature negotiation must be confidential.

This is the essence of diplomacy.

3.4 The Nature of Diplomacy

The real nature of diplomacy consists of the techniques and procedures for conducting relations among states. It is in fact, the normal means of conducting international relations. In itself diplomacy, like any machinery, is neither moral nor immoral, its use and value depend upon the intentions and abilities of those who practice it.

Diplomacy functions through a labyrinth of foreign offices, embassies, legations, consulates, and special missions all over the world. It is commonly bilateral in character. However as a result of the growing importance of international conferences, international organizations, regional arrangements, collective security measures, its multilateral aspects have become increasingly significant. This has lead to the emergence of the following types of diplomacy:

(i) Permanent Traditional Diplomacy
(ii) Multi- Track Diplomacy
(iii) Permanent Conference Diplomacy
(iv) Parliamentary Conference Diplomacy
(v) Personal Diplomacy
(vi) Ad Hoc Conference Diplomacy
(vii) Economic Diplomacy.

They may embrace a multitude of interests, from the simplest matter of detail in the relations between two states to vital issues of war and peace. When it breaks down, the danger of war, or at least a major crisis is very real.

3.5 Foreign Policy and Diplomacy

A necessary distinction to bear in mind is that between foreign policy and diplomacy. The foreign policy of a state as Childs (1948:64) has said is “the substance of foreign relations” whereas “diplomacy proper is the process by which policy is carried out. Policy is made by many different persons and agencies, but presumably on major matters in any state, whatever it’s form of government, it is made at the highest levels, though subject to many different kinds of controls. Then it is the purpose of diplomacy to provide the machinery and the personnel by which foreign policy is executed. One is substance, the other is method.

One of the most astute students and practitioners of diplomacy in the twentieth century, Harold Nicholson, is particularly insistent on calling attention to this distinction. In some cases, however, his efforts to be precise in this matter seem to raise further questions. For example, in his

interesting study on the Congress of Vienna (1948:164) Nicholson wrote:

- It is useful, even when dealing with a remote historical episode to consider where diplomacy ends and foreign policy begins. Each of them is concerned with the adjustment of national to international interests. Foreign policy is based upon a general conception of national requirements….. Diplomacy on the other hand, is not an end but a means, not a purpose but a method. It seeks by the use of reason, conciliation and the exchange of interests, to prevent major conflicts arising between foreign states. It is the agency through which foreign policy seeks to attain its purpose by agreement rather than by war. Thus when agreement becomes impossible, diplomacy which is the instrument of peace becomes inoperative, and foreign policy, the final sanction of which is war, alone becomes operative.

The last sentence tends to destroy the nice distinction between diplomacy and foreign policy which Mr. Nicholson makes; and it is misleading in that it suggests that diplomacy ceases to function when major international crises arise, especially if they lead to war. The object of diplomacy, as of foreign policy is to protect the security of a nation, by peaceful means if possible but by giving every assistance to the military operations if war cannot be avoided.

Diplomacy does not cease to function, as Nicholson suggests in time of war, although it necessarily plays a different role in war time. The works of diplomats as of foreign ministers may even expand. The diplomacy of the two World Wars of 20th century provides convincing support for this contention.

SELF ASSESSMENT EXERCISE

Differentiate Diplomacy and Foreign Policy.

4.0 CONCLUSION

Diplomacy as application of intelligence and tact to the conduct of official relations between the governments of independent states and other international organizations originated from the ancient Greek City States in the early centuries. However, Diplomacy through the centuries has undergone changes. Diplomacy is not foreign policy but the agency for giving effect to it. The object of diplomacy and foreign policy is to protect the security of a nation by peaceful means and at the same time achieve the national interests.

5.0 SUMMARY

In this unit, we have been able to understand the nature of diplomacy through the characteristics identified from the various definitions and also differentiated Diplomacy and foreign policy, noting their common purpose which is to achieve the national interest of states peacefully.

6.0 TUTOR-MARKED ASSIGNMENT

1. What is Diplomacy?
2. Identify the differences and similarities between Diplomacy and foreign policy.

7.0 REFERENCES/FURTHER READINGS

Satous, E. (1922). *Guide to Diplomatic Practice*. London.

Vienna Conventions on Diplomatic Relations 1961 (1964). New York: Harcourt Press.

UNIT 2 FUNCTIONS OF DIPLOMATIC MISSIONS

CONTENTS

1.0 INTRODUCTION

A diplomat is at times spoken of as the eyes and ears of his government in other countries. His chief functions are to execute the policies of his own country, to protect its interest and its nationals, and to keep his government informed of major developments in the rest of the world.

On the other hand, diplomats refer to all the public servants employed in the foreign affairs department or Ministry whether serving at home or abroad. Strictly speaking the political head of the ministry is also a diplomat. His function is that of a responsible stateman conducting the affairs of his country with other states.

2.0 OBJECTIVES

The objectives of this unit include among others things the following:

- to enlighten the students on the roles and services expected from their foreign missions
- at the end of the unit the students should be in a position to know the duties of foreign ministers and the ambassadors
- the students should also be able to understand or know where to seek refuge in times of need or danger while in another country appreciate the need and importance of maintaining foreign missions by governments.

3.0 MAIN CONTENT

3.1 Diplomatic Functions

There are many functions performed by a diplomat, some of these include: diplomatic representation, protection of his nationals, exchange of roles on matters of mutual interest, political and parliamentary negotiations, and most importantly, preservation and projection of the national interests of his country generally.

The functions of diplomatic missions are spelt out in the Vienna convention of 1961. Article 3 of the convention states as follows:

The functions of a diplomatic mission can consist of the following:

- Representing the sending state in the receiving state.
- Protecting in the receiving state the interest of the sending state and its national within the limits as permitted in the international law.
- Negotiating with the government of receiving state.
- Ascertaining by all lawful means conditions and developments in the receiving state and reporting them to the sending state.
- Promoting friendly relations between the receiving and sending states and developing cultural, social and technological relations

It goes on to say that nothing in the present convention shall be misconstrued as preventing the performance of the consular functions by a diplomatic function.

Consular functions consist of issuing passports and other traveling documents and acting as notary public. In the discharge of these functions, the head of mission will be consulted either by permanent members of diplomatic service especially trained by ministry of foreign affairs or other officers belonging to ministries of government.

In an address in Tokyo, Japan on November 22, 1938 Joseph C. Grew, United States Ambassador to Japan, commenting on the work of professional diplomat, explained the “supreme purpose and duty of an ambassador” thus:

- He must be, first and foremost, an interpreter, and this function of interpreting acts both ways. First of all he tries to understand the county which he serves – its conditions, its mentality, its actions, and its underlying motives, and to explain these things clearly to his own government. And then contrariwise, he seeks means of making known to the government and the people of the country to which he is accredited the purposes and hopes and desires of his native land.

> He is an agent of mutual adjustment between the ideas and forces upon which nations act. Simon and Schuster (1944:262)

The work of a diplomat may be broken down into four basic functions:

(i) representation
(ii) negotiation
(iii) reporting and
(iv) the protection of the interests of the nation and of its citizens in foreign lands.

These functions, as we shall see are closely interrelated.

3.2 Representation

A diplomat is a formal representative of his country in a foreign state. He is the normal agent of communication between his own foreign office and that of the state to which he is accredited. In the eyes of many citizens of the country in which he is stationed, he is the country he represents, and that country is judged according to the personal impression he makes.

The diplomat must cultivate a wide variety of social contacts, with the ranking officials of the foreign office and of the foreign government in general, with his fellow diplomats, with influential persons in all walks of life, and with articulate groups in the country. Social contacts can be enjoyable, stimulating and profitable; they can also be hard on the stomach as well as on the pocket book, trying to the diplomat's patience as well as to his intelligence. Whatever else they may be, they seem to be an inescapable adjunct of the important duty of representation.

Although these contacts have tended to become less formal, they have at the same time broadened in scope. Ambassador Grew, a career diplomat of long experience, referred to them as "the x-ray language vibrating beneath the surface of the spoken and the written word" which is simply a diplomatic way of saying that trained-mixer-observer-auditor can often pick up information or intelligence of great value in-or from-conversation at social functions.

In the course of representing his country a diplomat equally provides necessary information and advice to foreign policy decision-makers which will help to shape the direction of foreign policy adopted. This is because such information is based on the spot assessment, experience and observation. It should be observed that, the extent to which such advice and information made available by ambassadors and diplomats abroad are considered and consequently acted upon is determined by

attitude, values, biases and image of the policy makers as well as the prevailing domestic factors.

3.3 Negotiation

Virtually a synonym for diplomacy, negotiation is per excellence the pursuit of agreement by compromise and direct personal contact. Diplomats are by definition negotiators. As such, they have duties that, as described by Mr. Childs, include "the drafting of a wide variety of bilateral and multilateral arrangements embodied in treaties, conventions, protocols, and other documents of political, economic and social nature.

Their subject matter ranges from the creation of the international security organization, through territorial changes, establishment of rules to govern international civil aviation, shipping and telecommunications, and the adjustment of international commercial relationships, such particular matters as immigration, double taxation, water way rights, tourist travel, and exchange control. Almost the entire gamut of human activities is covered Childs (1948:64).

However, because of the developments in communications and the increasing resort to multilateral diplomacy, as well as for other reasons, diplomats do not play as great a role in international negotiations as they once did. Most agreements between states are still bilateral and are concluded through negotiation between the foreign offices by the use of ordinary diplomatic channels. But the major international agreements, especially those of multilateral character, are usually negotiated though directly by foreign ministers or their special representatives often at international conferences.

Diplomats also have less latitude than they once enjoyed, they are now bound more closely to their foreign offices by detailed instructions and constant communication by cable, diplomatic pouch, and transoceanic telephone. Although their stature has been somewhat reduced, they are more than glorified messenger boys at the end of a wire, and the value of the personal factor in diplomacy is still very great.

3.4 Reporting

Reports from diplomats in the field are the raw materials of foreign policy. These reports cover nearly every conceivable subject, from technical studies to appraisals of the psychology of nations.

Diplomats must, above all be good reporters, if they have the ability to estimate trends accurately, if they keep an eye out for all useful

information, and if they present the essential facts in concise and intelligible form, they may be worth a king's ransom. According to a publication of the United States Department of State on the American Foreign Service, diplomats are expected to "observe, analyze, and report on political, social and economic conditions and trends of significance in the country in which they are assigned.

Some major subjects of these reports are legislative, programs, public opinion, market conditions, trade statistics, finance, production, labour, agriculture, forestry, fishing, mining, natural resources, shipping, freights, charters, legislation, tariffs and laws. Diplomats prepare thousands of reports of this sort every year.

3.5 Protection of Interests

Although a diplomat is expected to get along with the authorities of the state to which he is accredited - that is, he must not be persona grata to the government of a state - he is also expected at all times to seek to further the best interest of his own country. However selfish this approach may seem to be, it is the bedrock of the practice of diplomacy.

While it is assumed that the interest of each state will be so interpreted that they will harmonize with those of the international community, it is not the function of the diplomat to make the interpretation. His duty is to look after the interest of his country as interpreted by policy-makers back home and in accordance with treaties, other international agreements, and principles of international law.

He also has the more specific duty of attempting to assist and protect businessmen, seamen and all other nationals of his own country who are living or traveling in the country in which he is stationed or who happen to have interests there. He seeks to prevent or correct practices which might discriminate against his country or its citizens.

SELF ASSESSMENT EXERCISE

What are the major functions of diplomatic Missions in the 20th Century?

4.0 CONCLUSION

Every diplomat must discharge certain basic functions in the course of his dealings with the president or the head of the receiving state and his other officials. Basic functions of a diplomat include; diplomatic representation, protection of his nationals, preservations and projection of the national interests of his country, and more importantly, ascertaining, by all lawful means, conditions and developments in the receiving state and reporting thereon to the government of his own state.

In carrying out his functions, the diplomat should be sociable and penetrating, more or less a cosmopolitan because he should be able to adjust himself to the conditions in his state of accreditation even when the prevailing political, social, religious or economic system is not conducive. He should be able to familiarize himself with the tradition, customs, language and circumstances of the state he is accredited and equally conduct himself as a good friend in order to get the best from the receiving state for the interest of the sending state.

5.0 SUMMARY

Diplomats are regarded as the eyes, and ears of their governments in other countries. Their main functions are to execute the policies of their own countries, to protect their interests and their nationals, and to keep the home government informed of major developments in the rest of the world. These functions are broadly broken into four basic functions:

(i) representation
(ii) negotiation
(iii) reporting and the protection of the interest of the home government in the accredited states.

6.0 TUTOR-MARKED ASSIGNMENT

1. Outline the functions of diplomatic missions and write short notes on any two.
2. Reporting is one of the functions of diplomats, what makes a diplomat a good reporter?

7.0 REFERENCES/FURTHER READINGS

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UNIT 3 DIPLOMATIC NOMENCLATURES

CONTENTS

1.0 INTRODUCTION

The word diplomat has been used in a loose and rather general sense to include all members of the foreign services of all nations, and particularly those acting as chiefs of mission. However, not all diplomacy are carried on by diplomats. In a sense, every citizen of a state who travels to another country is a diplomat, sometimes not a very good or skillful one.

In a professional sense, diplomats include two main groups: diplomatic officers and consular officers. All the diplomatic functions which have been described in unit 2 of this module are performed to a greater or lesser degree, by both groups, but generally speaking, diplomatic officials specialize in representation and negotiation, whereas consular officials are particularly concerned with the protection of the interests of the nationals of their country. Reporting is however an important function of both groups.

2.0 OBJECTIVES

The objectives of this unit are to:

- explain the administrative structures that make up diplomatic missions
- identify the hierarchies of diplomatic mission
- specify the various functions that exist in foreign mission
- identify the links between foreign missions and foreign affairs.

3.0 MAIN CONTENT

3.1 Classification of Diplomats

The success or otherwise of diplomacy in any nation state depend greatly upon the choice of its diplomatic officers, their abilities, and competency to discharge their duties accordingly. The designation of diplomatic officers to assist in implanting the foreign policy of a particular country started in March 17, 1815 during the Congress of Vienna and was later publicized in the supplementary rule of Congress of Aix-la-Chapelle on November 21, 1818. According to the supplementary of Congress of Aix-la-Chapelle, four distinctive categories of diplomatic officers were established thus:

a. Ambassadors, Legates and Nuncios
b. Envoys, Ministers or other persons accredited to sovereigns
c. Minister's Resident, accredited to sovereigns.
d. Charges d'affairs, accredited to the ministers for foreign affairs.

This classification has helped the government of one country in accrediting an envoy to another country, to actually indicate in brackets the class or category in accordance with the 1815 – 1818 classification. It should be noted that the privileges of diplomatic agents may be the same materially, but they differ in rank and honour, and are therefore treated separately.

Ambassadors are personal representatives of the governments of their nation-states. The title of *Excellency* is attached to Ambassadors because, they can always ask for an audience from the President or the Head of Government of the state to which they are accredited.

The Ministers and envoys are not seen as personal representatives of their states because they cannot at all times ask for an audience with the President or Head of Government of the country to which they are accredited, hence, they do not enjoy all the special honour accorded the Ambassadors. Again, unlike Ambassadors who receive the title of *Excellency* by right, Ministers are accorded such title only by courtesy. Next to the above class of diplomatic officers, are Ministers' Residents who enjoy less honour and cannot be addressed as *Excellency* even by courtesy.

The next category is Charges d'affairs, which, unlike the others accredited from one Head of Government to another Head of Government, is usually accredited from one foreign office to another. Their level of honour is also lower.

According to article 2 of the Havana Convention of February 20, 1928, diplomatic officers can further be classified as ordinary and

extraordinary. Those who represent the government of one country in another on permanent basis are classified as ordinary; and those who are fully entrusted with a special mission or accredited to represent the government of one country in international conferences and congresses or international organizations are classified as extraordinary.

For purpose of classification, all the envoys accredited to a particular country constitute a body known as the Diplomatic Corpse usually headed by the Doyin that is the oldest Ambassador. The body acts as a watchdog over the rights, privileges and honours accorded envoys. The classes of diplomatic agents exchanged between two countries are usually agreed between the governments concerned. Customarily, agents of the same class are exchanged.

3.2 Diplomatic Personnel

The title High commission is the same thing as "Ambassador". The Ambassador/High commission is referred to as the head of mission or principal representative. He has the responsibility for over-all execution of diplomatic functions. Thus, top positions in the diplomatic service are held by the chiefs of mission, most of whom have the rank of Ambassadors/High commission or Minister.

The various ranks of the diplomats who form the diplomatic hierarchy are still based on the rules agreed on at the Congress of Vienna in 1815. The number of Ambassadors, the highest diplomatic officers, has greatly increased in recent years. The United States, for example, refused to appoint any Ambassador until 1893, because it was felt that this title was too suggestive of monarchical diplomacy. Until very recently the United States had more Ministers than Ambassadors abroad, but today there are only a few Ministers in the American Foreign Service.

Ambassadors and Ministers together constitute only a fraction of the total number of diplomats, most of whom are career officials or non career specialists. Unlike the upper diplomatic hierarchy, there is no agreed basis for classifying all these lesser diplomats, but at least, three ranks are widely recognized. These are:

(1) Counselors of Embassy or Legation, who rank highest among diplomatic staff members;
(2) Secretaries of Embassy or Legation usually, ranked as first, second and third secretaries, and Attachés who may be junior career officers or non career persons serving in a diplomatic capacity on a temporary basis-including commercial, agricultural, military, naval, air, petroleum, cultural, press, and other attaches.

Within this generally accepted framework of Foreign Service each country has many distinctive features. In America the Foreign Service act of 1946 divided the American Foreign Service into five main categories:

(i) chiefs of mission divided into four classes for salary purposes;
(ii) foreign service officers, the elite corps of the American foreign service, divided into seven classes (a top category of career ministers, plus classes (i-vi),
(iii) foreign service reserve officers in six classes, who are assigned to the service on temporary basis (no more than four consecutive years);
(iv) foreign service staff officers and employees, in 22 classes, who perform "technical, administrative, fiscal, clerical or custodial" duties; and
(v) alien clerks and employees personnel of the United States foreign service nearly half of whom are alien employees numbering over 20,000.

In the United Kingdom a new diplomatic service, comprising some 6,400 civil servants was created in January 1, 1965, to absorb the personnel in the former Foreign Service, commonwealth service, and trade commission service. This new service has its own grade structure, comparable to the grades of the Administrative class, the executive class, and the clerical classes of the home civil service.

3.3 Diplomatic Duties

The ambassador of every country is the head of every diplomatic mission. He organizes reception parties for new envoys or other dignitaries to the country of his accreditation. He promotes understanding and friendly relations between his home and host country, through exhibition, reception and entertainment. He assigns representatives to other members of mission and co-ordinates their activities. He represents his country in important events in his country of accreditation and he is to do so with dignity by studying the local issues of the host country. He participates in negotiations or agreements between his country and host country and signs important agreements on behalf of his government. He fraternizes with other diplomatic representatives (ambassadors).

In big missions, the next ranking officer is the minister; he is the deputy head of mission. In addition to having specific schedule of duties e.g.

political, economic work, he assists the head of mission in supervising and co-coordinating the functions of other officers.

In addition to specific functions assigned to them, diplomatic officers receive delegations from home and participate in their meeting with host authorities. They liaise with host ministry's officials and organizations. They fraternize with other members of other diplomatic missions at their own level. They represent the head of mission at functions which he is unable to attend personally.

One key position worthy of mention is the "head of chancery". In a small mission, he is usually the next ranking officer to the ambassador but in large missions, he will not necessarily be as there will be more senior officers in the mission. Among other things, the head of chancery is in charge of the entire administration and the finance of the embassy. He authorizes expenditures, with signing cheque together with the finance attaché. He supervises the hiring, deployment and firing of local staff. He sees to the regular submission of annual report to the head quarters. In small missions, it is the executive officer who is responsible for signing of cheque and consular matters.

3.4 Consular Duties and Personnel

Consuls are part of the foreign service of a country. They often perform diplomatic as well as consular functions, but their duties are different from those of diplomatic service. They form a separate branch of the Foreign Service, even though diplomatic and consular officials are interchangeable in most foreign services at the present time.

Historically, the consular service is older than the diplomatic service, since it is concerned largely with two general functions which were of importance long before the rise of the nation state system and the beginning of organized diplomacy. These functions pertain to commercial and business relations and to services to nationals.

The specific duties under the first general function include many activities in the promotion of trade, periodical and special reports, replies to trade enquiries, settlement of trade disputes, and certification of invoices of goods shipped to the country. The consular officially represents, enforcement of provisions of treaties of commerce and navigation, and of regulations regarding plant and animal quarantines, sanitation and disinfectants, protection and promotion of shipping, entrance and clearance of ships and aircraft and other duties related to international commerce.
The second function refers to the varied work of consuls in many of the above respects but also to their work in helping nationals who live or are

traveling to country to which the consular is sent. These duties include welfare matters, funeral arrangements, and settlements of estates of nationals who die abroad; services to nationals who for any reason run foul of local authorities or violate the laws of the foreign country; protection and relief of seamen (a very special function), notaries' services, services to veterans, and the like. Consuls are usually divided into five classes:

(i) consuls general
(ii) consuls;
(iii) vice consuls of career;
(iv) vice consuls (non- career); and
(v) consular agents.

The first three classes are career foreign service officers who are assigned to duties as consuls general, consuls or vice consuls; the last two are non career officers, who may be promoted from the ranks of the clerical staff or who in the case of some consular agents, may not even be citizens of the country which they represent. Consuls general have supervisory powers over a large consular district or several smaller districts but not necessarily over a whole country and over the consular officials within their area.

SELF ASSESSMENT EXERCISE

Explain the administrative chains of diplomatic mission.

4.0 CONCLUSION

The designation of diplomatic officers to assist in implementing the foreign policy of a particular country started in March 19, 1815 during the Congress of Vienna and was later publicized in the supplementary rule of the Congress of Aix-la-chapelle on November 21, 1818 and according to the congress four distinctive categories of diplomatic officers were established.

5.0 SUMMARY

In a professional sense, diplomatic missions include two main groups; diplomatic officers and consular officers. All the diplomatic functions are performed to a greater or lesser degree, by both groups, but generally speaking, diplomatic officials specialize in representation and negotiation, whereas consular officials are particularly concerned with the protection of the interests of the nationals of the country.

6.0 TUTOR-MARKED ASSIGNMENT

1 a. Who is the head of diplomatic mission?
b. Briefly explain administrative chains of diplomatic mission.

2. Write all you know about the duties of a consular
3. Name the five classes of consuls and state their functions.

7.0 REFERENCES/FURTHER READINGS

Satow and Stuart (1952). *American Diplomatic and Consular Practice* 2nd ed. New York: Appleton Century Crofts.

UNIT4 DIPLOMATIC IMMUNITIES AND PRIVILEGES

CONTENTS

1.0 INTRODUCTION

The broad outlines of customary international law regarding the privileges and immunities of diplomats, their property, premises and communication were established by the middle of 18th century. This features in the writings of such juris like Motifegiu Voltel.

Diplomatic immunities and privileges refer to exemptions from criminal, civil and fiscal jurisdiction of the receiving state as founded in the customary practice of many cultures. They enable ambassadors and their staff to act independent of any local pressures. Thus, it is very essential for the conduct of relations between sovereign states. They are given on the basis of reciprocity which have proved the most effective guarantee of observance.

The modern law on diplomatic privileges and immunities is the Vienna Convention in diplomatic relation 1961. It represents a codification of customs and usages with regard to the treatment of diplomatic envoys. The preamble of the convention says: “the purpose of the privileges is not to benefit individual but to ensure efficient performance of function of diplomatic missions as representing states”.

However, customary international law continues to govern issues not expressly regulated by the convention. Articles 22 to 41 of the convention deal with the privileges and immunities of diplomatic missions.

2.0 OBJECTIVES

The objective of this unit is to:

- give an understanding of some special attributes of diplomatic mission environment
- make the students know the meaning of privileges and immunities as regards diplomatic envoys
- guide policy makers in their rules concerning relations with convoys
- provide an insight into the environment of diplomatic activities and relations with receiving states and governments.

3.0 MAIN CONTENT

3.1 Reasons for Immunities

Certain privileges and immunities are extended to diplomats which are not granted to private citizens. The reason for this special status is largely of two folds:

(1) diplomats are personal representatives of their heads of states and also in effect, if not in form, of their governments and hence of the people of their own countries.

(2) in order to carryout their duties satisfactorily, they must be free of certain restrictions which local laws would otherwise impose. Ordinarily they enjoy exemption from direct taxes and customs duties from the civil and criminal jurisdiction of the countries to which they are accredited, and in fact, from the laws of the foreign state in general. They themselves, their families, and the members of their staff are personally inviolable. Embassies and legations, with all furnishings and their archives, are regarded as part of the national territory of the states which diplomats represent and are therefore immune from molestation by officials of the states or the local governmental units in which the properties are usually located.

The same rights and privileges were extended to officials of the League of Nations and delegates to it, and they are now similarly extended to the United Nations.

Consuls are not generally accorded as many rights and privileges as diplomats, and their status is regulated more by agreements between governments or by courtesy privileges than by well established rules of international law. In certain instances, they are extended all the

privileges and immunities of diplomats, usually when they perform diplomatic as well as consular functions.

On the other hand, non career consuls receive few if any immunities. Almost invariably consular offices and archives are regarded as the property of the nations which the consuls represent and are therefore in a sense extra-territorial. Consuls are usually exempted from local taxes and customs duties but except for the giving of testimony in civil cases, they are customarily held to be subject to the laws of the state of their residence.

There are, of course, many variations and exceptions to the generally recognized status of diplomatic and consular officials as here described. The Vienna Conventions 1961 and 1963, to which reference has already been made, constituted an effort to state the commonly accepted rules regarding the status of such officials, but even these conventions have not received universal acceptance.

Moreover, cases are always arising in which diplomats and consuls are alleged to have abused their privileges or in which a state is alleged to have violated the immunities of these representatives or their residences. Some cases are relatively minor - as for example, traffic violations involving no injury to persons – but they may cause bad feeling on the part of local officials or the populace, or both, and even on the part of the government concerned.

The United States granted full diplomatic privileges and immunities to United Nations officials and delegates over the protests of articulate groups in the country and in the congress. However, during the Cold War, Soviet embassies, legation and consulates were suspected to be head centres for subversive and espionage activities, and there was considerable feeling that strong measures should be taken, including search of the premises if necessary, although this would have been impossible under existing agreements. According to international law, diplomatic and consular officials are strictly forbidden to engage in espionage.

3.2 Theoretical Bases of Immunities and Privileges

There are three theories for the development of privileges and immunities. These are:

(a) the extraordinary territoriality
(b) representative character and
(c) functional necessity theory.

a. Extraordinary Territoriality Theory

This theory was propounded by Hugo Girtius who stated that by certain function, ambassadors are in the place of those who send them and as it were extra-territorial. However, this theory has long since been discarded. Sir Cicil Hurst during a lecture in 1926 at Cape Academy of international law declared the theory as untrue and that it has been definitely repudiated by modern writers and court decisions.

Court Decision: In Redwan v. Redwan, an English Court rejected the extraterritoriality theory. Mr Justice Cumming Brusel ruled that Egyptian consulate in London was not part of Egypt and therefore the divorce obtained at the consulate was not obtained outside London.

Again in R. v. Turnball, the Supreme Court quashed the argument by the defence council that an act against an embassy in a receiving country is a part of the sending country. He therefore held that, an embassy is not a part of the territory of the sending state.

b. Representative Character Theory

This theory predicates that the privileges and immunities enjoyed by diplomatic agents is on the conception that diplomatic mission personifies the sending state. Thus, an ambassador is accorded the same degree of immunities and privileges in his country of accreditation as are due to the sovereign he represents.

c. Functional Necessity Theory

This theory justifies the provision of privileges and immunities on the ground that they are necessary to enable the diplomatic mission to perform its function.

The international law commission stated in its 1958 report that in considering the draft of the Vienna Convention, it was guided by the functional necessity theory, while also bearing in mind the representative character of the ambassador and the mission itself.

3.3 Provisions of the Vienna Convention on Diplomatic Immunities and Privileges

Articles 22 to 41 of the convention deals with the privileges and immunities of diplomatic missions.

Article 22 (1) states that the premises of the mission shall be inviolable; the agents of the receiving states may not enter them except with the consent of the head of mission.

Article 22 (2) states the receiving state is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impendent of its dignity.

In Satow's view, the appropriate steps used in the context imply that the extent of protection must be proportionate to any perceived danger.

The judgment of the International Court of Justice in the US diplomatic and consular staff in Iran case in 1980 is relevant here (upheld the principle of inviolability of missions). The issue of inviolability of diplomatic premises also arose in 1984, when shots were fired from Libyan people's bureau in London at demonstrators outside the bureau killing a female police officer. The British government refrained from authorizing entry into the premises of the Libyan mission, instead it asked for the recall of the staff of the bureau, and thus complying strictly with the principle laid down by International Court of Justice.

Article 23 exempts the premises of the mission of all taxes except for the services rendered like water bills, light bills etc.

Article 24 states that diplomatic archives and documents must not be searched even on transient. Closely related to this is article 27 which prohibits the opening or detention of diplomatic bags by host authorities. Such bags must be clearly marked as diplomatic bag and should contain only official documents and articles.

Article 26 enjoins receiving states to grant the diplomats the freedom of movement in his territory except zones regarded as security zones.

Article 29 accords inviolability to the persons of a diplomat. The host state must treat him with due respect and protect him. The host state shall take all appropriate steps to protect him from danger or attack. Appropriate steps used in this concept do not mean surrendering to kidnappers. Ambassador Count Von Spreti was kidnapped in 1970. The

kidnappers requested for a ransom which the government refused and he was consequently murdered.

Article 30 confers inviolability and protection also on private residence of a diplomat.

Under article 31, a diplomatic agent shall enjoy immunity from criminal, civil and administrative jurisdiction of the receiving state, except in respect of actions relating to private immovable property, succession matter, action relating to private professional or commercial activity.

The immunity of a diplomat may be waved. The waver must be in writing. It can also happen when the embassy institutes an action, the immunity of the diplomat to testify can be waved only for the period of the case. Diplomats are also exempted from all taxes and custom duties even for good which he imports into the country for his personal use.

Article 41 enjoins all diplomats to respect the laws and regulations of the receiving state. They must not interfere in internal affairs of the receiving state. They must obey all the laws e.g. they must insure their cars.

In Dickinson v. Delsolan, an insurance company refused to pay for a car damaged by a diplomat on the ground that the diplomat enjoys immunity, the court held the company liable.

Article 41(3) states that the premises of a diplomatic mission must not be used in any manner incompatible with the functions of the mission. Dena is of the view that in the last resort, a receiving state which is sufficiently sure of evidence of abuse should risk a violation, if it believes its essential security is at risk. In 1973, the Iraq ambassador was called to the Pakistan foreign ministry and told that arms were being brought into Pakistan under diplomatic immunity and that there was evidence that they were being stored at the embassy of Iraq. The ambassador refused permission for a search, in the presence of the ambassador, a raid was conducted on the embassy by armed police men who found huge consignment of arms stored in crates. The Pakistan government sent a strong protest to the Iraq government and declared the Iraq Ambassador *personal non grata.(an undesirable person)* and recalled their own Ambassador in Iraq.

Article 42 prohibits the involvement of a diplomatic agent in professional or commercial activity.

SELF ASSESSMENT EXERCISE

Critically examine the importance of Immunities and Privileges.

4.0 CONCLUSION

Diplomatic envoys enjoy certain privileges and immunities which are not granted to private citizens. This is because, diplomats are personal representatives of their heads of states and also the governments and peoples of their countries. Secondly, in order to carry out their duties satisfactorily and efficiently, they must be free of certain restrictions which local laws would otherwise impose. These immunities and privileges are contained in the 1961 Vienna Convention.

5.0 SUMMARY

The broad outlines of customary international law regarding the privileges and immunities of diplomats, their property, premises and communication were established by the middle of 18th century. This features in the writings of such juris like Montequi Voltel. However, the modern law on diplomat privileges and immunities is the Vienna Convention 1961. Articles 22 to 41 of the conventions specify these immunities and conventions.

6.0 TUTOR-MARKED ASSIGNMENT

1 a. What do you understand by diplomatic immunities and privileges?
b. Are they relevant to diplomatic relations?

2. State the theories of diplomatic immunities and privileges you have studied.

7.0 REFERENCES/FURTHER READINGS

Nicolson (1939) Diplomacy.

Vienna Conventions on Diplomatic Relations, 1961.

UNIT 5 BREACH OF DIPLOMATIC RELATIONS

CONTENTS

1.0 INTRODUCTION

The beginning of a diplomatic mission starts immediately when the letters of credence are presented to the head of the receiving state. This continues as long as the head of the sending and receiving states maintain their relationships.

In contemporary periods, all foreign officers must be prepared, as far as the complex nature of international relations is concerned, to face unexpected situations where they may have to terminate overnight the Diplomatic Mission in the receiving state. According to International Convention and Pan American Convention signed at Havana on February 20, 1928 and reinforced under Vienna Convention on Diplomatic Relations signed in 1961, a Diplomatic Mission can be terminated under the reasons mentioned in Article 25 of the Pan American Convention .

2.0 OBJECTIVES

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

- understand the meaning and effect of declaring a diplomat persona non granta
- understand the reasons of nations at times severing diplomatic relations
- understand why diplomats must avoid actions that may tarnish the image of their nations abroad
- understand why nations must avoid issues that can result in breach of diplomatic relations.

3.0 MAIN CONTENT

3.1 The Meaning of Diplomatic Breach

A breach of Diplomatic relations is usually announced unilaterally. It indicates a strong objection by a government to an action by another government. This step does not necessarily imply an intention of going to war. Since the Second World War, there have been instances of the formal break of diplomatic relations.

During the Anglo/Iranian disputes of 1951, Iran broke relations with the United Kingdom and resumption took place in December 1952. Also in 1956, Saudi Arabia broke diplomatic relations with Britain and France over the Swiz crises. The relations were not re-opened until 1962. The conduct objected to, is most usually felt to be directly injurious to the state breaking relations.

However, relations may also be broken as a protest against a policy of the other state in a matter of general concern. In 1965, for example, some African States severed relations with the United Kingdom because of resentment over the United Kingdom's handling of Rhodesia's unilateral declaration of independence. In 1961, Nigeria broke off diplomatic and commercial relations with France in protest against France's test of Atomic bomb in the Sahara desert.

Breach of diplomatic relations does not mean total stoppage of transactions between the countries concerned. Arrangements are usually made for each side's interests to be looked after by a third party. For example, when diplomatic relations between Egypt and United States of America were broken down in 1967, at the beginning of the war between Israel and Arab States, the handling of American interest in Egypt was taken over by the Spanish embassy in Cairo while Indian embassy assumed the same for Egypt in Washington D.C.

Relatively recent development is the opening of the country's interest section in another embassy when there is rapture in diplomatic relations. Fore example, when France broke off diplomatic relation with United Kingdom in 1976, a British interest section of French Embassy in Regkjuvan was established, consisting of all the members of the former United Kingdom Embassy except the Ambassador and they carried on business as usual.

3.2 Characteristics of a Diplomatic

The level of success of the diplomacy of any nation state depends heavily upon the nature and qualities of diplomats chosen. In other words, most of the breach of diplomatic relations is caused by the attitudes of the diplomatic envoys. For that reason, a diplomat is required to have a balanced mind, amicable disposition, ability to withstand stress, reasonable tact and skill to assess and deal with a number of issues and problems.

Diplomacy as a profession demands great personal qualities, charm and intellectual incisiveness, and as such, a diplomat must have proven abilities to win the confidence of the receiving state and goodwill of its people.

Moral influence is the most essential qualification of a diplomat and he must be a man of the strictest honour if the government to which he is accredited and his own government are to place explicit confidence in his personality to continue the relations. However, some of the qualities of a diplomat, according to Harold Nicolson (1956:35) have to do with moral influence founded on seven specific diplomatic virtues:

a. Truthfulness
b. Precision
c. Calmness
d. Modesty
e. Good temper
f. Patience, and
g. Loyalty

As a result of the complex nature of modern diplomacy and international relations, a successful diplomat should always rely on factual situations, watch things as observer and employ higher degree of precision in his dispatches to his home government vis-à-vis the receiving state. He should always attempt to win the confidence of his government as well as the affections of the people. Again, a diplomat should be a scholar, well-versed in history, political science, geography, military science, economics, international relations etc.

A diplomat in charge of a particular embassy has to realize that he should be able to inspire and coordinate the team of other officials of the embassy or mission. He has to keep watch on all the members of the mission. His responsibility includes coordination of the work of various officials like military, naval, air, commercial, financial, agricultural and labour advisers attached to him. A diplomat must necessarily be

ambivalent in order to be successful in his career and avoid breach of diplomatic relations.

Another attribute of a good diplomat is his readiness and ability to prepare dispatches both to his government and the state he is accredited to, in a much more precise and appropriate language. He has to express himself in well-articulated words without being offensive very straight-forward and truthful. This means that, any letter he is sending either to his home state or receiving state must be carefully scrutinized to avoid improper usage of words, consciously or unconsciously, in what he intends to convey. In summation, a diplomat must judge accurately and appropriately the likely behaviour, reaction and actions of others, and appreciate their views with a clear sense of accuracy and equally present them to his government. This is the best way to ensure mutual understanding between states for continued cordial diplomatic relations.

Moreover, a diplomat should be sociable and penetrating, more or less a cosmopolitan, because he should be able to adjust himself to the conditions in his state of accreditation even when the prevailing conditions is not conducive. In other words, he should be able to familiarize himself with the tradition, customs, language and circumstances of the state he is accredited to, and equally conduct himself in such a way as a good friend of the receiving state.

There are many qualities that are expected of a good or successful diplomat. However, it must be noted that some people are born diplomats, while others just acquire the status. All said a diplomat must possess the following attributes as prescribed by Harold Nicholson (1963:126):

- …. Truth, accuracy, calmness, patience, good temper, modesty, loyalty, intelligence, knowledge, discernment, prudence, hospitality, charm, industry, courage, and tact.

3.3 Persona Non-Grata

The process by which an ambassador and other diplomatic agents who are personally unacceptable to the receiving state are removed has been known under various descriptions, such as expulsion, request or recall. The modern procedure is known as *persona non grata*. In Article 9 of Vienna Convention on diplomatic relations of 1961, it is stated that the receiving state may, at any time without having to explain its decision, notify the sending state, that the head of mission or any member of the diplomatic staff of the mission is *persona non grata*. In any such case, the sending state shall as appropriate either recall the person concerned or terminate his function with the mission.

Article 9(2) states that if the sending state refuses or fails within a reasonable period to carry out its obligation under paragraph one of these Articles, the receiving state may refuse to recognize the person concerned as a member of the mission.

In most cases, the reasons for declaring a diplomat *persona non granta* are known to both receiving and sending states. But they are discussed in diplomatic correspondence. The diplomat may have committed a serious offence. For example, forgery, it may be interference in the receiving states internal affairs, or he may have caused offence by his personal manner, attitude. One of the most dramatic cases of *persona non granta* occurred in 1971, when the British government asked for the withdrawal of one hundred and five Soviet diplomats within two weeks.

In 1976, the Libyan Ambassador to Egypt was declared *persona non granta* for distributing pamphlets hostile to the late President Sadat of Egypt. Also in 1976, the North Korean Ambassador and his six staff were expelled from Denmark for smuggling and illegal sale of alcohol, cigarette and drugs. The actions of the diplomats amounted to abuse of diplomatic privileges.

Another case occurred here in Nigeria, when Nigeria asked the British Government to recall its Ambassador in Nigeria, Sir Leqqueste, sequel to his acts of insensitivity following the assassination of General Murtala Mohammed in February 1976.

3.4 Termination of Diplomatic Mission

According to international convention and Pan American Convention reinforced under the Vienna Convention on diplomatic relations of 1961, a diplomatic mission can be terminated for the following reasons mentioned in Article 25 of the Pan American Convention:

- By the official notification of the officer's government that the officer has terminated his functions,
- By the expiration of the period fixed for the completion of the mission,
- By the resolution of the matter, if the mission had been created for a particular question,
- By the delivery of passports to the officer by the government to which he is accredited.
- By the request for his passports made by the diplomatic officer to the government to which he is accredited.

Again, according to Article 43 of the Vienna Convention on diplomatic relations, the functions of a diplomatic agent can be terminated on:

- Notification by the sending state to the receiving state that the function of the diplomatic agent has come to an end,
- On notification by the receiving state to the sending state that in accordance with paragraph 2 of Article 9, it refuses to recognize the diplomatic agent as a member of the mission.

In the same Vienna Convention, Article 44, it is stated that:

- The receiving state must, even in case of armed conflict, grant facilities in order to enable persons enjoying privileges and immunities, other than nationals of the receiving state and members of the families of such person irrespective of their nationality, to leave at the earliest possible moment. It must, in particular, in case of need place at their disposal the necessary means of transport for themselves and for their property.

Once a notification is given by both the sending state and receiving state, regarding the termination of a diplomatic mission, the diplomatic officer adopts a formal procedure to leave the receiving state. In a normal situation (in the absence of war, hostility or diplomatic rapture between the two states), the formal procedure is to request the head of the receiving state to grant him a farewell audience. The importance of granting farewell audience is to cordially send the diplomatic officer back to sending state in accordance with the dignity and status accorded to the two states.

In the farewell audience granted by the head of the receiving state, a formal exchange of greetings between the two countries will be made. The head of the receiving state on receipt of the letter of recall will grant "re-credential" and in the process register his satisfaction on the official conduct of the diplomatic officer and possibly regrets for his departure.

There are two methods of termination of a diplomatic mission – recall and dismissal. In terminating diplomatic mission through recall, the receiving state will have to wait for the orders of the sending state recalling the diplomatic officer. But in dismissal without notice, which is done in cases of a serious character which endanger the safety and security of the receiving state, or which are so flagrant that the stay of the envoy on the territory is fatal and undesirable in the interest of the receiving state, Murty (1968:96), there is no procedure adopted, it is the duty of the sending state to make immediate arrangements for the termination of the diplomat's stay in the receiving state.

Articles 45 and 46 of the Vienna Convention on Diplomatic Relations have made enough provisions for the temporary protection of the interests of the diplomatic agent, officer, his family, property as well as other members of the mission in case there is a termination of diplomatic relations between two sovereign states.

SELF ASSESSMENT EXERCISE

What are the qualities of good a diplomat?

4.0 CONCLUSION

The primary objective of diplomacy is to achieve settlement of disputes as much as possible by negotiation through peaceful means, and hence, it is expected that every nation state should attempt to pay needed attention to the interests of peace, and if need be should sub serve their national interests to international peace, instead of breaking off diplomatic relations between states. This can only be realized by appointing born diplomats with best diplomatic qualities instead of those who just acquire the status.

5.0 SUMMARY

The breach of diplomatic relations may result from either the formal request of the receiving state for political reason or for reasons of gross misconduct of the diplomat, or due to his activities endangering the safety and security of the receiving state. Recalls may also be effected due to dissatisfaction of the sending state in regard to the performance of the diplomat in the receiving state or misunderstanding between the two states.

6.0 TUTOR-MARKED ASSIGNMENT

1. Enumerate the characteristics of a good diplomat.
2. What is the effect of declaring a diplomat “persona non grant”?
3. What reasons can you use to justify the breach of diplomatic relations?

7.0 REFERENCES/FURTHER READINGS

Harold Nicolson (1956). *Evolution of Diplomatic Method.*

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MODULE 2 THE ORIGIN OF INTERNATIONAL LAW

UNIT 1 THE SOURCES OF INTERNATIONAL LAW

CONTENTS

1.0 INTRODUCTION

The sources of international law are three in number; treaties International Customs Principles and general principa1 of law. Thus the statute of the International Court of Justice (Article 38) stipulates that the court shall apply international conventions, whether general or particular, establishing rules expressly recognized by the contesting states, international custom, as evidence of a general practice and accepted as law, and the general principles of law recognized by civilized nations.

2.0 OBJECTIVES

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

- identify the three sources of international law
- understand the meaning of treaties, international customs and general principles of law
- determine the implication of states signing or ratifying treaties
- evaluate the place of judicial decision in the principle of international law.

3.0 MAIN CONTENT

3.1 International Conventions

A convention is an agreement creating binding obligations between subjects of international law. Other words, some of which also have other meanings, used synonymously with convention are treaty, protocol, accord, arrangement, understanding, compromise, regulation, provision, pact, charter, statute, act, covenant etc. The word "Convention" must not be confused with a constitutional convention.

Treaties have been the main instrument of conducting international relations. International cooperation has been carried out principally through these treaties. The trend towards written law is irreversible. It clears doubts and ensures a common understanding at least, among the parties. A treaty may supplement, modify or override ob1igations derived from customary law. Conventions have been proliferated as evidenced in the large number of treaties registered with the United Nations. They diminish the importance of customary law as a source of international law.

A contract treaty is one that merely regulates specific relationship between two or more states. For example, a loan agreement, a law making treaty lays down rules for a number of states. A contract treaty may be more readily terminated than a law making one, for example, by war or non performance by the other party. A constitutional treaty is one that creates an international organization in which case, the treaty is also the constitution of the international organization.

Although treaties normally bind only the parties, (pacta tertus nec nocent nec prosunt) yet they are the nearest to legislation in a partially organized society. A recurrence of a provision in treaties may create an international customary law to that effect. Thus, the rule pacta sunt servanda (a party cannot be a judge in his own case) associated with treaties is a customary rule of international law. The principles of treaty are now largely codified in the Vienna Convention on the Law of Treaties 1969.

3.2 International Customary Law

The wording in the statute of the World Court "international custom, as evidence of general practice accepted as law" has been criticized for its clumsiness. It is in fact, the general practice of states that is accepted as custom under certain conditions.

Customs remained the most important source of international law until recently when the situation was changed by the large number of multilateral law making treaties. Customs may be gleaned from the practice of state as in press conferences, official statement, opinions of legal officers and acts of state, official instructions to diplomats, consuls, military commanders, of municipal courts and tribunals, and the practice of international institutions and tribunals. Care must be taken to separate political statements, rhetoric or mere promises.

For rules to become customs there must be a constant and uniform usage. In lotus case PCIJ (1927), the PCIJ found that state law were inconsistent, municipal decisions conflicted, text writers were divided, and consequently, no uniform trend was discernable to support the existence of a custom giving a flag state exclusive penal jurisdiction over ships in collisions at sea.

State must act under the impression that the action is obligatory in law. This is often expressed as *opinion jurissive necessitatis* or simply *opinion juris* for short. The ICJ stressed in the North Sea Continental shelf cases ICJ (1969: 3), that states must feel impelled by a legal obligation, not habitual action. Action necessitated by reasons of comity or courtesy is not custom, nor is a mere usage. Whereas usage may differ among states, custom must be consistent.

No particular duration is required for a custom to materialize, although long period is an evidence of consistency and acceptance. The customary law on freedom of outer space flight and the right of littoral states to exploit their continental shelves arose recently.

Not all state need to be involved in custom formation, only a few states have conducted outer space flight and not all state have coastlines or ships. Resolution of international institution especially the Security Council and General Assembly, when acted upon, may become evidence of state practice and aid the development of international law. Custom may be general or particular, in case of the later, it must be proved although, a particular custom may be treated as general within a region.

A custom may exist, between as small as two states. A state may contract out of custom by refusing to be bound at the time of its formation. But opposition by one or more states may hinder the development but not necessarily halt it indefinitely. A custom may cease to exist through the rise of conflicting customary rule or conventional rule.

A party alleging a local or regional custom must prove it and show that it is binding on the other party and reflects a right appertaining to the claimant and a duty incumbent on the other.

There is a tendency to codify customs in special areas, e.g., law of diplomatic immunities. The International Law Commission has the codification of law as major responsibilities. Codification has the advantage of clarifying doubts and minimizing disputes.

3.3 General Principles of Law as Recognized by Civilized Nations

The statute mentions general principles of law by civilized nations as the third source of international law. It does not define "civilized", the provision is reminiscent of exclusiveness of international law in the past to Christian nations and then to "civi1ized" nations. The word is now used to refer to the states of the international community. Presumably, general principles will not include a theory of criminal punishment that supports the amputation of convicted criminals. They exclude barbarous relics of any religious or judicial system.

If there is a relevant treaty or custom, general principle does not apply. They are called in to fill a lacuna in the law so that the court is not incapacitated from giving a *judgment non liquate*. They constitute a reservoir of principles from which the courts, may draw in appropriate cases and further recognize the dynamic nature of international law and the creative function of the courts in administering it. This borrowing is not new but merely declaratory of existing practice of international courts. The early writers drew inspiration from the principles of Roman law. They embraced the principles of substantive, procedural and evidentiary law common to legal systems and which exist in both municipal and international laws.

The court is however, not obliged to admit a municipal doctrine if it thinks, it is inapplicable in court, as opposed to dissenting judgments, which rarely makes reference to general principles. It does not require a principle to be manifested in every legal system, does not even call for evidence of its being widespread and does not indulge in a comparative study of systems.
In practice, it takes the general principles known to judges sitting. The number of legal systems considered is not as many as the number of states in the wor1d. This may be because of the penetration of European legal principles in other parts of the world. Thus, the same principles applicable in Britain may apply to Nigeria, Malawi, India, New Zealand and Canada, all of them, former British colonies and now members of

the Commonwealth of Nations. The same applies to other former colonial powers and their former colonies.

Some writers, especially of Soviets, denied the existence of this category of sources. They argued that the deep divergence between bourgeois and socialist systems defined the existence of common general principles. They further argued that, there were attempts to use this category against the interest of socialist states and the new Afro- Asian states. They cited, for example, the principles of "acquired rights" and full compensation for nationalization, which they considered to be attempts to impose bourgeois legal principles.

In practice, every principle is considered on its merits and no state now accepts a principle merely because it was supported by another. The Soviets sometimes used general principles in the sense of the most fundamental principles of international law. For example, rule against aggression but this was unacceptable to others. To become law, the general principles must form part of treaty law or custom.

There are however, general legal concepts, logical rules, mode of legal technique, which are used in interpreting and applying law in general, both international and national irrespective of the social essence of the law.

General principles only applied if they were part of treaty or custom: Some examples of general principles are –pact sunt servanda (a party cannot be a judge in his own case), the doctrine of litis pendens (non retroactivity of criminal legislation) and the territoriality of crimes. The ICJ invoked consideration of humanity in the Corfu and Nicaragua cases in the South-West African case.

3.4 Judicial Decisions and Text Writers

Article 38 of the statute of the ICJ directs it to apply judicial decisions as subsidiary means of determination of the rules of law but subject to Article 59 which lays down that a decision of the court is binding only on the parties and in respect of that particular case.

The court has however treated these decisions with great respect and refers to them frequently. Although, only a subsidiary means of ascertaining the law, in some cases, they have proved to be the best of means. Repeated or frequently cited decisions increasingly become, not merely evidence, but in fact create, the law and form part of international practice.

Decisions of arbitral tribunals are also respected and referred to by the international court of justice. The fact that arbitrators are more flexible and inclined to make a compromise does not reduce the importance of their judgment. The separate and dissenting judgments of judges have, at least, the authority of texts. In the execution of the judgment, ICJ is guaranteed by Article 94 of the UN Charter.

Text writers are subsidiary law, determining agencies. The importance attached to a text depends upon the prestige of the author and the extent his opinion withstands the test of time. Because of the impression of international law and the sparseness of its success in early times, the works of text writers were, if not the only, source of international law. Thus, writers like Grotius, Vatiel and Victoria exercised unrivalled influence on the law. They freely drew analogies from Roman Law and Natural Law. After Grotius, text writers broke into naturalists, positivists and eclectics or grotians. With the swing of the positivism in the 19th century, the influence of text writers waned to what it is now.

The statute refers to writers "of the various nations." This is because of the fact that some writers are influenced by national, racial or other subjective considerations. The justification of state action by some writers from those states sometimes makes sad reading when tested for objectivity after the lapse of time. Some writers have found it herculean task to rise above the national craze of the moment compelled by leaders with distorted world visions.

A comparison of some of the text writers from the East, West and non-aligned states confirm this statement. For a reasonable ascertainment, it is necessary to consult the three sides until universalism can instill in writers the courage to stand above governments in order to promote objectivity and the genuine interest of humanity as a whole. The work of text writers is still very important as a subsidiary source of international law if properly selected and assessed.

SELF ASSESSMENT EXERCISE

Judicial Decisions are very important sources of international Law. Discuss.

4.0 CONCLUSION

The question of law as fixed by treaty or convention is a fairly objective one, but even this presents at least two difficulties, one is the matter of interpretation, and the other is that of knowing just when a rule agreed to by some states, but not by all becomes international law.

Custom or customary law is often difficult to prove. The task here is to show that a particular rule has been accepted in practice by the community of states even though the various states have never reached an explicit understanding to that effect. The rule must be proved, if at all, by the presentation of evidence. Generally speaking, this evidence comes from judicial decisions, diplomatic correspondence, state papers, and the findings of research societies and private scholars.

The "general principles of law" have been variously spoken of as justice, common sense, and right reason. Yet, they must not be regarded as entirely subjective that is, as something which each individual determines for himself instead, they may be thought of as principles common to the great legal systems of the world. This can be determined with some degrees of objectivity, and they make it possible for judges to fill in the gaps between the rules of "positive law" - the term applied to law based upon practice or express assent.

5.0 SUMMARY

International conventions or treaties, customs, general principles of law as recognized by civilized nations, Judicial decisions and text writers are the main sources of international law, but Article 38 (2) of the International Court of Justice, states that the court shall apply whatever, the parties regarded as the bases of their actions.

6.0 TUTOR-MARKED ASSIGNMENT

1. a. Name the four sources of international law.
   b. What are the major disadvantages of each of them?

2. Write short notes on:

   i. Judicial Decisions
   ii. Text Writers

3. For rules to become customs, "there must be a constant and uniform usage". Do you agree? Give reasons.

7.0 REFERENCES/FURTHER READINGS

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UNIT 2 SUBJECT MATTER OF INTERNATIONAL LAW

CONTENTS

1.0 INTRODUCTION

The conventional view was that public International law is made up of two separate and distinct branches, with the law of war being necessary to regulate the rights and obligations of bel1igerent and neutra1 states when the law of peace is no longer applicable However, in an era of protracted conflict, the boundary lines between war and peace are becoming more obscured, and the new techniques and new weapons of destruction have made conventional laws inadequate, if not obsolete.

Better understanding of the subject matter of International law may be gained by reading the International Law Commission's listing of twenty-five (25) topics in the field, prepared at an early stage of the commissions work:

.

(1) Subjects of international law
(2) Sources of international law
(3) Obligations of international law in relation to the law of states
(4) Fundamental rights and duties of states
(5) Recognition of states and governments
(6) Succession of states and governments
(7) Domestic jurisdiction
(8) Succession of acts of foreign states
(9) Jurisdiction over foreign states
(10) Obligations of territorial jurisdiction
(11) Jurisdiction with regard to crimes committed outside national territory

(12) Territorial domain of states
(13) Regime of the high seas
(14) Regime of territorial waters
(15) Pacific settlement of international disputes
(16) Nationality, including statelessness
(17) Treatment of aliens
(18) Extradition
(19) Rights of asylum
(20) Law of treaties
(21) Diplomatic intercourse and immunities
(22) Consular intercourse and immunities
(23) State responsibility
(24) Arbitral procedure
(25) Law of war

Every one of the twenty-five topics raises fundamental questions of international obligations and conducts and has been the subject of careful examination and decision.

2.0 OBJECTIVES

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

- understand the meaning of the law of neutrality
- understand the politics of neutrality in international politicking
- distinguish between law of war and law of peace.

3.0 MAIN CONTENT

3.1 The Laws of War

Until recently international law has not even attempted to prohibit or "outlaw war" for such an effort would leave states with no means of redressing wrongs where the law of peace afforded no remedy. To deny states the right of self help when no other help is available is no furtherance of justice and such an unrealistic attempt to control conduct by rule-making would bring all law into contempt. Although war itself, may in some instances, be lawful and necessary it does not follow that warring states are without obligation, hence the laws of war.

Laws of war on land, and sea have been formulated in various codes and conventions, notably in the conventions drafted at Hague Conferences of 1899 and 1907 and in many Geneva Conventions.

Among the aspects of warfare dealt with, in these documents are the following:

- Privateering,
- Blockade, Prize Courts,
- The Care Of Sick And Wounded,
- Protection For Medical Personnel And Facilities,
- The Qualifications Of Lawful Combatants,
- The Treatment Of Prisoners, Forbidden Weapons And Agencies,
- The Power Of Military Commanders In Occupied Enemy Territory,
- The Status Of Spies,
- The Beginning Of Hostilities,
- The Use Of Merchant Vessels As Warships,
- Naval Bombardments, The Use Of Submarine Mines,
- The Right Of Capture In Maritime Warfare,
- The Right And Duties Of Neutrals, And
- The Use of Poison Gases.

On some of these subjects the agreements were largely nullified by sweeping reservation, on others these agreements were never ratified. In some instances, as is the case with the convention on the treatment of prisoners of war, the law is detailed and explicit. Nevertheless a substantial part of the laws of war is still based on custom and usage.

The laws of war have helped to humanize warfare, if such a thing is possible - and even by the totalitarian state they have been generally observed than disregarded but they have not availed to prevent the most inhuman practices, such as unrestricted submarine warfare and the use of flame throwers, napalm and atom bombs. They have never been adequately revised to cover the new and more terrible weapons of destruction that were developed during World War I and II in intervening years, nor have they been adopted to meet the needs of the atomic age.

3.2 Laws of Neutrality

Before the First World War, an important offshoot of the laws of war was the laws of neutrality. Among the subjects with which these were concerned were the forms of neutrality and neutralization, the proclamation of neutrality, and especially the relations between neutral states and belligerent states and between states and individuals.

Specific problems involving the rights and duties of neutrals included the maintenance of the inviolability of the territorial jurisdiction of neutrals, the obligation of neutrals not to permit the use of their territory

as a base for military operations, the regulations of the rights of asylum and of internment, the conditions under which enemy ships may enter and leave neutral ports, the obligation of neutral state not to furnish military assistance to any belligerent or to permit enlistment of troops for a belligerent state, and the neutrals obligation to enforce its neutrality laws and to exercise 'due diligence" in preventing violations of its own status.

Traditional laws of neutrality lost much of their meaning as a result of the practices of the combatants in World War I. In many cases where they should have been honoured, they were flagrantly disregarded, and in others, relating to the use of such new weapons as the airplane and the submarine, they appeared to be largely inapplicable. Woodrow Wilson sternly insisted on the rights as the greatest neutral state. His adamant position in this matter led to strained relations with Great Britain over interference with American ships, goods and nationals and to the American declaration of war upon Germany, since Germany's use of the sub-marine was to the president a clear violation of America's rights as a neutral.

Traditional laws of neutrality must be listed among the causalities of the World War 1. They have never been satisfactorily revised since that time, and during World War II, they seemed quite anachronistic. One of the important questions in present international law is whether laws of neutrality can be meaningful in times of total war, and whether the nations can agree on a thorough revision of previous codes. Perhaps even more important is the question of the relationships of neutrality to collective security.

3.3 The Laws of Peace

The subject matter of the international law of peace is varied in the extremes. It embraces the bulk of the matters with which the international lawyer usually, dea1s. To illustrate, may we refer to "six grand aspect or divisions of the subjects". The first is the law relating to the nation states, the traditional and principal subject of law in the international system, with particular attention to its birth, recognition, life and death. If the law of recognition were better defined, many vexations of political differences could perhaps be avoided.

The second aspect deals with nationality and the principles which determine human allegiance to the nation including the severance of allegiance and the protection of nationals abroad. Third is the law of the national domain or homeland, including such earthly business as acquisitions, transfers, boundaries, internal authority and external responsibility. The fourth and fifth aspects cover the laws of jurisdiction,

and of intercourse and agreements. Finally number six relates to settlement of disputes.
On each of these aspects a vast literature exists and these areas of international law are rather well developed. At the same time however, as Dickson pointed out, there are deficiencies in the law that has been generally agreed upon characterized by weakness, importing gaps, and extraordinary paradoxes. That the deficiencies observed in various divisions of the law of nations are no more than varying aspects of the same thing is due to the character of the international society.

The law has developed upon the members of an organized community of basically dissimilar subjects. After all, are not all subservience to polities, evasions of reality, exaltation of sovereignty and all the rest natural among sovereign states?

3.4 International Law and Municipal Law

International law is largely but not altogether concerned with relations between states, whereas municipal law controls relations between individuals within a state and between individual and the state. The two kinds of laws are similar in their sources – chiefly custom and express agreement, with however, substantial differences in legislative machinery. They differ altogether in their judicial processes.

Both are usually applied by national courts, which results in complete decentralization of the judicial function in international law and effective centralization in municipal law. What is true of the judicial function is also true of the executive function. As in tort in domestic law, traditional international law always depends, for its enforcement upon the initiative of the injured party. Most municipal laws, on the other hand, are enforced by responsible executives unknown to international law.

The relationship of international law to municipal law was once a matter of controversy. The principal question at stake was thus, in the event of conflict between international law and domestic law, must a national court apply international law? Oppenheim held that in such a case the national courts neither may nor could apply the law of nations, for the latter lacks absolutely the power of altering or creating rules of municipal law, Clyde (1948).

Clyde Eagleton on the other hand, insisted, that to admit that international is ultimately depended upon domestic law and courts, or that municipal law may override international law, would be to deny international law out rightly and no state makes such denial; the decisions of the courts putting its (states) own law above international

law are not final, but may be reviewed and reparation may be demanded by international tribunal. He further pointed out that after World War I, the constitutions of Germany and Australia specifically made international law part of municipal law, and that court decisions have achieved the same result in the United States.

Eagleton wrote much later than Oppenheim, and time may in part account for their different interpretations for earlier writers were much more awed by sovereignty than more recent ones.

3.6 Expansion of International Law as a Result of Technological Development

Increasingly, in recent years, there has been a marked tendency to attempt to develop principles of international law to apply to question which in the past would probably have been regarded as outside the scope of international law. An outstanding example is the effort of the United Nations General Assembly and a Special Committee of the Assembly to develop principle of international law concerning friendly relations and co-operations among state.

The advents of the space age have moved international law, and man himself beyond territorial sphere. In 1959, the General Assembly created a committee on the peaceful uses of outer space. In September 1963, this committee was urged to continue its efforts to find solutions in the legal field in order to match the continuous scientific and technology progress in outer space. Three months later, the General Assembly unanimously adopted a Declaration of legal principles governing the Activities of states in the Exploration and use of outer space in which it was stated that outer space and celestial bodies are not subject to national appropriation but free for exploration and use by all states. It also recommended that consideration be given to incorporating principles governing space activities in international agreement form in the future as appropriate.

In addition to the international law of outer space, and growing efforts to develop what may be called an international criminal law, many other fields are expanding in scope and significance or are being developed effectively for the first time. These include such relatively technical fields as international constitution law, international administrative law, international labour law, international commercial law, international corporation law, international anti-trust law, international tax law, and international economic development law.

These new fields are developing from a far reaching interpretation between private and public law, and may in fact be evolving the form and authority of new international norms.

SELF ASSESSMENT EXERCISE

The Advent of Space age has moved international law like man himself beyond the territorial space. Discuss.

4.0 CONCLUSION

The number of treaties and other international law is increasing year by year. The major contributors to these developments are of course, the United Nations and its affiliated agencies. Despite the United Nations political paralysis, its various subgroups have probably created more international law in the past twenty years than enacted in all previous history.

5.0 SUMMARY

The subject matter of international law is expanding rapidly in volume as well as in scope. This is illustrated by the formidable achievements in the codification of international law and in the development of international legislation.

6.0 TUTOR-MARKED ASSIGNMENT

1. What are the similarities and differences between International Law and Municipal Law?
2. Enumerate the aspects of warfare dealt with in the conventions drafted at the Hague Conference of 1899 and 1907 and in many Geneva Conventions.
3. Name and explain the six grand aspects or divisions of the laws of peace according to Professor Dickson.
4. What are the subjects of the Laws of Neutrality?

7.0 REFERENCES/FURTHER READINGS

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UNIT 3 QUESTION OF JURISDICTION IN INTERNATIONAL LAW

CONTENTS

1.0 INTRODUCTION

Jurisdiction is the authority a state exercises over natural and juristic persons and property within it. It concerns mostly the exercise of this power on state territory or quasi-territory. But some states exercise a measure of jurisdiction exterritorialy especially when acts performed within or outside the territory/quasi-territory have harmful consequences therein.

Jurisdiction is a positive complement of state sovereignty. It contrasts with jurisdiction in conflict of laws or private international law which is the power of a court to entertain a case. It may be classified in several ways and some classifications overlap. It may be classified as civil or criminal depending on whether the subject mater is civil or criminal. It may be exclusive or concurrent, exclusive if only one state can exercise jurisdiction as in the case of territorial jurisdiction and concurrent, when more than one state can do so as in the pirates.

2.0 OBJECTIVES

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

- understand the meaning of jurisdictions in law
- state the different classifications of jurisdiction
- appreciate the conventions in jurisdiction especially on the law of the sea
- know the different categorization of jurisdiction by different authorities in international law.

3.0 MAIN CONTENT

3.2 Classification of Jurisdiction by Different Authorities

Levi, W. (1979: 119 - 169) classifies jurisdiction into:

a. Temporal - relating to the time a state acquires or loses personality.
b. Spatial - relating to the physical area over which a state has jurisdiction over persons, things and transactions.
c. Personal - relating to the natural and .juristic persons over which it has competence.
d. Material - relating to the subject matter of jurisdiction.

The American Re-Statement of the Law 1986 breaks jurisdiction into three categories:

a. Jurisdiction to prescribe - make laws whether by legislation, executive act or order by administrative rule or regulation or by determination of court;
b. Jurisdiction to adjudicate - the subjection of persons and things in both civil and criminal matters to the processes of the courts and administrative tribunals.
c. Jurisdiction to enforce - whether in judicial or non-judicial action, the use of resources of government to introduce or compel compliance with the law.

Schwarzenegger and Brown make the following classifications:

a. Personal and territorial/quasi territorial
b. Ordinary and extraordinary
c. Limited and unlimited
d. Potential and actual

Personal or national jurisdiction is asserted by a state over its national on grounds of allegiance or protection. Thus, the US requires its citizens, wherever they may reside, to do military service. Britain makes it criminal for the British wherever, they may be, to commit certain serious offences such as murder, treason and bigamy. Personal jurisdiction depends on the attachment of an individual to a state which justifies the exercise of jurisdiction on that basis. There must be a genuine link between him and the state.

Territorial jurisdiction denotes the power of legislative, executive and judicial competence over a defined territory. It covers territorial and internal waters including ports and harbours. The principle of territorial jurisdiction enjoys universal recognition, although there may be arguments as to the extent of recognized exemptions. Mere presence in a territory is a basis for jurisdiction, there may be difficulty in enforcing outside the jurisdiction, a judgment based on mere presence of the individual and having no other nexus with the territory. Statutes are normally presumed to have territorial effect unless they indicate otherwise.

Quasi-territorial jurisdiction is exercised by states over ships, submarines, aircrafts and space craft as well as persons and things in them. A vehicle carrying a national flag, is for the purpose of jurisdiction, assimilated to that state's floating or flying territory. Although, some writers object to this. Some consider that nationality or indeed quasi-nationality is more suitable.

Ordinary jurisdiction is based on territorial, quasi-territorial or personal nexus whereas extraordinary jurisdiction covers pirates, war criminals, and slave traders among others. Limited and unlimited jurisdiction deal with the exercise, of power in the context of multiplicity of states. A state exercises generally unlimited jurisdiction over its territory, subject of course, to limitation imposed by customary and conventional law.

Limitations may not be presumed but are to be established and strictly interpreted. A state has limited jurisdiction over aliens in its territory, limitation are imposed by international minimum standards in favour of foreigners. Similarly, a state's jurisdiction over its nationals in a foreign state is limited. A state's jurisdiction on the high sea is limited.

3.2 Principles of Jurisdiction

Certain aspects of state jurisdiction are not fully explained by the above classifications and so they have been introduced with greater particularity.

a. Active Nationality Principle

In this case, the subject against whom proceedings are taken is a national of the state exercising jurisdiction. A state claims the right to try its nationals for certain serious offences wherever they may be committed, although this may only be put into effect when they come within the jurisdiction. For a citizen with dual nationality, there is the danger of double jeopardy against which may have deve1oped a general principles of law.

b. Passive Nationality Principle

In this case, the victim of the wrong for which the state is seeking to punish is a national while the accused is and the event took place outside the jurisdiction. Although the principle is embodied in some constitutions, it seems not to have become a general principle. In fact in the lotus case PCIJ (1927), Judge Moore said that the exercise of jurisdiction on the passive nationality principle is contrary to international law. His view confirmed by the Geneva Convention on the Law of the Sea 1958 and the United Nations Convention on the Law of the Sea 1982, which states that, in the event of collision of ships on the high seas, the flag states or the national states should try the offenders.

A state may exercise jurisdiction over aliens or nationals who commit crimes against its security. Such offences concern currency, immigration, subversion, among others.

c. Universality Principle

This is adopted in order to punish a non-national who is guilty of serious crime that is generally repressed and for which the state in which the accused is present has refused to try or extradite him. Piracy and murder are examples. Certain crimes have been made punishable in treaties that have been so widely adopted in international agreements and in the resolutions of international organizations, that they have formed part of international customary law binding even on non-parties. Examples, slave trade, aircraft hijacking, or attack on aircraft, the practice of apartheid, genocide and war crime.

The jurisdiction to try an offender may be based on a treaty as in the convention to prevent and punish the acts of terrorism. A civil action may be universally entertained if based on an international crime, for example tort or restitution arising from piracy.

d. Protective Principles

States punish for acts that are prejudicial to their security or vital economic interest even if committed by foreigners outside their jurisdiction. Examples are counterfeiting currency, conspiracy to overthrow a government and procuring the national passport through corrupt means.

Two more principles are propounded to cover situation where an offence is commenced within one state and completed in another. The part taking place within a state may have been an accessory before or after the fact.

e. Subjective Territorial Principle

States punish for crimes commenced within the jurisdiction but consummated outside. A good example is shooting a gun from a state territory and killing someone across the frontier. This principle was incorporated in the Geneva Convention for the suppression of Counterfeiting Currency 1929 and Geneva Convention for the suppression of illicit Drug Traffic l936. The parties agreed to punish for the mere conspiracy and international participation though the crime was consummated elsewhere and also to treat certain important elements as full crimes.

f. Objective Territorial Principle

This punishes for crimes commenced outside but consummated within territorial jurisdiction, for example, shooting a gun from across the frontier and killing someone within, obtaining by false pretences by means of a letter posted from outside. The harmful activities of Multinational Corporation can be taken under this principle.

3.3 1982 UN Convention on the Law of the Sea

Article 2 of the convention states that territory of a state shall extend to sea, air space. The sea space is measured 12 nautical miles from the ocean baseline. Article 15 deals with states that have adjacent boundaries.

Articles 17 to 32 deal with matters of innocent passage of vessels and crimes which may be committed in such vessels and power of arrest. Article 2 deals with civil jurisdiction when a vessel is innocently passing, the coastal state has no civil right of arrest.

Article 33 deals with contingent zone and the contingent zone is put at 24 nautical baselines.
Articles 53 - 57 deal with exclusive economic zones, these zones extend to 200 nautical lines.

Article 99 vests every state the jurisdiction on trading in slaves. Article 100 to 107 deals with issues of piracy. Any vessels that are used for piracy are subject to arrest by any nation.

The general rule is that ship and foreign vessels are not subject to jurisdiction of coastal states. The reason is that it is regarded as part of the country or floating island. But a commercial ship is subject to local jurisdiction.

A Port is considered as integral part of the state and if a ship berths on it, it is subject to the jurisdiction of the state.

Immunity from jurisdiction

There are some persons that are immured from jurisdiction, they are:

(i) diplomats
(ii) foreign states
(iii) head of state of a foreign nation
(iv) diplomatic premises and diplomatic bags
(v) agents of the United Nations and
(vi) foreign armed forces.

Exceptions

There are few exceptions:

i. Immunity from jurisdiction does not operate when a foreign state sues as a plaintiff.
ii. It does not operate when a sovereign state embark on illegal business.
iii. When it concerns land that is not a part of the embassy.

3.4 International Criminal Jurisdiction

Certain crimes are intrinsically contrary to international law, entitlement to try and punish guilty persons whether or not they are committed in their territories and irrespective of the nationality of the accused. A pirate on the high seas may be tried by state whose agent arrests him and even a frustrated attempt is nevertheless piracy.

This offence was codified in the 1958 convention on the law of the sea and the 1982 UN convention on the law of the sea which defines it as an illegal act of violence committed for private ends by the crew or passengers of a private ship or aircraft on another ship or aircraft on the high seas. A slave trader shares the same jeopardy at common law as a pirate.

Article 227 of the Treaty of Versailles 1919 following the First World War provided that Emperor Wilhelm II should be tried by an international court, for flagrant offences against international morality, and the sacred authority of treaties. This was however, not carried out because the Netherlands refused to surrender him, and he died in 1941.

The International Law Commission adopted in 1954 a draft code of offences against Peace and Security of Mankind and talks began in the United Nations on a permanent international criminal court for persons that were accused of international crimes, and crimes against peace and humanity.

In its Resolution 1315 (2000), the Security Council set up the special court in Sierra-Leone consisting of two nationals and six foreigners to try those most responsible for serious human rights violations during the ten years of civil war. The Rome Treaty of 2000 set up the International Criminal Court at the Hague for the trial of war crimes, crimes against peace and genocide. The 18 member panel was sworn in on 11 March 2003.

3.5 Merits of the Classifications of Jurisdiction

Each of the classifications of jurisdiction of international law has some merit but perhaps, the clearest is that of Bin Cheng (1955) who divides jurisdiction into three hierarchical orders viz: territorial, quasi-territorial and personal.

Each of these is further divided into what he counted as jurisdiction and jurisaction. The underlying distinction is the difference between the possession and the actual enjoyment of jurisdiction. A state may legislate for its nationals in a foreign state (jurisfaction). It actually enjoys the power to enforce the legislation on them on its own territory/ quasi-territory (jurisaction). It cannot do so on foreign land in the absence of a consensual arrangement with the territorial sovereign.

The jurisfaction of one State in an individual may run concurrently with the jurisfaction of other states or the jurisaction of another state. The jurisaction of two or more states cannot run concurrently; only one state may enjoy jurisaction at a time, in the absence of consensual arrangements. The enforcement of the legislation in a concrete case depends on the satisfaction of the territorial or quasi-territorial principle.

4.0 CONCLUSION

Generally, in the practice of international law, there is lack of compulsory jurisdiction. International law does not require any state to submit its disputes to an international tribunal. Consent to judicial process may be given on a particular occasion or it may be given in advance to cover all or certain stipulated classes of disputes, but in theory consent are always a pre-requisite.

5.0 SUMMARY

The optional clause, which is contained in the status of both Permanent Court of International Justice and the International Court of Justice, was devised to bring states closer to compulsory jurisdiction, but states are free to accept or ignore the optional clause. The clause itself limits compulsory jurisdiction only when both or all parties to a dispute accepted it.

6.0 TUTOR-MARKED ASSIGNMENT

1. Write short note on the following:

(a) Objective Territorial Principle
(b) Subjective Territorial Principle
(c) Protective Principle

2. Write all you know about UN 1985 Convention on the Law of the Sea.

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UNIT 4 THE LAW OF TREATIES

CONTENTS

1.0 INTRODUCTION

International transactions are normally carried out through treaties. The law of Treaties is contained principally in the Vienna Convention on the law of Treaties which was signed on May 23 1969 and entered into force on January 27, 1980. It is mostly a codification of existing customary law but in parts represents progressive development. The commentary of the International Law Commission which prepared the draft provides a helpful explanation to the provisions. Any gap in the convention is to be filled by reference to customary law.

The Vienna Convention on the Law of Treaties refers to treaties within the meaning of an international agreement concluded between states in written form and governed by international law. However, international customary law does not prescribe the form of treaties for a treaty may be oral. On the other hand, states may conclude agreement that are not legally binding but are rather morally or politically binding.

2.0 OBJECTIVES

The objectives of this unit include the following:

- to bring out the legal interpretation of treaties
- to explain the processes of concluding a treaty and how and when it comes into force
- to evaluate the consequence of termination, withdrawal and suspension of treaties

3.0 MAIN CONTENT

3.1 The Process for Concluding/Entering into Force of a Treaty

Every state is competent to enter into treaties regarding matters that fall within its sovereignty. A part of a state may be empowered by municipal law to conclude categories of treaties.

Treaties are usually negotiated by accredited representatives. Under Article 7 of the convention, a head of state, head of government or foreign ministers is not required to furnish full power before negotiating for his state. A head of diplomatic mission need not produce full power before adopting a treaty between his own state and his host state. The same applies to representative to an international conference or organization. A treaty concluded by any other person cannot be effective until it is ratified.

An agreed text produced after negotiations may immediately become binding after signature or after signature and subsequent ratification, according to the intention of the parties. If ratification is necessary, signature alone does not imply an obligation to ratify.

A treaty usually takes effect after a specified period following the last ratification that made it effective. Ninety days has been adopted in many treaties. The aim is to allow for administrative arrangement and give notice to the other parties. The necessary number of ratification varies from two in humanitarian treaties such as the Geneva Red Cross Convention 1949 and the Additional Protocols 1977 to a third of those expected to ratify. The African Charter on Human and People's Right require a simple majority of AU states.

Usually, a treaty is signed or initialed by the parties subject to ratification. The aim is to authenticate the text and give room for reflection. It is then ratified by the parties whereby they declare their intent to be bound. A bilateral treaty becomes effective on ratification but a multilateral one usually awaits the required number of ratification and perhaps a stipulated time thereafter. Ratification involves the procedural act approval by the appropriate constitutional organ e.g. parliament and transmission to the depository of the treaty which may be a state or an international organ like the UN.

In Nigeria the Federal Ministry of Justice is the depository of treaties and keeps a register of treaties which is open for inspection on payment of a token fee.

An accession or adhesion is the declaration of a state's intent to be bound by a treaty it had not signed. Once a treaty becomes operative, it can only be adhered or acceded to by parties that had not signed it. Thus, adhesion or accession has the effect of signature and ratification combined.

Some treaties come into force by accession only, for example, the General Act for the Pacific Settlement of International Disputes 1928 and the Convention on the Privileges and Immunities of the UN 1946. A practice has developed for the UN General Assembly to adopt a treaty by resolution and submit to members for accession. A state can also become a party by succession as by the former colonial territory that so declares.

3.2 Effects of Treaty

Under Article 26, "every treaty in force is binding upon the parties to it and must be performed by them in good faith." A party may not invoke its internal law in justification for non performance unless such violation was manifest. Municipal law may prescribe the process for carrying the treaty into force, but this, strictly speaking, is not the concern of international law. Failure to implement a treaty obligation or a municipal legislation that is in conflict with treaty obligation does not necessarily give rise to invalidity in municipal law, but is ground for international responsibility.

A treaty normally binds the parties to it and may not create rights and obligation for other parties without their consent. Under Article 2 (b) of the UN Charter, the organization shall ensure that non member act in accordance with the principles of the organization so far as they are necessary for the maintenance of International Peace and Security. The principles of the treaty may also bind the third parties as part of international customary law.

Some treaties have objective legislative character as where they create situation binding on all states whether or not they are party. The Suez Canal of 1888 and the treaty of Versailles 1919 made the Rivers Niger and Congo, the Suez Canal, respectively, international waterway free for the shipping of all nations. A treaty that binds many parties (multilateral) is the nearest to international legislation. A treaty that is inconsistent with an earlier treaty does not necessarily render the earlier one void unless, the parties are the same, it appears from the latter treaty that the earlier one was intended to be abrogated or the provision of the latter are incompatible with the earlier one.

Reservations

Article 2 (1) of the Vienna Convention of Law of Treaties defines reservation as a unilateral statement made by a state when signing, ratifying, accepting, approving or acceding to a treaty whereby it purports to execute or modify the legal effect of certain provisions of the treaty in their application to that state.

In bilateral treaty, it has the effect of a counter offer which has to be accepted by the other party for the treaty to take effect. The situation is even more complicated in a multilateral treaty since the reservation may be accepted by some states, but not by others.

Traditionally, a reservation was valid if the treaty permitted it and the other parties accepted it. The special circumstances of the Genocide Convention 1948 and the reservation made by some parties led to the request of General Assembly of the UN for an advisory opinion. The International Court of Justice advised that the traditional theory, though having undisputed value, was inapplicable in conventions of a humanitarian nature which sought to protect individuals rather than confer reciprocal right on the parties and which the General Assembly intended should be universal in scope.

States are likely to have different views as to whether a reservation is compatible with the object and purpose of a treaty. Invariably, some states will regard a state making a reservation as a party, others may not. Articles 19-21 of the convention generally followed the advice of the court but also recognized the traditional position that a reservation to certain treaties is invalid unless unanimously accepted.

A reservation will be ineffective if the object has become part of international customary law or indeed a peremptory norm of international law e.g. the rule against genocide or torture.

3.3 Invalidity of Treaties

Under Article 46, a state may not invoke its constitutional provision as ground for invalidity, unless the violation of the constitution was manifest during negotiation.

Article 7(1) provides that a person representing his state must produce his full powers unless the practice of the states or the circumstances dispensed with such production. If a representative exceeds his power, invalidity cannot be pleaded successfully unless the restriction had been communicated to the other negotiators before he expressed his consent to be bound.

A fundamental error relating to a fact or situation that forms an essential of consent may invalidate a treaty provided the state had not contributed to that error and the circumstances did not put it on notice of possible error.

Coercion of a representative renders a treaty void at ab initio. So also is a treaty procured by threat or use of force in violation of the United Nations Charter.

The doctrine of unequal treaties was propounded by Soviet writers as a source of invalidity for treaties in which one party dictated unconscionable terms to the other when they were not in a position of legal equality. Most treaties of concession between African kings and the colonizing power during the period of colonization as well as treaties concluded immediately before or after independence had overtones of inequality. The doctrine of inequality treaties is also supported by third world writers.

The Vienna Convention does not provide for unequal treaties but its preamble refers to the principles of free consent, good faith, self determination, the determination of the people of the United Nation to establish conditions of justices among other things, all of which were contravened by unequal treaties. A declaration on the prohibition of military, political or economic coercion in the conclusion of treaties was however adopted at the Vienna conference.

Under Article 53, a treaty is void if at the time of its conclusion, it conflicts with peremptory norm of general International Law. A peremptory norm of general international law is a norm accepted and recognized by the international community of states as a whole, as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

Under Article 64, a new peremptory norm of general international law over rides an existing treaty that is in conflict with it. It may be that the principle of severability will be applied so that a treaty can possibly stand if the provisions against the peremptory norm are severable.

3.4 Termination, Withdrawal and Suspension of Treaties

A party may terminate or withdraw from a treaty in conformity with the provisions or with the consent of the other parties. Unless otherwise provided, a multilateral treaty does not terminate because the number of parties falls below the number required for it to enter into force.

The right of withdrawal may be expressed or implied, in the latter three months notice must be given. A treaty may be suspended in regard to certain parties provided, the treaty allows it or such suspension is incompatible with the object and purpose of the treaty and does not affect the rights of the other parties.

A breach of a treaty entitles the other parties to regard the treaty as terminated in regard to the party causing the breach. This derives from the legality of reprisal in international law. A material breach consists of a repudiation of treaty or the violation of an essential provision. Retaliation is however inapplicable to humanitarian treaties such as the Genocide convention 1948, the Geneva Red Cross Convention 1949 and their Additional Protocols 1971.

Impossibility of performance is a ground for terminating or withdrawing from a treaty. The convention makes no distinction between objectives and subjective impossibility. Such impossibility must, however not be created by the party invoking it. A temporary impossibility is ground for suspension only.

A fundamental change of circumstances may be ground for revoking a treaty or for withdrawing from, or suspending it. Article 19 of the Treaty of Versailles 1919 rejected the unilateral abrogation of a treaty but allowed the League Council to decide by a unanimous vote that a treaty had become inapplicable due to a change of circumstances. The UN Charter does not expressly provide for the revision of treaties but the same effect may be reached under Articles 14 and 39.

The effect of war on treaties depends on their nature. Some treaties are concluded specifically for war situations, such as humanitarian law treaties in armed conflicts. Treaties that are compatible with war continue to apply while others do not. Multilateral treaties are not affected although relations between the warring parties may be disrupted or suspended.

An invalid treaty is void and requires that the parties be placed as much as possible, in the position they would have been had the treaty not been concluded. Acts performed in good faith before the invalidity was invoked are not rendered unlawful only by reason of the invalidity.

Certain grounds of invalidity must be invoked by the party complaining, to be effective – incompetence under internal law, error and fraud. The ground for termination must also be pleaded. A treaty is also void for coercion of a state and for conflict with an existing or new norm of jus cogens. There can be no valid consent to be bound by either treaty.

SELF ASSESSMENT EXERCISE

What is the effect of Reservation on treaty? When is it valid?

4.0 CONCLUSION

Law of treaties is an area of law that is largely codified in the Vienna Convention 1969. Article 2 of the convention defines a treaty as an agreement between two or more states. Treaty is what is called agreement in municipal law and the same rules and regulations apply to both.

The legal relationship may be oral or written. In international law consideration is not material for a treaty to come to being. The main objective of a treaty is to create legal relationship between the contracting states. And when this takes place, each is expected to respect its own obligation. Any legal arrangement that does not affect legal rights of the states is not a treaty. The word treaty is a generic word for convention, agreements, covenants, protocols, etc.

Although, the Vienna Convention on the law of treaties refers to treaty within the meaning of an international agreement concluded between states in written form, governed by international law, international customary law does not prescribe the form of treaties, for a treaty may in fact be oral.

5.0 SUMMARY

Only states can be parties to a treaty, but in some special circumstance, specialized government agents can also be parties of a treaty.

However, the Vienna Convention on the laws of treaties 1986 was to bring international organization into being a party to a treaty. Furthermore, Article 34 of the Convention states that a treaty cannot confer a right on a third party, unless, the intention of the contracting states is to confer a benefit on the third party. On the other hand, multilateral treaties may be used as a basis of international law customs.

6.0 TUTOR-MARKED ASSIGNMENT

1. State the processes of treaty conclusion and how it comes into force.
2. What are the consequences of termination, withdrawal, and suspension of treaties?
3. What do you understand by the following?

(a) Effect of treaty
(b) Invalidity of treaty

7.0 REFERENCES/FURTHER READINGS

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UNIT 5 SETTLEMENT OF INTERNATIONAL DISPUTES

CONTENTS

1.0 INTRODUCTION

The Preamble of United Nations Organization says that the United Nation is established for peaceful resolution of international disputes. Paragraph I of Article I of the UN charter states that the purpose of the United Nations is:

- To maintain International Peace and Security, and to that end; to take effective collective measures for the prevention and removal of threats to the peace and for the suppression of acts of aggression or other breaches of peace, and to bring about by peaceful means adjustment or settlement of international disputes or situations which might lead to a breach of peace.

Consequently, international disputes can be resolved through peaceful means or coercion. Peaceful methods includes; Arbitration and Judicial Settlement, Negotiation, Mediation, Enquiry and Conciliation. Coercive means on the other hand include War, Retorsion, Reprisal, Counter measures, Blockade and Interventions.

2.0 OBJECTIVES

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

- have the idea of international disputes, their causes and means of resolution,
- understand the different methods of resolving international disputes
- value the roles of United Nation in maintenance of international peaceful co-existence
- evaluate the activities of the UN in ensuring peaceful co-existence among nations.

3.0 MAIN CONTENT

3.1 Negotiation

Most disputes which arise between states are settled through the normal channels of diplomacy, which is by negotiations between diplomatic representatives. These efforts may be supplemented by meeting of foreign ministers or even of heads of states; by international conference; or by resort to machinery provided by the UN or a regional organization such as the AU.

But the first step whenever a dispute arises is invariably direct negotiation. This is the very heart of diplomacy, and it is the main way in which relations between nations are carried on.

Unfortunately, the relatively few instances in which this procedure fails are likely to be most serious ones, involving real threats to peace and security. This is because the devices of diplomacy tend to breakdown in crisis situations. Hence in order to avert serious consequences, other methods for the peaceful settlement of disputes have been developed.

3.2 Good Offices and Mediation

If a third party offers to be of service in attempting to compose differences between two other states, it is said to tender its "good offices". If the offer is accepted, by the disputing states, good offices may lead to mediation. The difference between the two is that in good offices, the third party acts simply as a friendly "go-between" whereas a mediator may make suggestion of his own. In 1905, President Roosevelt tendered his good offices to Japan and Russia to end the Russo-Japanese war. The offer was accepted, but he actually became a mediator, for he exerted a direct influence in averting a threatened impasse in the negotiations and in bringing about intimate agreement. Russia and Japan

were not bound in any way to accept his suggestion, but they saw it fit to do so.

The United Nations has also performed many useful services in the field of mediation, either through individual mediators or through one of its agencies. Examples of the use of individual mediators would rather be the effective roles of Count Folke Bernadotte and Ralph Bunch in the delicate negotiation which led to an armistice between Israel and Arab states, of Dr. Frank Graham in connection with Kashmir dispute, and the former Secretary-General Dag Hammarskjöld himself in series of crises.

Dag Hammarskjöld was particularly effective in this role. "This preventive diplomacy" as Hammarskjöld called it was skillfully applied in such divergent situation as the long complex Middle Eastern crises and the always festering problem of Berlin, and even outside UN family in arranging the Chinese for release of American fliers who had come down in Chinese territory.

In 1948 and 1949, the General Assembly of the United Nations appointed a Conciliation Committee headed by the President of the Assembly to meet with the big powers and with representatives of the four Balkan states immediately concerned with the controversies in that area. This effort led to agreement in principle for the cessation of hostilities, but the agreement was not implemented until later efforts under other auspices were made.

The United Nations has also appointed mediation or conciliation commissions to seek settlement of critical issues through negotiation with states directly involved in various disputes, outstanding examples are the commissions appointed to assist in the resolution of differences between India and Pakistan over Kashmir, between the Netherlands and the Indonesian Republic and between Israel and the Arab states.

The tender of good offices may thus be made by one or more states, or by individuals acting in an official capacity, such as the head of a state or officers of the principal organs of the United Nations. The tender of good officers or mediation is never to be regarded as an unfriendly act, and the parties to a dispute are not bound to accept the offer or to regard suggestion of a mediator as binding.

Small neutral powers, especially Switzerland, have often assisted in arranging terms of peace between belligerents through good offices or mediation. The UN Good Offices Committee for Indonesia performed notable services in helping to settle the many disputes between the Dutch government and the self-proclaimed Indonesian Republic in the period following World War II.

3.3 Engaging and Conciliation

Closely related to and often more effective than good offices and mediation are enquiry and conciliation. The first Hague Conference recommended the use of commissions of enquiry. The second Hague conference renewed this suggestion, and provision for such provisions has been incorporated into many bilateral and multilateral treaties. The Assembly of the League of Nations strongly endorsed the idea in 1922. Inspite of all these, however, the use of commission of enquiry has been negligible.

A commission of enquiry investigates the facts of a dispute, but largely confines itself to a statement of the facts and a clarification of the issues. Although, it may also present conclusions and recommendations, these are in no sense binding on the disputants. Conciliation differs from enquiry in that it assumes an obligation on the part of third parties to take the initiative in the search for agreement.

A conciliation commission may advance proposals, ask for compromise or concessions, and in general, actively seek to effect an understanding between the contending parties. Conciliation is scarcely to be distinguished from mediation; the usual difference is that mediation is commonly performed by an individual and conciliation by a committee, commission, or council.

Conciliation is often held to be especially constructive approach to those disputes which are not justifiable in nature but also are not so exclusively political, that is involving delicate questions of national interest and prestige – that they can be dealt with only by diplomatic or power – political means. Since many kinds of disputes fall into this in-between zone, the possibilities of conciliation would seem to be great, even though, they have not been utilized to the full.

However, substantial progress has been made in establishing conciliation procedure and machinery on a regional basis. Generally, the development of international organization, with specific and continuing responsibilities for conciliation on either a regional or global scale has been the most vital factor in promoting peaceful settlement of disputes.

The United Nations has been trying to call attention to these opportunities and to suggest procedures for appointing and utilizing commissions of conciliation. It has itself already made successful use of such commissions, for example in dealing with the problem of Palestine. Some members of the UN think that the organization should pioneer more boldly in this field, both in handling disputes which are brought

before it and in providing well developed machinery for enquiry and conciliation.

In January 1948, for example the Lebanese delegation submitted to the interim committee of the General Assembly a proposal for the establishment of a permanent committee of conciliation. This committee would do all it could to assist parties to a dispute to reach a friendly settlement, and if no agreement could be reached, it would submit a "detailed report on the reasons for the disagreement" and would "formulate proposals which it deems fair and legal for the pacific settlement of the dispute". Many private organizations, especially those which tend to regard the UN, as either primarily or almost wholly an agency for peaceful settlement, have urged more general resort to conciliation. This method, they argue, has greater flexibility than arbitration or judicial settlement, and can be adapted to a greater variety of issues. At the same time, they reason, it facilitates the settlement of potentially explosive question through the use of disinterested and competent third parties or commissions, and thus helps to keep them out of the political arena in which conflicting national interest, coercive techniques, and ideological antagonisms make any kind of amicable settlement difficult.

3.5 Arbitration and Judicial Settlement

Judicial settlement, or adjudication is in a sense a form of arbitration, one in which a permanent court is the arbitral tribunal. As explained in a statement by the legal section of the secretariat of the League of Nations, arbitration is distinguished from judicial procedure in the strict sense of the word by three features:

(i) The nomination of the arbitrators by the parties concerned,
(ii) The selection by these parties of the principles upon which the tribunal should base its finding, and
(iii) Its character of voluntary jurisdiction.

The boundary between the two kinds of judicial procedure cannot be definitely fixed. Judicial settlement because, it is less impromptu than arbitration and requires permanent tribunals assures a larger measure of jurisdictional and procedural consistency. It should also assure a somewhat more favourable clime for the progress of the law from precedent to precedent.

The submission of dispute to arbitration is a time honoured practice among states. It was undertaken in medieval times and even by the Greek city-states. The nineteenth century added some four hundred examples of successful arbitration to the precedents set by the

arbitrations under the famous Jay's Treaty of 1794 between Great Britain and the United States.

The United States stood as the foremost champion of arbitration during the nineteenth century, but in the last and present century her interest has slackened. Although, she did participate in some eighty-five arbitrations up to the end of World War I, in several cases she refuses to arbitrate, or she delayed action for many years.

Attempts to create permanent courts of arbitrations and thereby provide machinery for the judiciary settlement of disputes, dates from the first Hague Conference of 1899, which established the Permanent Court of Arbitration. Actually, this was neither permanent nor court but a panel of arbitrators whose names were on the file at the Hague, to be drawn upon if disputing states chose.

The most elaborate permanent courts for the judicial settlement of disputes have been, of course, the Permanent Court of International Justice, which functioned in the inter-war period in loose association with the League of Nations and its successor, the International Court of Justice, which was brought into being in 1946 as one of the principal organs of the United Nations. Although, the courts were given different names and derived their authority from different status, the present International Court of Justice regards itself as a continuation of the older court. The Carnegie Peace Palace at The Hague has been the seat of both courts.

Since the time of the First Hague Conference, many attempts have been made to secure the consent of states to the compulsory adjudication of disputes. These attempts have met with only limited success, for the nature of the state system is not conducive to really binding limitations on the separate states, to put it mildly. Usually agreements to resort to adjudication have been hedged about by reservations in area involving vital interests, matters of domestic concern, or national honour – reservations which are obviously so general and so all inclusive that when interpreted unilaterally, they can make the original commitment virtually meaningless. Thus, the Hague Convention for Pacific Settlement of Disputes called for resort to arbitration in so far as circumstances permit.

3.6 Coercive Means of Settlement

a. Retorsion

This was retaliation for the lawful act of another state which was harmful to the retorting states. For example severance of diplomatic relations, expulsion of foreign nationals, restriction of movements etc. These acts were and still are within the law.

b. Reprisal

This was an act to compel a state to comply with the law consequent on that state's delict. It could involve the seizure of property and detention of persons. The difference from retorsion is that reprisal is illegal per se, but only justified by the earlier commission of that act by the other state. To be legal, a reprisal must be preceded by a demand for redress which was ignored, the act must be proportionate to the injury suffered, it must be necessary in order to secure compliance with the settlement.

c. Armed Intervention

This was done by a single state or group of states in the domestic or foreign affairs of a state and was calculated to maintain a state of affairs favourable to the interveners. Classical international law permitted intervention under consensual arrangements by a suzerain in a protected state and on humanitarian grounds. The ECOMOG intervened in 1995 in Liberia to quell a civil war that followed the overthrow of the government and later in Sierra-Leone to remove a military junta that ousted the president. Presently, they are in Sudan to restore law and order.

d. Humanitarian Intervention

The principle of sovereignty was traditionally given a wide interpretation and covered all aspects of states treatment of its own subjects as matters within its domestic jurisdiction. It was however, recognized that foreigners were entitled to minimum standards of treatment, a breach of which incurred international responsibility. The practice then developed that a state's treatment of its own nationals invited external intervention if it degenerated to a level that shocked the conscience of mankind. The right of humanitarian intervention was thus acknowledged by many jurists, though denied by other. Intervention in this regard means dictatorial intervention in the sense of peremptory demand which is not complied which involved a threat or recourse to compulsion in some form.

SELF ASSESSMENT EXERCISE

Explain any 2 of the means of peaceful settlement of international disputes you studied in this unit.

4.0 CONCLUSION

In spite of its obvious limitations and some conspicuous failures, peaceful settlement of international disputes has a rather encouraging record. It provides a framework for resolution of international conflicts, or at least for keeping them from becoming major threats to peace. It seems to embrace an honest recognition of the realities of international politics, in which it plays an active and constructive role. While it is concerned with disputes arising out of past and present tensions, it looks to the future and is compatible with other and more hopeful patterns of international relations. In time, it may help to bring into being a really effective system of collective security. Together with collective security, it may lead to a world order based on justice under law.

5.0 SUMMARY

Collective security and peaceful settlement of international disputes are only two of the approaches to the problem of preventing war. Indeed, some alternatives seem necessary, although force alone may be called to stop an aggressor, peace without accommodation may be only an uneasy truce.

6.0 TUTOR-MARKED ASSIGNMENT

1. What are the various methods involved in coercive means of settlement of international disputes?
2. Distinguish:

(a) Enquiry and Conciliation and
(b) Arbitration and Judicial Settlement.

3. Write all you know about Negotiation in Settlement of International Disputes.
4. Write short notes on the following:

(a) Good offices
(b) Mediation
(c) Arbitration

7.0 REFERENCES/FURTHER READINGS

Brownlie, I. (1963). *International Law and the use of Force by States*.

Carnegies Endowment for International Peace (1974). *The Law of Armed Conflict.*

Bangkok (1963). *Collective Security, Shield of Freedom*. Revised Edition (A SEATO Publication).

MODULE 3 ASSUMPTIONS OF CONTEMPORARY DIPLOMACY

UNIT 1 INTERNATIONAL LAW IN CONTEMPORARY DIPLOMACY

CONTENTS

1.0 INTRODUCTION

Diplomacy is defined in a popular sense as "the employment of tact, shrewdness and skill in any negotiation or transaction" and in a more special sense used in international relations as "the art of negotiation, in order to achieve the maximum of group objectives with a minimum of costs, within a system of politics in which war is possible" Wright (1955:158).

This definition indicates that the term diplomacy is used to describe both the methods used by the agents conducting the foreign affairs of a state and the objectives which such agents seek to achieve. In the first sense, it is almost equivalent to the term "negotiation", implying methods of persuasion rather than coercion, and is therefore contrasted with war. Negotiation, however, under conditions where physical coercion is practically impossible, as in business or domestic government is not usually called diplomacy.

Secondly, diplomacy is almost equivalent to foreign policy and implies devotion by its practitioners to the national interests of their respective

states. It is therefore contrasted with international law which implies that respect for the international legal order is an end superior to the national interests of the state. Foreign policy, however, conducted without respect for such basic principles of international law as "pacta sunt servanda", cannot effectively utilize negotiation but, becomes war, either hot or cold and so is not diplomacy.

2.0 OBJECTIVES

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

- identify the basic relationships between diplomacy and international law
- know the effect of international law on the practice of contemporary diplomacy
- differentiate the role of foreign policy, war, international law and diplomacy on modern international relations
- appreciate the role of international law on world peace.

3.0 MAIN CONTENT

3.1 Diplomacy Contrasted with War and Law

Diplomacy though contrasted with both war and law implies the existence of war as a possibility and law as a potentiality. Diplomacy does not exist either in a "state of nature", which Thomas Hobbes described as a bellun omnium contra omnes, (developed state of society, where law is effectively administered). It is characteristic of the society of nations where war is possible and law is imperfect. The essence of diplomacy therefore is flexibility, adaptation to continually changing conditions. It escapes the rigidity of military tactics on the one hand and of the application of law on the other hand. Although in both war and law, as in all the practical arts, the circumstances alter the means or even the ends of action and the applicability of generally accepted principles and rules, yet this is true in diplomacy to an exceptional degree.

The art of war proceeds by deciding upon objectives and then seeking to achieve them even at great sacrifice. The will to achieve the objectives is the essence of war, the art of law proceeds by establishing rules and principles to which behaviour must conform and tends towards a system of positive law in which the opportunities of interpretation are reduced and rigidity increases. Diplomacy however, cannot be successful if it assumes the logical form either of a plan to be realized, of a principle to be supplied, or of a rule to be observed. It must rather assume the logical form of a dialectic or conversation in which each event is in a degree creative of the next.

Diplomacy more than either war or law, proceeds by a process of action and reaction. Initial plans, general principles, and customary rules are adopted and modified until at the end, those relied upon by both participants may have been radically altered. History is therefore, the natural form for expounding the art of diplomacy. It's essence is in the process by which a result, unplanned, unforeseen and undetermined at the beginning emerges at the end. The possibility of such a result depends upon a certain vagueness and flexibility and expediency, and particularly upon a refusal to close doors ultama mark the end of negotiation.

Diplomacy always leaves every possible solution open. It closes only those which are impossible, diplomacy is therefore, closely related to both war and law. However, this unit confines attention to the latter relationship which has varied considerably in different historic periods.

3.2 Varied Impacts of Internationals Law on Diplomacy in Different Historic Periods

Modern international law began to develop in the practices of diplomacy, trade and war during the late middle ages. It was formulated by theoretical writers in the sixteenth and seventieth centuries as the hierarchical structure of the middle ages, dominated by the papacy gave way to a system of equal territorial states.

The invention of gun powder and artillery capable of destroying feudal castles, and of printing press capable of widely distributing vernacular literatures, creative of national consciousness, the rise of science and geographical discovery altering the prevailing picture of the world, and the development of critical history, exhibiting the role of power in politics, all contributed to this transition.

However, human thinking adjusted itself slowly and the period was one of almost continuous war in which competitive religious ideologies and emerging national ambitions both played a part. When these struggles had been a measure settled, the dominant positions of sovereign territorial states were recognized and a system of international polity emerged based upon the expediency of maintaining an equilibrium of power for the security of all. It was after this that the modern international law which has existed in sporadic practices and theoretical practices for several centuries began to exert much influence.

The influence of international law decreased during the period of French Revolutionary and Napoleonic wars, when ideas of nationalism, of human rights, and of mass welfare were developed with the emergence of the industrial and domestic revolutions. Notwithstanding, the period following the revolution witnessed an increasing influence of international law. And this was the most peaceful period of European history, though European armies were developing empires overseas and non-Europeans states were fighting major civil and international wars in the Asia and America. Great Britain was able to maintain a balance of power among the great states of Europe and to give effective support to principles of international law. This is more especially those defining the operation of the diplomatic and consular system, the modes of acquisition and determination of the boundaries of territories, the freedom of the seas subject to belligerent rights of capture in times of war, the sanity of treaties, the responsibility of state to injured aliens, and the procedure of negotiation, mediation and arbitration.

In the twentieth century, the impact of international law on diplomacy and also on war was important, especially through its definition of diplomatic privileges and immunities, of procedures and formalities of treaty making, of rules and principles of treaty interpretation, of rights of neutrals in time of war, of rules of land, warfare, and of the limits of state territory on land and sea.

Within this framework of power equilibrium and legal principle and utilizing the agencies and procedures established and regulated by international law, diplomacy functioned to settle international disputes, to adjust problems arising from overseas expansion, and to tidy up European state and boundaries, often through the “concert of Europe as in the Belgian and Balkan problems.

The extensive use of arbitration re-introduced to international practice by the Jay Treaty of 1794, the movement for codification of international law initiated by the declaration of Paris of 1856, and the development of international cooperation in matters of river navigation, postal and telegraphic communication, public health, the elimination of the slave trade, standards of weights and measures, and other matters through multilateral treaties (international legislation) and administrative organizations (public international unions) provides the community of nations with embryonic agencies of adjudication, legislation and administration. At the same time guarantees of independence and neutralization to critical states, as Switzerland, Belgium and Luxembourg, indicated a possible development of international executive agencies. These developments culminated in the Hague Conventions of 1899 and 1907 designed to crystallize international law through codification especially of the laws of war and neutrality and

facilitation of arbitration and other means of pacific settlement and to stabilize the power equilibrium through regulations of armament.

As for the time of French Revolutionary wars, the influence of international law was reduced. Established principles of the laws of war and neutrality were violated. Diplomacy after the war functioned in a less clear framework of legal principle yet the establishment of the League of Nations and the Permanent Court of International Justice, and the progress of disarmament in the Washington Conference (1921) and the League discussions gave a new confidence to international lawyers, inspite of the defection of the United States from the League of Nations and the anxiety about Russia and China, both in a state of revolution.

Russia, raven by revolution and at first politically and militarily weak, indicated its contempt for traditional international law, but adjusted itself to diplomacy within international law as its leaders became convinced that this was necessary if the Soviet Union was to be recognized. When Hitler and Japan came threatening, Russia entered the League and sought to strengthen collective security and the legal conception of aggression. China, weakened by revolution involved the League and international law to defend itself from Japanese aggression.

World war II was more devastating to international law than has been either the Napoleonic wars or World War I. Little attention was paid to the laws of war and neutrality by either side as military strategies found advantages in uses of the submarine, airplane, high explosive and atomic bombs which these laws did not sanction. Racial and ideological concepts destroyed respect for the laws concerning prisoners of war and reintroduced the concept and practice of genocide. Military occupations, ideas of national self-determination, and the propaganda of communism shattered empires. The relative power position of Europe as a whole declined while that of America and Asia increased.

However, after the war, the United Nations charter renewed World Court statute, and the Nuremberg interpretation of the Icellogy – Briand pact provided a more thorough going system of international law to maintain collective security than had the League system. But the effectiveness was seriously unpaired by the ideological split between communism and democracy, the new conditions of technology and by new demands for self determination and influence of the new states of Asia and Africa voiced at the Banding Conference of 1955.

Furthermore, the extreme instability of the power equilibrium because of bi-polarization of power with the establishment of NATO and Warsaw Alliances and the creation of power vaunt consequent upon the temporary disappearances of several great states, undermined the foundations upon which international law had rested.

Finally, many statesmen were convinced that the traditional international law of the Hague Conventions was obsolete, but the new international law of the UN charter was uncertain. Consequently politics dominated law. Writers on international relations warned against "Legalism and moralism" in foreign policy and suggested that diplomacy should be guarded by national interest alone. Orators in the United Nations seemed more intent on propaganda than on utilizing legal standards and peaceful procedures to settle differences. Resorts to world court, whether for decision or advisory opinion were less frequent than during the League period, and the work of the United Nations International Law Commission aroused little interest either among governments or jurists.

4.0 CONCLUSION

A change in the situation has been detected since the passing of Stalin and the development of a general conviction that war with hydrogen weapons would be devastating to all countries.

The atomic stalemate has directed attention to the need to revive international law and to control armaments if peace is to be put on a more stable basis, than mutual fear. It is recognized that the task of achieving disarmament agreement, of solving major international controversies, of stabilizing the power equilibrium and of reducing international tensions are problems of diplomacy, but is coming to be recognized that diplomacy cannot function without law. References to the need for international law had been increasingly abundant among statesmen.

5.0 SUMMARY

John Foster Dulles said in an address to the American Society of International Law in 1956 thus:

- When we review the task of making peace a stable institution through process of law and justice and enforcement thereof, it is easy to become discouraged. We must not, however, admit of discouragement because the task is much too important. The fact that the task is difficult, and that the road to the goal may be long, is a

reason not for delay or for despair, but rather for greater urgency and for greater effort.

There is no other word more cogent to stress the importance of international law for effective diplomatic relations in the present complex international political system than the above statement.

6.0 TUTOR-MARKED ASSIGNMENT

1. Diplomacy is closely related to both war and law. Explain?
2. Trace the chronology of the development of international law in the practices of diplomacy.

7.0 REFERENCES/FURTHER READINGS

Quincy Wright (1942). *A study of war*.

Georg Schvarzenberger (1951). *Power politics* (New York).

UNIT 2 INTERNATIONAL LAW AS AN ASSUMPTION OF DIPLOMACY

CONTENTS

1.0 INTRODUCTION

Diplomacy functions in a nebulous field but it must take something for granted. Governments cannot negotiate unless they can take for granted the immunity of the diplomats who represent them, the mutual observance of agreements arrived at, a common understanding of the situation under discussion and or common acceptance of relevant facts.

Modern international law which began to develop in the practice of diplomacy, trade and war was very vital to the practice of negotiation by the diplomats and diplomatic missions. The impact of international law on negotiation was very important especially through its definition of diplomatic privileges and immunities, of procedures and formalities of treaty making, of rules and principles of treaty interpretation and of the limits of state territory on land and sea.

Thus, through the provisions and principles of international law on the immunities of diplomats, the sending states have the confidence that their diplomats will not be molested or disturbed in the receiving state while carrying out their diplomatic duties of using skill, tact and even shrewdness to achieve the best for their government. There is also the assumption of diplomacy that every agreement reached must be observed, and also that the agreements are reached through the guidelines stipulated by international law.

2.0 OBJECTIVES

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

- understand that international law acts as a part of diplomacy
- understand that safety of diplomats can only be assured through the observance of international law
- explain the importance of mutual confidence in negotiations
- value compliance to agreements once reached within the guiding principles.

3.0 MAIN CONTENT

3.1 The Immunity of Diplomats

Governments must take it for granted that their diplomatic agents are not under physical duress or other pressures which would prevent them from fully employing their ability to carry out their instructions.

It is true that the development of telephonic communication and aerial travel make it more possible for heads of states and foreign ministers to limit the discretion of intermediate representative, but the services of the diplomats in personal contact with other diplomats remains indispensable, therefore common observance of the rules of international law defining diplomatic immunities must be assumed.

Regular diplomatic intercourse is impossible except between states that have high degree of respects for the diplomats who are the representatives of their governments and have high degree of mutual confidence that the rules of diplomatic immunity as spelt out by international law are understood and will be observed. This is why Adam Watson (1987:20) believes that:

- The diplomatic dialogue is the instrument of international society; a civilized process based on awareness and respect for other people's point of view, and a civilizing one also, because the continuous exchange of ideas, and the attempts to find mutually acceptable solutions to conflicts of interest increase that awareness and respect.

It is therefore, not surprising that this branch of international law was the first to develop historically and that revolutionary groups, though sometimes inclined in their enthusiastic desire to reconstruct the world on an entirely new model, to repudiate the pre-existing international law, discover as soon as expediency demands that in negotiating with other groups that they must accept at least this part of international law.

3.2 Mutual Observance of Agreements

Governments must also be able to take it for granted that if diplomatic negotiations results in agreements, these agreements will be observed, at least so long as the conditions which led to it continue.

The principle of pacta sunt servanda has been regarded by some jurists as the basic norm of international law, and philosophers like Thomas Hobbes have believed that men cannot emerge from the state of nature in which there is a condition of war of all against all without organizing a society which maintains this principle.

The "Cold War" was to a large considerable extent a consequence of the lack of confidence between the communist and the democratic worlds. "Soviet Promises", said Secretary of States Dulles in a broadcast on July 22, 1957, "have not proved dependable. We will not change our military posture merely in reliance on paper promises." Therefore, the disarmament agreements must provide such provisions for inspection that violations can be immediately detected, New York times (July 1957). To similar effect, the soviet leader, Nikita Khruschev said on July 26, 1957 to a group of American tourists, "We have to live on the same planet in war or peace. The latter implies confidence. We did not ask you to empty your pockets before entering my office, we had confidence in you as nice people"

The value of mutual confidence in good faith as a background for diplomacy is less obvious and less absolute than is the value of mutual confidence in respect for diplomatic immunities. Machiavelli thought good faith was less necessary than a reputation for good faith, perhaps insufficiently appreciating the close relationship between the two.

No state is without blemish in its history of treaty observance. All have occasionally been accused of violations and the issue of whether there has actually been a violation becomes technical. Doubtless, there are factors, other than past performance such as common interest, common ideology, common fears which may give confidence that the results of a negotiation will be observed.

However, diplomacy is greatly facilitated, if negotiating states can assume that each accepts the principles of international law which require good faith in the observance of treaties and which provide criteria for determining whether good faith has been observed in particular circumstances.

3.3 A Common Understanding of the Object of Negotiation

Another issue which diplomacy should be able to take for granted is mutual understanding of the objects of negotiation. This implies not only that an agenda had been agreed upon and will be observed, but the meaning of the items be understood and that there is a common comprehension of the situation.

Negotiation between India and Pakistan on Kashmir bogged down in 1957, because there was a difference of opinion, whether a plebiscite was intended to transfer Indian Territory to Pakistan or to determine the sovereignty of a territory to which neither had title. In 1956, negotiation between Great Britain and Egypt over the Suez Canal floundered because it was uncertain whether, it was intended to assure Egyptian observance of the Constantinople Treaty in administering the canal or to deny the Egyptian right to administer the canal. Discussion of South African racial discriminations in the United Nations General Assembly suffered because of uncertainty whether South Africa was being asked to observe an obligation of the charter or to subject a domestic policy to the opinion of the Assembly. In all these cases, the parties differed as to the nature of the situation.

Doubtless, the formulation of a problem greatly affects the solution. Diplomats will seek to interpret the agenda and the situation to their advantage, but the more a mutually accepted framework of international law decided the status quo from which negotiation is to proceed and thus narrows the issues in controversy, the more likely is negotiation to succeed. Advisory opinions were often utilized for this purpose by the League of Nations, less frequently by the United Nations.

It is true that legal determination of the framework of negotiation shackles the diplomat. Such determination tends to convert negotiation into adjudication, a government of men into a government of law; and as has been noted by Wright (1956:580) “this may not be either practical or desirable unless the field in which the decision is to function is homogeneous in respect to attitudes, opinions, and values of systems of actions within it”. In an extremely heterogeneous field, decision-making must operate through controversy, negotiation and conciliation rather than through legislation, administration and adjudication.

The field in which diplomacy functions is heterogeneous and lacking in common understanding of values. Consequently, situations are by their nature flexible, and their definition must, in considerable measure be left to the imagination of statesmen, free to build an atmosphere which may itself provide a definition. In such circumstances, excessive rigidity may make for instability.

On the other hand, too much flexibility is also incompatible with stability. The more accepted rules of international law provide a definition of the situation within which diplomats deal, the more their efforts are likely to contribute to stability rather than to the aggravation of tensions.

3.4 A Common Acceptance of Relevant Facts

Apart from the definition of the definition of the situation, diplomacy profits by common assumption concerning the facts. Machiavelli paid no more respect to truthfulness than to good faith, and Sir Henry Wotton said that "an Ambassador is an honest man sent to lie abroad for the good of his country".

The expediency of these suggestions has been increasingly doubted. International law favours both truthfulness and good faith by qualifying the rule of pacta sunt servanda by the right to consider a treaty invalid if fraud is found to have occurred in its negotiation. It insists that negotiators have a right to believe factual statements made by their opposite numbers in the course of negotiations. If there is mutual confidence in the observance of the rule of truthfulness, the course of negotiation may provide a common basis of factual information helpful in reaching agreement.

International fact-finding commission of assured reliability can be of assistance. The corrupting influence of a lack of confidence was exhibited in the difficulties for the United Nations in establishing such commissions acceptable to both communist and the capitalist nations during the cold war era. The rules of international law facilitating the discovery of relevant facts and discouraging lying by negotiators provide a useful background to all negotiations.

SELF ASSESSMENT EXERCISE

What do you understand by mutual observance of agreements?

4.0 CONCLUSION

States have grown through the broadening of the conception of self interests held by smaller groups. At first, each considers the maintenance of its autonomy and augmentation of its own power-known to the Greeks as hubis - as its major interest.

With the extension of communication and contact through other technological means with its neighbours, with increased opportunities for friction and increased vulnerabilities to attack, together with increased opportunities for fruitful cooperation, economic and political, neighbouring groups become aware of the virtues of reciprocity, of the value of common law (international law), of what Greeks called themis. Such development is resulting into merging of the self interest of each with the interest of the larger group under the mutual understanding of the agreements based on the fact known to all.

5.0 SUMMARY

The more accepted rules of international law provide a definition of situations within which diplomacy is practiced, the more diplomatic efforts to ensure international stability through negotiation of conflicting interests are more likely to contribute to peaceful co-existence than the aggravation of tensions.

6.0 TUTOR-MARKED ASSIGNMENT

1. State the importance of Diplomatic immunity in practice of contemporary diplomacy.
2. What do you understand by "Mutual Observance of Agreements?"
3. Why is a common understanding of objects of negotiation important?

7.0 REFERENCES/FURTHER READINGS

Jessup (1956). *Transnational Law* (New Haven: Yale University Press).

UNIT 3 INTERNATIONAL LAW AS INSTRUMENT OF DIPLOMACY

CONTENTS

1.0 INTRODUCTION

There is no doubt on the value of international law as instrument of diplomacy. Its function in providing assumptions underlying negotiation is very obvious and necessary, but its provision of means in the realization of diplomatic objectives is a more obvious utility.

Diplomats need a common language, available procedures and forms for manifesting agreement, criteria for settling disputes about the substance of agreement, and arguments of persuasive value, international laws can provide all of these. And these are the instrument used in diplomatic relation that gives it a meaning and direction.

2.0 OBJECTIVES

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

- understand the importance of common language in diplomatic negotiation
- understand the role of procedures and forms in treaty making
- appreciate international law as instrument of selection of variables by diplomats in settling conflicts.

3.0 MAIN CONTENT

3.3 Common Language

The more diplomats, and the governments and nations behind them have in common, the easier is negotiation. The "group dynamists" emphasize the extreme difficult of fruitful discussion among people with different perceptions. Representatives of nations with different cultures, conditions, interests and language maximize this difficulty.

International law provides a common language. Its key terms are similar in all vernaculars and are defined in the literature of international law. Through sophistication in the meaning of these terms, diplomats can make themselves understood even though the language and culture of their respective nations differ greatly.

The ambiguity often discovered in treaties may indicate failure of negotiators to achieve real understanding of the language of international law by the negotiators. Problems of interpretation that frequently arise over treaties emphasize the importance that diplomats be thoroughly grounded in that language.

3.2 Procedures and Forms for Manifesting Agreements

The drafting of agreements requires more than a common language, it requires the observance of procedures and forms that will be subsequently accepted as making the instrument legally valid, and the inclusion of provisions that will maximize the probability of actual observance.

The accepted procedures of exchange of full powers, signature, ratification and exchange of ratifications, the accepted forms concerning ratification, reservation, accession, coming into force, and customary provisions concerning arbitration of disputes over interpretation of the instrument, guarantees and denunciation should all be observed if the results of diplomacy are to have a maximum chance of enduring success. An important function of international law is to provide diplomats with precise knowledge of these forms and procedures.

Unfortunately, international law remains uncertain on some aspects of treaty making. This is true of the effect of reservations of multilateral treaties. The International Court of Justice and the United Nations International Law Commission have expressed different opinions on this matter when raised in connection with the Genocide Convention. The International Law Commission has recognized the need for a clarification of international law on the general problem of the

procedures and formalities of treaty making especially because of the problems which have arisen with the increased use of multilateral and law making treaties and of informal agreements.

Even with the greatest care in drafting, subsequent disputes are likely to arise over the meaning of treaty. It is a rule of international law as well as of common sense, too often forgotten by national politicians that neither party can unilaterally and definitively interpret the meaning of international instrument. Diplomacy must therefore, be concerned with such disputes and must resort to international law for criteria which exact meaning from the text, or to submit that task to arbitration or adjudication for solution under that law.

The value of travaux preparatoires indicating the context of the negotiation (mischief and remedy), the relation of parts of the whole (construction), and the presumptions arising from the expressed purpose of the negotiation (effective interpretation) and from the presumed reluctance of states to qualify sovereignty (respective interpretation) – these matters must be considered and on all of them, international law can provide answers useful for interpretation.

3.3 Arguments of Persuasive Value

International law provides the diplomat with arguments to support his cause. The diplomat's arsenal of weapons is extensive. He can try to persuade his opponents by compromise, bargaining or rewards, while direct threat or use of force shows his failure and is also prohibited by the United Nations Law, unless there is a necessity for defense or an authorization by the United Nations itself.

He may also try to create a favourable atmosphere by information or propaganda addressed to his adversary to third parties, or to world public opinion. Such publicity may appeal to principles or morals, humanity, and civilization, as well as to national interests. Appeals and international law, however, are likely to be more effective to the broader audience, because its principles are more generally accepted than those of any particular moral or cultural system. The diplomat, who is able to persuade world opinion and show that international law is on his side will have the advantage, and the diplomat not versed in international law is likely to let this advantage go to his opponent, whatever the actual legal merits of the case may be.

So far as the parties in actual negotiation are concerned, the more equal is their power position, the more the negotiations are multilateral including some less interested states, and the more negotiation are public, the more useful is the appeal to international law likely to be.

International law is especially valuable when diplomatic activity is concerned with the solution of a dispute. Diplomacy has many other objects. It may seek to protect national agencies and national interest in the territory of another state, to protect the national territory and culture from invasion, propaganda, subversion, or other dangers, to influence the policy of another government, domestic jurisdiction, to increase national or world prosperity by regulating or stimulating trade, investment, and economic development, to improve international culture by exchange of persons and information to reduce international tensions and prevent hostilities, to increase the relative power position of the state or to maintain the general balance of power, to strengthen and contribute to the functioning of alliance and international organizations or to deal with "situation" not formulated as "disputes".

International relations educational and propaganda activity, the establishment of contacts and the conduct of conversations and the making of representations and protests may contribute to these ends without negotiation. While international law may not be directly involved in some of these activities, it is always indirectly involved because it sets limits to the methods, which are appropriate by the distinction which it draws between international relations and the domestic jurisdiction of states.

This distinction requires the diplomat to exercise great discretion in dealing with maters within the domestic jurisdiction of another state, if he is to avoid defeating his object by developing local resentment. International law can therefore, be of great value in indicating the reaction to be expected from any diplomatic agent. Where an international obligation established by treaty or customs is under dispute, the diplomat has a locus standi which is lacking when this is not the case and the matter is therefore, within the domestic jurisdiction of the other state. Very different reaction can be expected in these two situations.

3.4 Guild to Select a Method among Available Alternatives

When an issue is sufficiently formulated to be designated a "dispute", the value of international law is more direct. Diplomacy is usually the first method attempted for settling disputes. If it fails, various alternatives are available; dictation, perhaps involving the use of force, utilization of an international procedure such as inquiry, mediation, conciliation arbitration, or invocation of the jurisdiction of a regional arrangement, of the World Court or of the United Nations, or dropping the matter, with the hope that the issue will become obsolete or that changed circumstances may provide a better opportunity for settlement. International law cannot be neglected in any of these procedures,

whether they aim at a settlement or to seek or select a method among available alternatives.

Its rules will inevitably be appealed by one side or the other to determine the validity of the claims presented or the nature of the dispute. International law must be invoked to decide whether the dispute is legal, in the sense that rules of international law are available to decide the merits, political, in the sense that such rules are lacking, or domestic in the sense that international law gives the competence to one party to decide the matter at its discretion.

If it is agreed that the dispute is legal, international law is necessary to support the arguments urging a particular settlement. If diplomacy either fails to settle the dispute or characterize it, international law may still prove useful in deciding what to do next, unless indeed, there is mutual consent to let the matter drop for the time being.

Is the use of force prohibited by a treaty, by the charter, or by a customary rule? Are there obligations to submit to international enquiry, conciliation, arbitration, or judicial settlement? What are the respective competences in the matter of the United Nations and of relevant regional arrangements? These and similar questions that can only be answered by appeal to international law and the task of finding correct answers has become exceedingly complex with the development of a network of bilateral, regional, and general treaties, including the charter, and of divergent interpretations of their meanings and their relationships.

If the issue is submitted to enquiry, arbitration or the World Court, international law must appraise the evidence and provide the arguments; but the case will in such circumstances usually be out of the hands of diplomacy and into those of legal advocates. If the dispute goes before a conciliation commission, a regional agency, or the United Nations, diplomats will often have to present the case, but can only do so if a request for an advisory opinion of the court is made in such agencies. The probable results of the courts actions upon such a request and consequently the expediency of submission cannot be appraised without extensive knowledge of international law.

4.0 CONCLUSION

International law as an instrument of diplomacy brings diplomats and governments of nation states behind them close to have a better understanding of each other as having many things in common. Consequently, the more diplomats and government and nations behind them have in common, the easier is negotiation, the “group dynamists”

emphasized the extreme difficulty of fruitful discussion among people with different cultures, conditions, interests and language.

International law provides a common language. Its key terms are similar in all vernaculars and are defined in the literature of international law. Through the sophistication in the meaning of these terms, diplomats can make themselves understood, even though the language and culture of their respective nations differ greatly.

5.0 SUMMARY

It is clear from the discussion here that international law can be an extremely useful instrument for diplomacy especially if the objective of diplomacy is the achievement of agreement and solution of difficulties. If its object is the maintenance of tensions preparation of war, international law may be less useful.

6.0 TUTOR-MARKED ASSIGNMENT

1. Write all you know about:

i. Common Language.
ii. Argument of persuasive value.

2. What are the international law rules for procedures and forms for manifesting agreements?

7.0 REFERENCES/FURTHER READINGS

Lauterpacht (1933). *The Functions of Law in the International Community* (New York).

Situation and Disputes are distinguished in the Practice of the United Nations Charter, Act 33 – 338.

UNIT 4 INTERNATIONAL LAW AS A RESULT OF DIPLOMACY

CONTENTS

1.0 INTRODUCTION

International law is a result of diplomacy partly because much of international law is conventional and it is the function of diplomacy to produce international conventions or treaties. While bilateral conventions may contribute little to developing general international law, diplomacy has become increasingly multilateral. Conference diplomacy characteristically produces general conventions, sometimes called "international legislation" because they are intended to make international law among the parties. Such conventions constitute a growing corpus of international law.

2.0 OBJECTIVES

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

- understand the meaning of international legislation
- trace the evolution of the legislative process
- comprehend the contributions of bilateral conventions to developing general international law
- appreciate international law as a product of diplomacy.

3.0 MAIN CONTENT

3.1 International Law as a By-Product of Diplomacy

States which engage in diplomacy desire their agreements to be legally binding. Consequently, they necessarily wish diplomacy as a by-product of its activity, to develop international law. If they are opposed to international law in general, or to its development in particular fields, they refrain from participating in the making of general treaties in that field.

Undoubtedly, the Bricker amendment movement in the United States, designed to restrict the treaty-making competence of the Federal government was motivated by opposition to the development of international standards in fields normally within the legislative power of the states of the union, and particularly, to the development of international law for the protection of human rights and for the punishment of inhuman crimes such as genocide.

In so far as diplomacy resorts to legal arguments for the settlement of disputes or submits disputes to arbitration or judicial settlement, it contributes to the development of international law. That contribution is most important when disputes are submitted to the World Court composed of jurists versed in international law and bound by the statute of the court to apply it.

A great deal might be added concerning the way in which diplomacy has contributed to the development of international law, not only by treaties and submissions to adjudication, but also by the very process of diplomatic correspondence appealing to international law and asserting positions on the subject by formal declaration.

The Digest of International Law prepared for the United States Government by John Bassett Moore and Green Hackworth consist largely of such fruits of diplomacy. They constitute a source of international law no less important than the opinion of courts and text writers.

3.2 International Legislation

There has never been any international body set up with a status comparable to that of national legislatures. On the contrary, states almost invariably regard agreements arrived at by treaty or conference as valid and binding only when they have been expressly ratified “in accordance with the respective constitutional processes” of the signatory states. This is true of even most actions taken by any of the organs and

agencies of the United Nations, an organization of almost universal membership.

While some public international organizations make exceptions to the rule of express assent, the exceptions are few and usually relate to less important matters. Nevertheless, despite its inaccuracy and the protests of some writers, the term international legislation is used having in mind, a wide participation in formulating principles of rights and duties rather than a perfect analogy to the national legislative process.

International legislation does not imply a specific procedure. States or representatives of states may reach an agreement by any one of a number of means or combinations of means. Whatever device is used to reach an understanding must be ratified by each individual state in order to be binding on that state. Even then, the state is not necessarily bound, for the agreement may provide that a certain number of ratifications are required to make it effective, even for ratifying states.

While international legislation closely resembles the conventional multilateral treaty process, that is negotiations or conference followed by ratification of agreements reached, there are certain important differences. More generally, it seeks to assert rules of law rather than to compromise differences, and it is commonly open to accession by all interested states.

While it is still subject to all obstacles that capricious sovereignty may devise, failure to ratify, nullifying reservations, and unilateral termination, there is some evidence that states are now feeling a stronger moral obligation to accept the "legislation" in good faith. Ten years before the founding of United Nations, Manley O. Hudson declared that international legislation was more important than international jurisprudence as a source of law. That judgment would certainly be valid today.

3.3 Evolution of the Legislative Process

The Congress of Vienna of 1815 may be taken to have inaugurated the process of international legislation. Agreements of continuing importance were reached at Vienna on the classification of diplomatic agents and on the free navigation of the international rivers of Europe.

Another notable conference that of Paris of 1856, approved a declaration on the abolition of privateering which became securely fixed in international law. International legislation on telegraphic matters dates back to 1865, on postal matters from 1874, and on weights and measures from 1875. During these years, technological changes in

communications and transportation were creating problems of general concern that would be handled only by what amounted to almost continuous international legislative activity. This commonly took the form of adhoc conferences which, becoming somewhat standardized and regularized and at times being supplemented by the maintenance of permanent office, led inevitably toward a more general form of permanent international organization.

The Hague conferences of 1899 and 1907 may be said to have represented a transitional step from adhoc conferences and specialized international organization toward the League of Nations, the first great experiment of an organization open to all states and without a special purpose character.

3.5 International Legislation by League of Nations

The League of Nations ushered in a new era of legislative effort. In its first dozen years, the League produced more international legislation than had issued from all sources during the entire century before World War I, or than was currently being issued from all other sources combined. The subjects were almost as broad as human interest. They included communications and transit, slavery, pacific settlement of disputes, the traffic in opium, women and children, arms, and obscene publications, buoy age, and lighting of coasts, counterfeiting, uniformity of bills of exchange and labour.

Under the persuasion of the League's Secretariat, states came to feel more and more bound to follow signature with ratification and while the international legislative process was by no means perfected, considerable improvement certainly took place during the lifetime of the League.

Professor Hudson found at least sixteen different names for the understandings reached between or among states within the existing period of the League. Alphabetically these were as follows: act, agreement, arrangement, convention, covenant, declaration, final act, general act, pact, plan, protocol, regulation, rule, scheme, statute and treaty.

It is significant that he included all the monumental collection to which he gave the name "International Legislation". Although his compilation, covering the period from 1919 to 1949, fills eight volumes, it is a selective and not an exhaustive one, as was gathered from the fact that before its termination, the League of Nations Treaty Series had reached two hundred volumes.

3.6 International Legislation by United Nations

Within the United Nations, the legislative procedure operates in this fashion. The General Assembly directs one of the commissions or agencies to prepare a "draft statute"; the term varies according to a particular subject. A committee of the agency does the work, keeping it until the agency approves a report for submission to the General Assembly. This body may approve the draft statute or it may send it back to the agency for revision. If approved, the statute is sent to member states for ratification.

The volume of international legislation has become so great that merely keeping a record of it is a problem. Hudson's international legislation, already mentioned, includes only the texts of agreements registered with the League. That these texts are in print is insufficient in itself, for it is often important to know which ones are still in force, what revisions have been made, which states were bound by a particular arrangement at a particular date.

The United Nations Treaty Series, issued by the Secretariat, contains text of treaties, conventions and the like entered into by member states since the charter became effective. By 1967, 568 volumes in this series had been published. Other agreements, those antedating the charter and those between non-member states were, or were not included, depending upon the acceptance of the secretariat's invitation to submit them. There is a considerable support for the proposal to have the secretariat undertake the all inclusive publication of international legislation, truly a formidable enterprise.

The question of participation in multilateral treaties concluded under the auspices of the League of Nations by states which had not been in existence before the demise of the League was considered on several occasions by the General Assembly of the United Nations, and was carefully studied by the International Law Commission in 1963. Late in the same year, the eighteenth session of the assembly in accordance with the recommendations of the ILC designated itself the appropriate organ of the UN to exercise the power vested in the League Council under general multilateral treaties, and agreed that these treaties should be opened for ratification to all members of United Nations or specialized agencies or to states which were parties to the statute of the International Court of Justice.

4.0 CONCLUSION

The acknowledged sources of international law came to be custom and treaties. Custom because it disclosed what states has already agreed to practice and treaties because they involved express consent.

Custom is not always easy to ascertain, for it involves deciding when a practice has become a custom and has achieved something like general acceptance. Consequently, it is not a satisfactory basis for making law. It is therefore, upon treaties that the making of new international law has largely depended. More recently, states have turned away from conventional treaties for the making of international law and instead have tended to use what is now known as international legislation.

5.0 SUMMARY

A comprehensive survey of the way in which international law came into existence as a result of diplomacy has been here portrayed. However, a great deal may still be added concerning the way in which diplomacy has contributed to the development of international law, not only by treaties and submissions to adjudication, but also by the very process of diplomatic correspondence appealing to international law and asserting positions on the subject by formal declaration by nation states.

6.0 TUTOR-MARKED ASSIGNMENT

1. International law is a by-product of diplomacy. Explain.
2. Assess international legislation, stating their peculiarities under:

i. League of Nations.
ii. United Nations.

3. Trace the evolution of international legislative process.

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UNIT5 INTERNATIONAL LAW AS A GOAL OF DIPLOMACY

CONTENTS

1.0 INTRODUCTION

Within the framework of the present world system, all states will continue to regard as their ultimate defense, their own strength and that of their trusted allies. Only then can they find full loyalty to their own special interest. And then, protected by sovereignty, they will cultivate their strength until and unless a new order of affairs makes it abundantly clear that their destinies are secure in other hand. No such assurance has yet appeared.

Consequently, states will continue to place chief reliance for the settlement of their differences upon conventional diplomacy. Through this means, they will foster trade, protect their nationals, and as in the past in many ways bring a degree of cooperation among states. They will privately and quietly resolve most disputes before they reach a serious stage.

2.0 OBJECTIVES

The objectives of this unit are among other things for the students to:

- understand the controversies surrounding the goals of diplomacy
- see international law, national interest, collective security as goals of diplomacy
- value variance opinions of scholars as to the contributions of international law to world peace
- take personal stand as per the roles of international law to world peace.

3.0 MAIN CONTENT

3.1 Controversy over the Goal of Diplomacy

To say that diplomacy results in the development of international law is not to say that such development is necessarily a goal or object of diplomacy. The extent to which diplomacy has or ought to have that goal is extremely controversial. Diplomats and foreign officers usually say that their objective is to serve the "national interest" and they usually define the national interest in terms of political security and economic prosperity of the nation, sometimes adding maintenance of its independence and power position as supposedly contributing to both prosperity and security.

More sophisticated diplomats often recognize maintenance of the balance of power as a national interest. Great Britain and United States of America have long done so. If each state recognizes the maintenance of equilibrium as the essence of its own security, the beginning is made toward subordinating the sovereignty of the states to the stability of the world community. Policies of balance of power naturally lead to policies of collective security which become institutionalized through common organs, procedures, and rules of law to assure that aggression will always be confronted by overwhelming force.

International organization to promote "collective security" is therefore, only a planned development of the natural tendency of balance of power policies. It is the natural tendency of the states, when faced by an emergency to gang up against the aggressor, who is successful against his first victim and is likely eventually to turn on the others, one at a time.

Collective security seeks to supplement this natural tendency by positive obligations, appropriate procedures, and convenient agencies to assure that common action will be enlisted when aggression begins. Whether the gain in certainty compensates for the loss in flexibility depends upon the presence or absence of general conditions favourable to cooperation among states.

Public opinion and legislative bodies within a nation may define the national interest differently from the diplomats. Parties and other groups may identify the national interest with the policies in which they have a particular interest at the moment. "Economic Self Sufficiency", "America for Americans", "Victory in Cold War", and "Strengthening NATO" were slogans which appealed to some, while "Make the World safe for democracy", "Expansion of Democratic Christian Civilization", "Promotion of World Understanding, Strengthening the United

Nations", and "Establishing an Effective International Legal Order", appeal to others.

Thus, the controversy concerning the proper goals of diplomacy may be defined in terms of what the national interests of the diplomats and their states are. Enlightened self-interest may approach the most comprehensive altruism.

3.2 International Law as a Goal of Diplomacy

States and federations have grown through a broadening of the conception of their self-interest held by smaller groups. At first each considers maintenance of its autonomy, augmentation of its own power-known to Greeks as hubris-as its major interest.

With the extension of communication and contact with its neighbours, with the increased opportunities for friction and increased vulnerabilities to attack, together with increased opportunities for fruitful cooperation, economic or political, neigbouring groups become aware of the virtues of reprocity, of the value of law, of what the Greeks called themis. Such developments may result in merging of the self-interest of each with the interest of the larger groups.

As is well known, citizens of the United States of America, after a century of discussion and civil war, decided that the interests of each state were in considerable measure, merged with the interest of the United State as a Federated Unit. European states (Citizens) have been attempting since World War II, to decide whether the national interests of each should be identified with the interests of Europe. Some of the states have already expressed this identification by amending their national constitutions to assure the national execution of the decisions of European organ. All long nursed expectations have metamorphosed into the European Union of today, having a common currency and working seriously towards the goal of having a common constitution.

Presidents of the United States of America have, on many occasions, said that the major foreign policy of the United States for security is to strengthen the United Nations. Such changes in the national interest can be expected to take place only gradually, often with local or general setbacks, but the conditions of contemporary world suggest that each state can save its sovereignty only by losing it in some measure in an effective international legal order, that the only liberty which the individual can enjoy is liberty under law, so it may be accepted that the only sovereignty state can enjoy is sovereignty under law.

If this is true, international law can become a goal of diplomacy. Diplomacy may appreciate that the national interest in prosperity and security, hitherto served by developing national independence, national power, and a balance of power, may be better served by strengthening international law and the international agencies which maintain and develop them.

By its success in such an endeavours, diplomacy as the art of negotiation, where war is a possibility, might become obsolete. This is because war as a duel between nations would cease to be a possibility, even though its possibility as an international crime or an international policing operation continued.

3.3 Institutionalized Diplomacy

As diplomacy becomes institutionalized, it may make use of good offices and mediation, of commissions of enquiry and conciliation, arbitration and judicial settlement, thus approaching the methods of adjudication familiar within the state. It may also make use of consultation, conference, or periodic meetings of councils and assemblies as in the League of Nations and the United Nations, thus augmenting the role of common opinion and of disinterested parties and approaching the legislative procedures familiar within the state.

It may also make use of permanent alliances, guarantees, obligations of mutual assistance, and international procedures to determine and stop aggression as in the United Nations Charter, thus, approaching the executive function familiar within the state. Furthermore, it may establish consultative and administrative agencies for performing common functions as in the international unions and the specialized agencies of the United Nations, thus approaching the administrative activity familiar within the state.

With such development, diplomacy would become merged in international organization and international law. Tendencies in this direction are to be observed, but the existence of high tensions, the differences between the world blocks and the differentials in the local standards of culture, economy, and opportunity indicate that diplomacy will long retain its importance.

3.7 International Law and World Peace

We should remember that international law is only one aspect of international relations, and by no means the most important one. The great issues of international politics, those most clearly involving issues of peace or war, are largely outside its purview. This is not because many of these issues do not lend themselves to judicial settlement, but because the states of the world will generally not submit them to judicial settlement.

Matters of national honour and prestige are too closely involved. International law moreover, is still in a very primitive stage of development. Professor Dickson, a friendly critic, described it this way "…as regards its institutions and procedures of adjustment, the law of nations has been a jungle law imperfectly ameliorated by a fragmentary and hesitant progress in the direction of legal order." Dickson (1951:76).

In Professor Brierly's judgment, "the system is still at what we may describe as the laissez-faire stage of legal development," Brierly (1963). Nevertheless, it represents a positive attempt to build an international legal order in the absence of which peace and sanity in the international community are in constant jeopardy.

However, we must not regard international law as an alternative to diplomacy. Clearly, diplomacy too is essential to the family of nations, infact it is the usual method of conducting interstate relations, including the adjustment of differences and disputes. Even if one argues that international law now provides rules that are adequate for the solution of all disputes among nations, he must concede that there remains the need for diplomacy to bring nations to seek settlement by law and to accept it.

If one ague that diplomacy must take up where law leaves off-, that there are justifiable and non-justifiable disputes, then there falls to diplomacy the whole area of political differences among states.
Many scholars have warned against what is described as the swing from over estimation to under estimation of international law. It could be recalled that, at the close of the World War I, there were everywhere, in victors, neutrals, and vanquished, not only the will to achieve a better world through international law, but also the firm conviction that it could be done.

After the World War II, came the flowering of the new "realism" with its emphasis on politics and power. International law was not even mentioned in the Dumbarton Oaks proposals, and it barely escaped exclusion from the United Nations Charter.

Whereas the Permanent Court of International Justice was busy in its early years, the International Court of Justice has had very little business. Thus, many scholars like Professor Kunz has protested against this "underestimation" of international law, he declared that the law is not "sterile" and that it must necessarily play an important role in international relations.

That realism and regard for international law are not mutually exclusive is proved by the writings of many distinguished contemporary authorities. Professor Dickson for example, followed a rather severe critique of international law with a volume of essays entitled "Law and Peace" in which he affirmed his faith in international law as a realistic approach to peace.

4.0 CONCLUSION

Diplomacy will continue to provide a forum for the oratory and debates of the diplomatic agents of nation states. It will pursue its vast programmes of international cooperation. It will do particularly good work in social, cultural and humanitarian fields, and it will achieve some successes in its economic work. It will be less in dealing effectively with political problems. Through Judicious operation it will continue to establish norms for the relation among states and so will continue to enlist supporting world opinion. It will have to continue to earn respect and authority but it cannot legislate them.

We must not expect neither too little nor too much of international law. Persons who have little faith in it point to the occasions on which it has been violated with impunity and to the continuance of war in international society. Faithfulness to the law occurs in countless routine dramatic matters, and its violations often appear in highly publicized dramatic incidents.

5.0 SUMMARY

The changing world situation seems to require the many fronts approach, both to deal with a vast range of current problems, many of which seem to offer no hope for immediate solution. As has been observed, "We must maintain a pluralist approach so as to be able to adapt to the unexpected alternatives and keep our options open."

Diplomacy will long retain its importance. It will continue to benefit by international law as an assumption and as an instrument. It will continue to create international law and gradually, it may make the strengthening of international law its goal.

6.0 TUTOR-MARKED ASSIGNMENT

1. Discuss the functions of institutionalized diplomacy
2. Analyze the controversies over the goals of diplomacy.
3. Critically examine the roles of international law to world peace.
4. What do you understand by overestimation and underestimation of international law?

7.0 REFERENCES/FURTHER READINGS

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MODULE 4 INTERNATIONAL LAW AND DIPLOMACY IN A CHANGING WORLD

UNIT 1 DIPLOMACY AT THE UNITED NATIONS

CONTENTS

1.0 INTRODUCTION

The United Nations being an association of sovereign countries in which the members are pledged under a charter to work for certain common ends, cannot be a place for the exercise of diplomacy in the classical sense – the conduct of business between states on a basis of national interest.

The conception at the root of this world organization is that members far from using it as a place to further their national interests, should subordinate those interests to the attainment of certain ends assumed to be in the common interests of all - peace with justice, development of friendly relations among peoples and the promotion of the social and economic advancement of peoples.

In theory members should all be outbidding each other for these ends, but the practice has fallen short of the theory and it is in fact true to say that, at present, diplomacy in the classical sense is commonly practiced at the United Nations.

In another sense, diplomacy is defined as the practice of solving international disputes by peaceful rather than warlike means that is by the methods of negotiation and conciliation. Diplomacy in this sense is a proper international activity at the United Nations and indeed an activity basic to the purposes laid down in the Charter. Although, much genuine effort is devoted to utilizing the great potential of the United Nations for negotiation and conciliation, and the results have been encouraging, the other practice – utilization of the United Nations for national interests – has been followed by many member states, to the detriment of the practice of negotiation and conciliation and of the operation of the organization as a whole.

2.0 OBJECTIVES

The objective of this unit among other things is to:

- enlighten the students on the organization of the UN
- identify the various ways the world body is being misused by the powerful nations
- teach the students the differences between open and private diplomacy
- enumerate the main functions of the UN in diplomatic relation among nation states.

3.0 MAIN CONTENT

3.1 The Nature of United Nations

The complexities of the international activity pursued at the United Nations are derived from the nature of the organization itself. The United Nations is a free association of sovereign countries. Containing as it does 82 members; it now comes near to representing the totality of the countries of the world with their many diverse traditions, institutions and interests. It is not a condition or an alliance with specific and binding conditions. This of course is how it differs fundamentally from other international organizations such as the North Atlantic Alliance where certain nations have joined together for well defined common objectives and where decisions can be made and are taken in the common interest.

If the United Nations functioned with theoretical perfection and all its members conducted their international affairs through the United Nations, and subordinated their national interests to the requirements of the UN Charter, there would be no need for such other regional organizations. But this postulates an ideal, friction-free world, and the framers of the charter themselves recognized, in Article 51 and 52, the

justification of such collective security arrangements in present conditions.

In practice, the United Nations has not developed as the United States who conceived the project, planned and hoped. The plan and hope was that it would provide an international forum in which all members would co-operate for the common ends. Difficulties have arisen from a number of factors, in the forefront of which must be placed the way the most powerful nations have treated the United Nations as place for the promotion of their national interests.

There has been the distortion of the aims of the charter in favour of anti-colonialism and ultra-nationalism which has complicated the task of the so-called colonial powers in making the contribution which they wish to make for the purposes of the charter. And finally, there has developed a double-standard of behaviour as applied to different parts of the world.

Despite all these complications, the United Nations has made and is making an essential contribution to international peace and stability, but in order to understand how it really works and how diplomatic activity is conducted at the United Nations, it is essential to prove that the task of international diplomacy is complicated by the factors we have enumerated.

3.2 Misuse of the United Nations

The difficulties with world powerful nations, as reflected at the United Nations, have arisen from the fact that these major members have blocked so many serious efforts to deal with world problems and lately have even exploited the organization as a vehicle for their own national ambitions. This has caused the democratic world to consume much time and effort in circumventing and countering these tactics. This has been a major task for diplomacy and has complicated efforts to move towards the objectives which the founders of the United Nations had in mind.

Perhaps, the greatest damage to the effectiveness of the organization has resulted from the behaviour of the permanent members in the Security Council, where they have the veto. The Security Council was intended to be an executive arm with major responsibility for peace and security. The Security Council has been gravely handicapped in this role by the misuse of the veto power by the permanent members in order to frustrate some moves genuinely designed to preserve peace and security, or to promote some particular national aim of their own.

In the wider forum provided by the General Assembly during its annual three months session, much time have been wasted and useful initiatives has come to nothing owing to the propagandist use to which these meetings were turned to especially during the Cold War era. The Soviet line was to play on the fear of war, using the slogan of peaceful co-existence, and presenting themselves as the true apostles of peace and progress and the western powers as aggressive trouble-makers and imperialists. Opportunities were not lost to intensify this propaganda effort by capitalizing their remarkable advances in science and by alternating peace propaganda with intimidation.

With the end of cold war and the demise of the Soviet Union, United States of America has turned into itself the police of the world using the United Nations as an instrument to actualize its national interest. There is hardly any distinction now between US decisions and the decisions of the Security Council.

In the United Nations, the task is not only to counter this kind of propaganda but in spite of it to create and maintain conditions favourable to conciliation and agreement. This requires considerable effort and unremitting patience.

Conciliation and agreement are indeed the main functions of the United Nations. Until the international situation improves that the extent of the major countries especially the permanent members of the Security Council work together and the United Nations is given executive powers for the collective security of the world, genuine peace will continue to elude humanity.

The General Assembly was conceived by the founders of UN as having that function, while the Security Council was to be primarily the organ concerned with matters of peace and security. There is a real danger in attributing to the General Assembly executive attributes which properly belong to the Security Council.

The world with its hundreds of separate nations is diverse. It is diverse by race, creed and national interests. The United Nations, being an association of sovereign nations cannot do more than reflect the sum total of international relations as they actually exist. At present, there are cleavages of varying depths between the nations, and these cleavages inevitably are reflected in the United Nations.

It would be a self-delusion to postulate a unity that does not exist and to entrust to the United Nations as it stands the powers of world executive. The goal to establish the degree of world unity which will ensure co-operation instead of rivalry. This should be furthered by recognizing the

United Nations as it is with its present limitations. By understanding its immense potentialities we shall reduce the differences that divide the nations of the world today.

3.3 Open Debate and Private Diplomacy

These are less clear-cut issues where strains are likely to arise for friendships within the free world when a matter is raised in the United Nations. The difficulties arise largely from the simple fact that they are raised in the United Nations. The United Nations proceedings are public and its decisions are taken by voting. This has value when some broad issue of international concern is being debated. But when it is a specific issue affecting the vital interests of a major power, this open procedure can prove awkward. A problem which might be solved by the old fashioned methods, of private non publicized diplomacy, often becomes intractable when debated in the United Nations. A relatively minor problem becomes magnified out of proportion to its true importance owing to the clash of differing views in the debate at the United Nations.

But private diplomacy is not unfashionable; it has come to be regarded as positively immoral. This is perhaps because private diplomacy smells of secret diplomacy, and secret diplomacy in the popular mind is plotting behind people's backs. Yet "open covenants privately arrived at" is often the best method of agreement. Covenants are often not arrived at if they have to be reached through the medium of public debate.

The moral for diplomacy at the United Nations is more restraint in advocating the treatment of thorny questions in public debate and greater use of the many alternative media available in the flexible organization of the United Nations.

Nonetheless, private diplomacy is quietly and regularly pursued at the United Nations as well as diplomacy by public debate. The experience is that a preliminary phase of such behind the scenes preparation for the public debate in the council, committee or plenary, is normally the best way of reaching a good result. The helpful role of the Secretary-General in this kind of activity is of very great value. But the view of the majority of the United Nations seems to be that freedom of public discussion must be untrammeled and that every matter is debatable at the United Nations if a member government wishes to bring it up.

However, we suggest that the United Nations should be rather more selective in its choice of matters to discuss. It should consider carefully whether discussion of a particular problem brought before it by a member nation is going to be helpful to the finding of a peaceful

solution or whether discussion is against the terms of the charter itself and is just going to give one member nation a chance to make propaganda against another group. It would be foolish not to recognize that discussion of some problems at the United Nations may actually hinder the interests of peace and stability in the area concerned.

The tradition of private diplomacy between individual states was a tradition of mutual respect. This was not merely because its practioners believed in mutual respect as a virtue in itself; they also found that it helped them to bring their business to a successful result. When diplomacy becomes public, this respect is harder to achieve. If every time a diplomat shakes hands with his rival or opponent a photograph of the event appears in the next day's paper with a political implication, then he may decide that it is safer not to shake hands. If an impolite speech wins bigger headlines than a polite speech, there is obviously a temptation to make it. But it is still true that mutual respect is a valuable adjunct to diplomacy. It is indeed essential in the give and take to multilateral diplomacy in a universal organization, which by its very nature is designed to further, not the interests of individual countries, but the common interests of all.

These differences are accentuated by the procedure in the United Nations – unavoidable in public debate, of expressing an opinion by a vote. A vote can be for, or against, or an abstention. If for example, the United Kingdom votes for and the United States against, this advertises a serious difference. If one votes for or against and the other abstain, it is clear to the world that some differences exist.

We do not however, take a negative line about public discussion at the United Nations. In a world in which public opinion strongly influences the shaping of policy by governments, discussions at the United Nations can be an immensely influential force even if it produces no immediate definite decisions. If this force of public opinion is used selectively, it can be extremely valuable in bringing the pressure of world public opinion to bear when it is needed.

SELF ASSESSMENT EXERCISE

Examine the implications of open debate and private diplomacy in ensuring world peace and security.

4.0 CONCLUSION

The United Nations will make its best contribution in ensuring international peace and security by running its affairs in accordance with the structure laid down at San Francisco in 1945, which provides a flexible balance between the major organs of the organization.

There is also the need to develop certain techniques to respond to the unsettled state of international relationship and the peculiar condition of an all nation open forum. In any worthwhile diplomatic activity, there are three stages viz:

(i) appraisal of the facts of the case,
(ii) determination of best course to pursue and
(iii) a conclusion which is widely acceptable as possible not only to governments but also to world opinion.

It often occurs at the United Nations that these processes, essential for a good result, are either ignored or become bedeviled by emotion or propaganda. The would be cure is then worse than the disease. When emotions rule, the true purposes of the UN are liable to ignored, and international diplomacy becomes diplomacy by slogan. The actions cannot be harmonized by plans for peace at any price or denunciations. The result is rather to increase international tension and acrimony rather than improve relations between peoples.

5.0 SUMMARY

The basic function of the rather special kind of diplomacy which operates in a universal organization whose proceedings take place in public, is to arrange that the problems which come within its purview are dealt with by the methods most likely to conciliate the diverse interests involved and most conducive to agreement; diplomacy by patience and planning and not diplomacy by slogan, diplomacy based on genuine regard for the charter as a whole and not diplomacy that picks and chooses according to the tactical advantage of the moment.

The nations should work out a generally acceptable diplomatic approach on these lines at the United Nations, so that hope to develop peaceful methods of resolving disputes and promote understanding between peoples is not lost, especially at this moment when our world needs absolute peace and stability.

6.0 TUTOR-MARKED ASSIGNMENT

1. Write short note on open debate and private diplomacy
2. What are the advantages of open debates?
3. Explain the nature of the United Nations.
4. What are the factors contributing to the misuse of the United Nation?

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UNIT 2 INTERNATIONAL LAW AND COURTS OF JUSTICE

CONTENTS

1.0 INTRODUCTION

Despite the absence of a global police force and global judicial system, there are many commonly accepted methods of resolving international legal disputes and one of such is the legal method of arbitration.

Attempts to create permanent courts of arbitration, and thus to provide machinery for the judicial settlement of international disputes, dates back to the first Hague Conference of 1899, which established the Permanent Court of Arbitration. Actually this was neither permanent nor a court but a panel of arbitrators whose names were in a file at the Hague, to be drawn upon if disputing states so choose.

Notwithstanding its limitations, the permanent court was utilized successfully in fifteen cases before 1914, including the Venezuelan debt controversy of 1904 involving Germany, Great Britain, Italy and the Newfound-land fisheries disputes between Great Britain and United States. Although still in existence today, the "Hague Court" has been little used since the opening of the Permanent Court of International Justice in 1922.

From 1907 to 1917, a Central American Court of Justice, which may be called the first real international court ever to be established, functioned with some success in eight cases. It was wrecked by the refusal of the United States, one of the sponsoring powers to accept the decision of the court in 1917 regarding the United States and Nicaragua.

2.0 OBJECTIVES

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

- understand the genesis of international arbitration
- evaluate efforts made in establishing of permanent international legal system for arbitration between state
- know the problems facing international courts of justice
- acknowledge the reasons for establishing the International Criminal Court (ICC).

3.0 MAIN CONTENT

3.1 International Court of Justice and Permanent Court of International Justice

The most elaborate permanent court for the judicial settlement of international disputes has been the Permanent Court of International Justice, which functioned in the inter-war period in loose association with the League of Nations, and its successor, the International Court of Justice which was brought into being in 1946 as one of the principal organs of the United Nations. Although the two courts were given different names and derived their authority from different statutes, the present International Court of Justice regards itself as a continuation of the older court. The Carnegie Peace Palace at the Hague has been the seat of both courts.

Since the time of the first Hague Conference, many attempts have been made to secure the consent of states to the compulsory adjudication of disputes. These attempts have met with only limited success for the nature of the state system is not conducive to have really binding power by an organization.

Usually, agreements to resort to adjudication have been hedged about by reservations in areas involving vital interests, matters of domestic concern or national honour–reservations which are obviously so general and so all inclusive that when interpreted unilaterally they can make the original commitments virtually meaningless. Thus, the Hague Convention for the pacific settlement of Disputes called for resort to arbitration in so far as circumstances permit.

A real advance in the prospects for compulsory adjudication was made by the Permanent Court of International Justice and the International Court of Justice. Paragraph 1 of Article 36 of the statute of the former court, also used almost verbatim in the same article in the statute of the present International Court of Justice, read as follows: “The Jurisdiction

of the court comprises all cases which the parties refer to it and all matters specially provided for in treaties and conventions in force."

In general therefore, the jurisdiction originally conferred was voluntary, but in fact both courts were given a wide compulsory jurisdiction through treaties and conventions in force and through the so-called optional clause, also contained in article 36 of both statutes. This clause provided that state could of their own accord accept the compulsory jurisdiction of the court in all legal disputes concerning:

a. the interpretation of a treaty;
b. any questions of international law;
c. the existence of any fact which, if established would constitute breach of an international obligation;
d. the nature or extent of the reparation to be made for the breach of an international obligation.

More than half the states of the world, including all the major capitalist powers, have accepted the optional clause, though in some cases, as with the United States, with devastating reservations.

3.2 International Criminal Court

In 2002, after the sixtieth country had ratified the treaty to create it, the International Criminal Court (ICC) officially came into existence. United Nations under Secretary-General then Hans Corell said that with the creation of International Criminal Court, "a page in the history of international humankind is being turned. May all this serve our society well with the years to come" (Associated Press, April 11, 2002).

The International Criminal Court is designed to prosecute individuals accused of genocide, war crimes and crimes against humanity, notably widespread and systematic atrocities. In many ways the International Criminal Court is a natural extension of the war crimes tribunals set up after World War II, to prosecute Japanese and Nazis in Germany who had committed the worst abuses of power during the war. Those who support the ICC hope those future political leaders will refrain from committing atrocities because they know that sooner or later, they will be hauled before the new court.

If Corell is correct and a new page in the history of humankind has in fact turned, the atrocities of the type that took place in Rwanda and Bosnia in the 1990s, for example should occur with less frequency in the future. Many, however, are not convinced of the merits of the ICC. The strongest and most important opponent is the United States. This spells out why the United States opposes the ICC and why its failure to ratify

the International Criminal Court treaty could seriously weaken the effectiveness of the new international court.

Two prominent international courts are the International Court of Justice (ICJ) also known as World Court and the International Criminal Court. The International Court of Justice is an integrated component of the United Nations and has existed since the late 1940s. It is the world's prominent international court that deals with a wide variety of state-to-state legal disputes.

The International Criminal Court by contrast is a new court that has not been fully tested. Beginning operation only in July 2002, the ICC was designed to fill an important gap in the international legal system. Neither the International Court of Justice nor any other permanent international court had criminal jurisdiction regarding the prosecution of individuals. The international bodies that have handled war crimes in the twentieth century have been the non-permanent military tribunal set up for specific cases. In this respect, the International Criminal Court goes much further than the International Court of Justice. For example ICC proceedings may be initiated not just by a state but also by the ICC prosecutor or United Nations Security Council.

The International Criminal Court consists of eighteen judges elected by the Assembly of the states parties for a term of office of three, six or nine years. During the election of judges, several factors are considered, including the representation of the principal legal system of the world, the equitable geographical representation, and a fair representation of female and male judges. The International Criminal Court also has its own prosecutor elected by an absolute majority of the Assembly of the State parties. However, International Criminal Court does not hold jury trials.

The International Criminal Court is designed specifically to prosecute individuals accused of committing genocide, crimes against humanity and war crimes. As the international criminal court's Website states, the twentieth century saw some of the worst atrocities in the history of humanity. In too many cases, these crimes were committed with impunity, which has only encouraged others to defy the laws of humanity. The ICC is thus urgently needed to help end gross violations of international humanitarian law.

The 1998 treaty establishing the International Criminal Court was signed by 139 countries that agreed that the court would have responsibility in cases relating to the crimes mentioned above only if the countries of the defendants were unwilling or unable, to dispense justice themselves. So, if a country could prosecute its own citizens, the ICC would not be called upon. Canada for example is a strong supporter of

the ICC and is not concerned that its people will be subject to it. Compared to US Canada has far more active peace keepers, who could be subject to ICC scrutiny. But Canada has been an enthusiastic supporter of the ICC in part because; it knows that Canada has adequate procedures in place for prosecuting its own citizens.

3.3 The Enforcement of International Law

Without a global police force to ensure that international law and international court rulings are upheld, it is possible for states to ignore any international court ruling including an international criminal court ruling.

On the other hand, international law does not require any state to submit its disputes to an international tribunal against its will. Consent to judicial process may be given on a particular occasion, or it may be given in advance to cover all or certain stipulated classes of disputes, but in theory consent are always a pre-requisite. States, either singly or in collaboration may of course condemn a state and even punish it, but the form of judicial process is not present unless the state so condemned or acted against has consented to the procedure used.

This is why even states that sign the international criminal court treaty may be able to prevent the court from prosecuting their citizens. For example, the state whose citizen is a suspect may not turn its citizen over to the International Criminal Court. Does this render the ICC irrelevant? Proponents of the criminal court say that even though, the ICC can be ignored, it can still have a positive indirect effect such as the influence of international public opinion. For example, international and domestic non-governmental organizations, combined with the media, can make human rights violations known to the world almost instantly.

An international criminal court ruling as well as pressure from non-governmental organizations and the media can help expose countries that are hypocritical about human right.

However, the optional clause, which is contained in the statutes of both the Permanent Court of International Justice and the International Court of Justice was devised to bring states closer to compulsory jurisdiction, but states are free to accept or ignore the Optional Clause (whence its name), and the clause itself limits compulsory jurisdiction to certain types of legal disputes and is operative only when both or all parties to a dispute have accepted it. Furthermore, the acceptance of the optional clause has often been attended by many and significant reservations, those of United States being perhaps the most far-reaching. Thus, there is nowhere in international law anything like real compulsory jurisdiction, either outside the United Nations or within it.

3.4 Limitations of International Law

The failure of International Criminal Court to achieve international consensus highlights a major problem for international law in general. Historical animosities between and even within states cannot be eliminated easily. Religious differences are notoriously difficult to resolve. History is full of ruthless leaders who spark wars for reasons of greed and personal aggrandizement. The current political, economic, and social trends do not indicate the disappearance of such leaders in future.

Another limitation of international law has to do with the issues of compliance and enforcement. If the international community is unwilling to act, laws are ineffective in stopping violence. So, despite the value of reputation and reciprocity, states may choose to ignore international law. In many prominent cases, states have flouted international law that have the backing of the rest of the international community. In 1979, for example, Iranias stormed the U.S. Embassy in Iran's capital, Tehran and held many of the embassy's staff hostages for 444 days. The United States field suit against Iran before the International Court of Justice, but Iran refused to recognize International Court of Justice jurisdiction. Thus, the United States was unable to use the ICJ to help free the hostages.

A few years later, in the early 1980s, the Regan administration tried to overthrow Nicaragua elected Sandinista government. Nicaragua brought the issue before the ICJ and the court ruled in favour of Nicaragua. The US government ignored the courts ruling.

Further reducing the effectiveness of international law is the way in which it is written. For example, the Universal Declaration on Human Rights, agreed to by most states is an authoritative guide to interpretation of the UN Charter and represents the sense of the international community. However, it is not biding on states; it simply offers guidelines for states to follow. Another example is that international law often allows an escape clause, an opportunity for states to avoid international law if they believe vital national interests are at stake. Even when states sign agreements to have disputes settled by arbitration, they typically exclude cases that affect their vital national interest. Even among allies, agreement is difficult as demonstrated by US unwillingness to go along with its allies and support ICC.

SELF ASSESSMENT EXERCISE

Critically examine the prospects and hindrances of International Criminal Court (ICC).

4.0 CONCLUSION

The average man would probably assume that, where there is violence and obvious injustice, there is no law. Against this assumption, it must be pointed out that international law, unlike domestic law is very limited in scope and that the greater portion of international relations has not come within its jurisdiction at all.

While it may be true that it should govern all the relations of states, international law in reality has applied only to those subjects on which states have agreed that it should apply. Economic discriminations, imperialism, and war may have often revealed greed and the will to aggression, but they were not necessarily violations of international law.

5.0 SUMMARY

The submission of disputes to arbitration is a time honoured practice among states. But in view of the nature of the sovereign state system and the political aspects of most international disputes, procedures leading to mutual agreement are resorted to much frequently than those leading to binding decisions. Thus, the Hague Convention for the Pacific Settlement of Disputes called for resort to arbitration in so far as circumstances permit.

6.0 TUTOR-MARKED ASSIGNMENT

1. What are the limitations of international law that you know?
2. Analyse the contributions of International Court of Justice to settlement of international disputes.
3. What procedures led to the establishment of Permanent Court of International Justice and International Court of Justice?

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UNIT 3 THE CHANGING NATURE OF DIPLOMACY

CONTENTS

1.0 INTRODUCTION

Diplomacy is often thought of as being concerned with peaceful activity, although it may occur for example within war or armed conflict or be used in the orchestration of particular acts of violence, such as over flight clearance of an air strike. The blurring of the line, in fact between diplomatic activity and violence is one of the developments of note distinguishing modern diplomacy. The point can be made more generally too, in terms of the widening content of diplomacy. At one level, the changes in the substantive form of diplomacy are reflected in terms such as dollar diplomacy, oil diplomacy, resource diplomacy, atomic diplomacy and global governance diplomacy.

Certainly what constitutes diplomacy today goes beyond the sometimes rather narrow politico-strategic conception given to the term. Nor is it appropriate to view diplomacy in a restrictive or formal sense as being the preserve of foreign ministries and diplomatic service personnel. Rather diplomacy is undertaken by officials from a wide range of domestic ministries or agencies with their foreign counterparts, reflecting its technical content, between officials from different international organizations such as International Monetary Fund (IMF) and the United Nations (UN) Secretariat, or involves foreign corporations and a host of government transnational and with or through nongovernmental organizations and private individuals.

In this unit we are concerned with discussing some of the main changes which have taken place in diplomacy since the end of nineteenth century which is the starting-point for the overall study.

2.0 OBJECTIVES

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

- explain the changes that have taken place in diplomacy within the period under study
- identify the modern players in diplomacy
- discuss Diplomatic Setting
- analyze the content of modern diplomacy.

3.0 MAIN CONTENT

3.4 Developmental Changes in Diplomacy

In discussing the development of diplomacy an over-view of the period will help to give some perspective in which to consider certain of the major changes which have taken place.

Harold Nicholson's analysis, written in 1961 in foreign affairs on the theme "Diplomacy then and now" is coloured especially by the impact of the cold war, the intrusion of ideological conflict into diplomacy and its effect on explanation, and the transformation from the small international elite in old style diplomacy to a new or democratic conception of international relations requiring public explanation and open diplomacy despite its growing complexity. A further striking change for Nicholson was in values, especially in the loss of relations based on creation of confidence and the acquisition of credit.

Writing shortly after Nicholson, Livingston Merchant noted the decline in the decision-making power of the ambassador but the widening of his area of competence through economic and commercial diplomacy, the greater use of personal diplomacy and the burden created by multilateral diplomacy, with its accompanying growth in the use of specialists.

In reviewing the period up to the late 1970s, Plishke, (1970) endorsed many of these points, but noted as far as the diplomatic environment was concerned with the proliferation of the international community, including the trend towards fragmentation and smallness and the shift in the locus of decision making power to nationals.

Writing at the same time, Panger additionally drew attention to methods, commenting on the volume of visits and increases in the number of treaties. Adam Watson in reviewing diplomacy and the nature of diplomatic dialogue noted the wide range of ministries involved in diplomacy, the corresponding decline in the influence of foreign

minister, the increase in the direct involvement of heads of government in the details of foreign policy and diplomacy and the growth in the importance of the news media.

3.2 Diplomatic Setting

The continued expansion of the international community after 1945 has been one of the major factors shaping a number of features of modern diplomacy. The diplomatic community of some forty-odd states which fashioned the new post-war international institution – the United Nations, had tripled in less than a quarter of a century later. A third phase of expansion occurred after 1989 with the break-up of the former Soviet Union and Yugoslavia.

The expansion in membership has affected diplomatic styles and uttered the balance of voting power within the UN General Assembly. The growth in number of states, and hence interests and perspectives has continuously fashioned the agenda of issues addressed by the Assembly. This has led to the emergence of UN Conference Management styles, Lobbying and corridor diplomacy. Other features such as the institutionalization within the UN of G – 77, have also had a significant influence on the development of the way in which diplomacy is conducted within the UN.

Another important effect expanded membership has is the entry into force of conventions. For example, the entry into force of the 1982 law of the sea convention was triggered by smaller members of the UN, such as Honduras, St. Vincent, and eventually Guyana in November 1993 without ratification or accession at that time by the major powers. Although the possibility of conventions entering into force without the participation of major players remains in some instances, e.g. The Montreal Protocol on Ozone Depleting Substances, thresholds or specific barriers to entry into force have been created in some agreements.

The continued development of regional multilateral diplomacy further distinguishes diplomacy from the 1960s onwards. Most regional groupings are economically based. As an illustration of economically based institutions, the Association of South-East Asian Nations (ASEAN) is an interesting example of a regional institution which has remained essentially concerned in its diplomacy with economic issues rather than expanding into defence during the Cold War period. The end of the Cold War by 1990 – 91 created opportunities for the extension of ASEAN's regional diplomacy vis-à-vis other South-East Asian States.

3.3 Modern Players in Diplomacy

In the first instance, a marked change of modern diplomacy is the enhanced role of personal diplomacy by the head of state or government. Frequently, such initiatives are at the expense of the local ambassador, who might have only a limited formal involvement, for example in a special summit.

However, it can be argued that whilst the importance of political reporting, part of traditional diplomacy has been eroded by developments in communications, the decline of the role of ambassador is overstated. The role remains important in terms of explanation of policy at crucial moments, political assessments, involvement in economic and trade work, and participation from time to time in international conference.

Secondly, the growth of post- war multilateral diplomacy has seen periodic involvement in external relations, such as Industry, Aviation, Environment, Shipping, Customs, Health, Education and Sport. The task for the foreign ministry is to establish in effect a lead position or otherwise co-ordinate both the formulation and implementation of international agreements. This is particularly important in technical agreement where choice of presentation, drafting of instructions and follow–up post conferences are especially important.

Furthermore non–state actors have proliferated in number and type, ranging from traditional economic interest groups through to resource, environmental, humanitarian, criminal and global governance interest. In some instances, non governmental organizations are closely linked to official administrations, while others are transnationally linked.

Above all, the institutionalization of non-governmental organizations in the diplomatic process especially in multilateral conferences has become an important distinguishing feature of recent diplomacy.

3.4 Content of Modern Diplomacy

One of the most striking aspects of post-war diplomacy is the rapid growth in volume of diplomatic activity since the end of 1960s. To a large extent, this has come about because of the expansion of multilateral and regional diplomacy, much of it economic or resource related.

At a national level, the changes in volume can be seen, for example, in United States diplomatic practice annually now concludes over 160 treaties, and 3,500 executive agreements. The broadening of the international agenda especially since the 1970s into issues concerning trade, technology transfer, aviation, human rights, and transnational environmental and sustainable development questions have continued with the increasing addition of novel or revived threats.

Examples of the latter include global sea level rise, stratospheric ozone depletion, environmental sabotage, money laundering, and refugee dumping, transnational stock exchange fraud and black market nuclear materials trade. Underlying the expanded diplomatic agenda are a range of issues concerning the relationship between domestic and external policy, sovereignty and adequacy of agreements and arrangements at bilateral, regional, international or global level.

3.5 New Diplomatic Process

The use of consensus decision making in international conferences rather than unanimity or majority voting is a marked feature of multilateral conference diplomacy. The consensus has significantly influenced both the processes and types of outcomes of multilateral negotiations. Consensus decision-making tends to produce frenetic, final phase negotiations, framework type of agreements and excessively qualified obligation.

Changes in the processes of multilateral conferences since 1990 has been influenced by several other factors. The break-up of the Soviet Union has meant the end of special voting and other provision for the socialist block in multilateral conferences, and led to new disputes over categories of countries. The G-77 have opposed any additional provision for the so-called ex-socialist countries in transition, arguing that G-77 members are also developing economies in transition.

A second notable factor is the difficulty the G-77 has experienced in developing new economic ideologies in a highly fractionalized and unstable international system, which has lost one of its key defining structural features the East-West division. That division acted as a kind of reference point for not only the non-Aligned but also the G-77 itself.

Thirdly, multilateral conferences have been distinguished by fewer group sponsored resolution and changes in implementation procedures. The trend of informality in conferences is directly linked to the decline of blocs or large groupings, growing individuality of states, especially in technical negotiations, and adhoc or shifting coalitions of interests.

A noted exception to the decline of blocs is the EU. One of the important effects of EU enlargement is to largely take out of play Sweden, Austria and Finland, who as non-EU members performed active roles in multilateral conferences, as conference officers, chairing working groups, drafting and broker roles.

A further exception is the continued use within the UN systems of politico-geographical groupings for the election of conference officers and heads of organizations, (example WTO, WHO). The election particularly has become a source of enhanced dispute as states seek access and control of strategic multilateral institutions.

International agreements have been influenced by two other important factors; the decline in the role of international law commission in preparing treaties and the growing use at a global level of soft law instruments such as Action Plans and framework agreements, influenced by the international and regional practice of UN specialized agencies such as UNEP, UNCTAD and FAO.

3.6 The Implications of the Changes in Diplomacy

The expansion of the international community which started by last century has affected style, procedures and substance of diplomacy. By early 1960s, there were still fewer than 100 independent states, although this rose from 159 by 1985 to 190 by 1996. It has necessarily brought divergent regimes and ideologies. Rather than diminishing, the ideological element has, if anything increased. It necessarily raises the question, can diplomacy in a broad sense cope with these changes?

Apart from the East-West dimensions, numerous national as well as wider ideologies have been introduced, such as those on economic kind associated with North-South relations, which demand economic redistribution and the transfer of technology. Although, these demands were partly diverted in the 1980s into the promotion of South-South relations between developing countries, they nevertheless remained as a marked feature of the diplomatic setting of economic confrontation.

Furthermore, diplomatic methods have undergone profound changes in the past decade than in any other period of diplomatic relations. The decline of East-West type summit diplomacy during the 1980s, though not absolute since the former could be revived, was a direct function of the internal weakness of the Russian Federation. On the other hand, the loss of significance of global North-South negotiating structures, particularly the demise of United Nations Conferences on Trade and Development (UNCTAD) has shifted the arena of North-South conflict into the World Trade Organization (WTO).

In terms of international security, diplomatic methods have been above all distinguished by multiple and competing security agencies such as NATO, UN and EU. International agreements have become increasingly informal, accompanied correspondingly by unilateral actions. An important new strand in modern diplomacy is the so-called governance diplomacy, involving four elements. These include adhoc global conferences e.g. Habitat II, follow-up environment conferences, UN domestic security operations, and global co-coordinating institutions such as the Commission on Sustainable Development.

Finally, the development of governance diplomacy has been accompanied by increasing conflict between international institutions over responsibility and budgetary control of this form of diplomacy. Apart from this, the growth of state and other actors in the international community is reflected in the policies of sub-national actors which are projected often violently, on to the international arena.

SELF ASSESSMENT EXERCISE

Examine the implications of the changes of diplomacy experienced in 20th century.

4.0 CONCLUSION

The procedures of diplomacy have undergone several important changes, particularly in terms of the effects of the demise or decline of traditional blocs, the emergence of shifting or temporary conditions in multilateral diplomacy and the extensive use of informal, interim and short-term arrangements.

5.0 SUMMARY

The agenda of diplomacy in terms of the volume of bilateral and multilateral meetings, and the range of issue areas has continued to undergo considerable expansion during a period of uncertainty over the role and functions of established international institutions, alliances and other arrangements.

6.0 TUTOR-MARKED ASSIGNMENT

1. What do you understand by diplomatic setting?
2. Discuss the developmental changes in diplomacy of the 20th century.
3. Examine the implications of the changes in diplomacy.
4. In your own words, explain the following:

(a) New diplomatic process.
(b) Content of modern diplomacy.

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UNIT 4 THE ROLES OF REGIONAL ORGANIZATIONS IN THE 20TH CENTURY

CONTENTS

1.0 INTRODUCTION

Traditional international Society was organized, every state acting separately in resolving conflicts with other states. As relations increased, it became necessary to regulate and set common standards through bilateral and later multilateral diplomatic conferences. The movement towards organized society probably dates back to the congress of Vienna 1815 which marked the end of the Napoleonic wars. It was the first attempt to create a standing conference of European powers to deal with problems and streamline their policies. Many diplomatic conferences were held between 1820 and 1885 in Europe, the last one dealt with the sharing of African territories among certain European powers. Achievements during the period included cooperation in communication, transport, public health and economic fields.

Consequently, one of the promising developments of the twentieth century in interstate relations has been the proliferation of international organizations. For the first time in history, permanent organization of a nearly universal type emerged. Perhaps, the word “permanent” may hardly be justified, the League of Nations lasted for only about a quarter of a century, with an effective period of barely fifteen years, and the future of the United Nations, after more than five decades of active existence is still very uncertain.

International institutions may be classified as universal or global regional according to whether they concern the universe as a whole or only part of it. However, this unit is concerned with regional organization activity at the international political arena.

2.0 OBJECTIVES

The objectives of this unit are to:

- identify the contributions of regional organizations to the actualization of national interests of member states,
- assess the contributions of regional organization to peaceful co-existence of sovereign nations
- explain the meaning of Associative Diplomacy
- examine the activities of ECOWAS and OAS.

3.0 MAIN CONTENT

3.1 Associative Diplomacy

One of the major striking aspects of the evolution of modern diplomacy is the relations which regional organization develops with other regional organizations, international institutions, groups of states and individual states. The attempts by individual states or groups to develop significant links within a treaty and institutional framework, with other states or groupings beyond merely routine transactions can be described as associative diplomacy.

Associative diplomacy serves one or more of a number of purposes, including the creation of larger groupings, the coordination of policies and mutual assistance within the group. Other purposes are maintenance of the political, economic or security influence of the primary groupings limiting the actual or potential coercive power of other groupings (damage limitation) and enhancement of the identity of individual members in the grouping.

There are generally four main elements in associative diplomacy, these include the institutional and treaty framework, regular meetings of senior political leaders and officials, some measure of coordination of policies and schemes to promote economic relations of the group such as trade credits, generalized scheme of preference (GSP), project aid and financial loans.

Associative diplomacy can involve one or more of the major sectors of public policy, including, socio-cultural exchanges, economic (trade, technical and financial assistance), political and security relations. It is possible to distinguish therefore, various types of associative diplomacy, such as for example aid project dominated (e.g. EC — African, Caribbean and Pacific Countries). Mixed economic security (e.g. ASEAN dialogues), Economic (e.g. EU associate members), Security (e.g. NATO extension via partnership for peace).

3.2 Pacific Settlement and Regional Organization

The United Nations Charter (Article 33) commends the settlement of disputes between nations not only by conventional methods and through the normal channels of diplomacy but also by resort to regional agencies or arrangement, or other peaceful means. It also provides in Article 52, that the members of the United Nations entering into such arrangements or constituting such agencies shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to Security Council.

The charters of all regional arrangements contain some provisions for the pacific settlement of disputes among the participating states in the spirit of the United Nations.

Thus, associated with today's general international organization — the United Nations are many lesser organizations, some of which as the specialized agencies, are equally broad in membership but more limited in function, while others, as the Economic Commission for Europe, are both regional and specialized.

Outside the United Nations structure, regional organization of a general character, as the Organization of American States, the North Atlantic Organization and African Union, formerly Organization of African Unity and some more specialized in function as the Organization For Economic Corporation and Development, Economic Community of West African States, and the South Pacific Commission are also numerous and active.

In addition to the scores of public international organizations concerned with almost every conceivable aspect of international relation, hundreds of private international organizations (the so-called non governmental organizations) such as the International Red Cross or Rotary International or the international Chamber of Commerce, play useful although less publicized diplomatic roles.

3.3 The Organization of American States and Security

The Charter of OAS devotes an entire chapter to the pacific settlement of disputes (chapter iv) and a special treaty, known as the Pact of Bogota contains elaborate provisions for peaceful settlement of disputes. The eight chapters of the pact are entitled as follows:

(i) General Obligation to Settle Disputes by Pacific Means
(ii) Procedures of Good Offices and Mediation

(iii) Procedures of Investigation and Conciliation
(iv) Judicial Procedure
(v) Procedure of Arbitration
(vi) Fulfillment of Decisions
(vii) Advisory Opinions
(viii) Final Provisions

Under the Pact of Bogota, every American state is obligated to settle all its disputes by peaceful means, various organs and agencies of the Organization of American States, notably the Meeting of Consultation of Ministers of Foreign Affairs and the Council have been authourized to act on behalf of the organization in dealing with inter-hemispheric disputes.

While the pattern of OAS action has been pragmatic, it has tended to emphasize; first a mutual accommodation among the protagonists themselves, secondly, a process of independence of fact finding by investigators accountable to the OAS directly, third, direct mediation or conciliation by an OAS body, fourth, a judgment of responsibility directed against one of the parties, if the OAS suggestions for settlement were rejected, fifth, the imposition of sanctions in case the states continued to be recalcitrant.

This list suggests that, if necessary, the OAS may move from procedures of peaceful settlement to those of collective action, a process also clearly envisaged in chapters vi and vii of the United Nations Charter.

In general, the organization of American States has been rather successful in dealing with the practice of formulating revolutions against neighbouring governments, the most persistent precipitant of Inter-American conflict in the late 1990s. It later resorted to sanctions against the Dominican Republic in the last days of Trujillo regime and against Cuba after the majority of the member states of the OAS were convinced of the reality of Castro's alignment with the Soviet Union. But in other aspects of the Cuban case and in reactions to unilateral United States intervention in the Dominican Republic in 1965, many OAS members have demonstrated a reluctance to apply sanctions against a member state, whatever the provocation.

They are very sensitive to any violation real or alleged of' the principle of non intervention and they are rather dubious about collective action by the organization which to them smacks of collective intervention.

3.7 The Economic Community of West African States (ECOWAS) and Security

Under Article 58 of ECOWAS Treaty members undertake to "safeguard and consolidate relations conducive to the maintenance of peace, stability and security within the region." They also undertake to establish appropriate mechanisms for the prevention and resolution of intra and interstate conflicts. They undertake to employ appropriate methods of dispute resolution – such as good offices, conciliation and mediation and establish a regional peace and early warning system and peacekeeping forces where appropriate.

The Protocol on Non-Aggression 1978 obligates states to refrain from the threat to use of force against the territorial integrity or political independence of states and not allow their territories to be used by foreigners for such purposes. The protocol relating to Mutual Assistance on Defence 1981 strengthens security in the event of external aggression or internal armed conflict engineered and supported from outside.

Events in Liberia provided the opportunity to test the effectiveness of the sub-regional security arrangements. A civil war broke out in 1989 and witnessed inter tribal atrocities. Nigeria intervened to mediate and initiated a proposal at the 13th Session of ECOWAS for a standing mediation committee which also had the blessing of the African Union.

Consequently, the ECOWAS Monitoring Group (ECOMOG) was founded to monitor and enforce a ceasefire with troops contributed by Nigeria, Ghana, Sierra-Leone, Gambia, Republic of Guinea, Mali and later Burkina Faso and Cote d'ivoire. A few troops were sent by Tanzania and Uganda. At a time, Nigeria contributed 12,000 troops and carried 70 percent of the total expenditure of the troops. The United Nations initially maintained minimal presence through the UN observer Mission in Liberia (UNAMIL) as a token support for ECOMOG.

A ceasefire was followed by democratic elections in 1997 with Charles Taylor as the head of government of national unity and reconciliation. Insecurity however, persisted after a lull and in order to secure the progress made, satisfy the rebels, Charles Taylor has to leave on exile in 2003. As the cost of peacekeeping mounted, the UN took over the operations.

In 1997, rebellious troops forced the president of Sierra-Leone to flew. ECOWAS failed to secure a peaceful resolution and had to move ECOMOG into Sierra-Leone to eject the military adventures. They fled into the hinterland and maintained a regime of terror, amputating limbs, committing rapes and forcing children into their ranks. British troops helped in the pacification. At the end of the civil war, the UN set up a

joint UN– Sierra-Leone Tribunal to try the leaders most responsible for the atrocities and the violations of International Humanitarian Law.

The Protocol on Mechanism for Conflict Prevention, Management, Resolution, Peace keeping and Security 1999, was adopted to enhance peace in the sub-region. One of the supporting organs of the mechanism is the Council of Elders of 32 eminent and highly respected persons with the mandate to mediate, conciliate and arbitrate dispute when the need arises. At the request of the Executive Secretary or the Mediation and Security Council, they can conduct political and diplomatic missions to member states. The Council of Elders uses in its functions reports, analyses and data collected from the General Observation and Monitoring Centre at Abuja and from the four zonal observation Bureaux.

Insecurity in the sub-region has come, not so much from outside, as from internal misgovernance. This emphasizes the importance of the Protocol on Democracy and Good Governance 2001, which lays down the benchmarks for good administration, the disregard of which has been the major cause of instability, insecurity and underdevelopment. This protocol should be given the widest publicity and close study so as to effectively check government excesses and shortcomings. It will raise public expectations of both the government and the citizenry.

SELF ASSESSMENT EXERCISE

Critically examine the activities of Regional organization in ensuring international Peace and Security.

4.0 CONCLUSION

From our discussion in this unit, one can conclude that one of the most promising development in the history of international relation that led to the emergence of international organization is the need by states to find a situation where they can have a common ground to face the societal differences that are threatening the world, especially in this period of weapons of mass destruction. This has resulted in the emergence of multitude of regional organizations, international administrative agencies or public international union in the later half of the nineteenth and early twentieth centuries.

They arose in response to the growing need for cooperation in economic, social and security problems which could not be handled satisfactorily by states individually.

5.0 SUMMARY

The relative peace today in the world lies in the strength of international law, international organizations and more importantly regional organizations. In short, global violence is being reduced due to successful application of international law and the effectiveness of international and regional organizations as shown in the activities of the United Nations to ensure peaceful co-existence among all nations and roles of regional organization like ECOWAS and OAS that coordinate state relations within their regions. Both methods help competitive states to cooperate less violently or non-violently.

6.0 TUTOR-MARKED ASSIGNMENT

1. Give a critical analysis of the activities of ECOWAS within the West African sub-region.
2. State the reasons for the formation of Regional Organizations.
3. With the emergence of regional organizations is the United Nations still re1evant?

7.0 REFERENCES/FURTHER READINGS

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UNIT5 THE EUROPEAN UNION AND DEVELOPMENTS IN DIPLOMATIC METHODS

CONTENTS

1.0 INTRODUCTION

The European Union is the most highly developed regional block in the world. No other trade bloc has a Common parliament, few have a common external tariff, and none is seriously contemplating a common currency or common defence po1icies. Because of the highly integrated nature of the European Union, and its supranational characteristics, it is sometimes described as having deep regionalism. By contrast, the vast majority of the world's regional international organizations are much more intergovernmental in nature.

The European Union expansion in 2004 is viewed with a mixture of admiration and hesitation by the international community. If one plots the trend of political and economic integration in European Union history, one will get the impression that, there would soon be a United States of Europe or U.S.E.

Since it's founding in the 1950s, the EU has integrated more and more, an increasing number of policy are within the EU's jurisdiction, including monetary policy, and others, such as common foreign and security policies are being addressed more forcefully. In addition, EU decision making is occurring more often at supranational level with more power granted to European Parliament and greater use of qualified majority voting in the council. These centralizing developments of greater policy coordination and supra nationalism are known in EU jargon as deepening and the world is observing with suspicion.

2.0 OBJECTIVES

The objectives of this unit are to:

- enlighten the students on the activities of European Union
- highlight the implications of the emergence of such strong regional block to world security
- identify the expansion trends in the European Union
- compare the activities of European Court of Justice and other International Courts of Justice.

3.0 MAIN CONTENT

3.1 The Origins of the European Union

After century of warfare between empires and states, the European countries agreed to create the most comprehensive set of international institutions of all time. There are five main reasons why countries with a historical background of rivalry and war chose to work together. The first three reasons are primarily economic; the others are more political and military in nature.

First, European cooperation began in the late 1940s with the need to re-build war torn economies. Many European countries realized that going it alone would not be sufficient to transform their struggling economies. Assistance from the U.S. Marshal plan was helpful in this regard.

Second, a lesson from the Depression era and from World War II was that when states create significant barriers to trade, economic conditions worsen and international relations become tenser. Thus, the Europeans sought to lower internal trade barriers and enhance economic competition.

Third, the six founding European Union States as well as the states that joined later, recognized the benefits of economies of scale that is, they saw the advantages of combining their resources in order to become more competitive internationally. Recently, this issue has become particularly important in the context of competition with the United States, Japan, and the newly industrializing countries (NICs) of Asia.

Fourth, a more cohesive Western Europe was viewed as being better able to prevent the spreading of communism, which was threatening on two fronts. In the 1950s, Western Europe was concerned about an invasion by the Soviet Union and its allies. In addition, communists' parties had made strong in roads in the domestic politics of some

European countries, notably, France and Italy. During the World War II the French and Italian communists underground has fought heroically against the Nazis and the post war electorate rewarded them with many votes.

Fifth, in the immediate post - World War II period, many feared a resurgent Germany, the country that has been fully or partially responsible for three major wars in Europe in two generations (1870 – 1945). By integrating Germany economically and militarily into the European Union, it was hoped that German militarism would be tamed and World War III would be less likely to occur.

3.2 The Expansion of the European Union

Jean Monnet and Robert Schuman, considered as the Fathers of the European Union, and others recognized these favourable factors and believed that a cooperative and peaceful Europe could be built step by step. They supported the notion of functionalism which later inspired many supporters of European integration.

According to functionalism, a shared transnational technical problem such as the need to rebuild the war torn industries of Europe, can lead to the formation of common institutions that perform important economic, social and technical functions to solve the problems. If these institutions succeed, the theory goes – inevitable pressure is put on states to yield sovereignty. The early decisions and experiences in one functional context were expected to spill over into other functional areas regardless of territorial borders, eventually involving interest groups, parties, and greater inter-bureaucratic contact. In turn leaders would begin to press for strengthening and expanding the functions of supranational institutions to perform those tasks. As a result, it was predicted that European states, industries and individuals would shift their political loyalties and look increasingly to the European Union.

Thus, European Union is a unique phenomenon in the history of the world, especially because it brings together states that, throughout history have waged war against one another. For example, Germany and France went to war in 1870, and almost all Europe fought in World Wars I and II. What began in the 1950s primarily as an economic oriented organization of six West European Countries has evolved into the most complex and integrated set of institutions anywhere in the world. The EU now comprises 25 democratic member countries from west, central, and Eastern Europe representing 455 million people.

The broad scope of the EUs responsibilities is reflected in its three "pillars". The economic aspects of the EU make up the first pillar in its frame work. Most EU laws deal with economic matters among the member-states. In addition, several EU countries have pushed economic cooperation to such an extent that they have even created their own currency, the euro. To manage the euro, the EU established the European Central Bank. So far, 12 EU member-states have given up their national currency in favour of the euro. The countries that joined the EU in 2004 are expected to adopt the euro. Thus, for example there are no more French francs, German deutsehemarks and Italian lira.

Through the EU's second pillar, justice and home affairs the EU states coordinate their policies to tackle immigration and drug trafficking and to cooperate more on border controls. This area has grown in importance with the threat of terrorism. As part of the common foreign and security policies pillar, the EU seeks cooperation in foreign policy and military matters. The EU also has highly developed institutions including a trans-European parliament and court of justice.

Consequently, no other international organization so far, can match the European Union in depth of institutional structure or the scope of policies under jurisdiction.

3.3 The European Court of Justice

The EU'S judicial branch he1p in making the EU unique among all international organizations. In short, no other international organization in the world has such a court of justice. World War II taught many Europeans that international relations should be driven by law, not by power. The Europeans also came to understand that common policies require a common legal framework. As a result by the start of the twenty-first century, the EU had built up an impressive body of legal documents.

In 2004, however, the EU completed work on its first constitution, designed to amalgamate the various treaties and acts that had accumulated since the founding of the Union in 1957. In the process of ratification by the EU member-states, the constitution is designed to streamline the legal process and institutional arrangements.

At the apex of the EU's legal system is the European Court of Justice (ECJ), made up of 15 judges. The ECJ is assisted by nine advocates general. They are all appointed by the member-states and serve renewable six year terms. The extended EUs legal system consists of the Court of First Instance, the Court of Auditor, and a Parliamentary Ombudsmen (who hears complaint made against EU institutions).

The ECJ is the ultimate arbiter of laws made by the EU. ECJ rulings cannot be appealed. The rulings are binding on citizens of European Union as well as on the governments of the EU. When EU law conflicts with the laws of a national government, EU law takes precedence. The ECJ is also more than a toothless body of judges unable to impose their will. Member-states or companies that do not comply with ECJ rulings can be fined. Sometimes, these fines can be rather large. In 1997, for example, Germany and Italy were fined by the ECJ for not complying with EU environmental legislation. For not complying with laws protecting wild birds, ground water and surface water, Germany was fined $31,420 and had to pay about $15,000 each day it delayed implementing the EU law. Italy did not implement legislation on waste and radiation protection and had to pay a fine of about $125,000 plus $100,000 for each day it delayed. EU law can also target non-EU companies. For example, the EU fined Microsoft $613 million in 2004 and ordered the company to offer a version of its Windows Operating System without the Windows Media Player software within 90 days of the ruling. When countries create much international legal structure, it of course, implies that member-states have given up a lot of sovereignty.

3.8 The Implications of the Emergence of European Union as a Block in Multilateral Diplomacy

One of the most striking features of developments in diplomatic methods is the emergence of the EU as a block actor in multilateral technical diplomacy. While the Maastricht Treaty set out in the Title V of the Treaty provisions for a common foreign and security policy, it is within the field of technical diplomacy rather than traditional foreign policy that the EU has increasingly acted au communitaire on the basis of the treaty of Rome, Single European Act and decisions of the European Court of Justice, within areas of community competence. These areas include the common fisheries policy, transport and some international trade and environmental policy.

In areas where the community has competence, member-states are represented by the commission in international negotiations. In certain residual policy area, for example some international trade policy in the Uruguay Round framework, there is mixed or joint competence. Difficulties have arisen over definition of what matters fall within community competence between member states and the commission, in areas such as trade policy including restrictions on exports, civil aviation and immigration. In civil aviation sector, for example, disputes have occurred over bilateral air transport agreements under negotiation or concluded by non-community members with individual community members e.g. US-UK, US – Finland, Austria, Sweden. The commission

opposed bilateral agreements and sought a mandate from EU Transport ministers to negotiate air transport agreements on a bloc basis.

The implications of community competence in technical diplomacy for diplomatic of the EU are numerous. First the negotiation on a bloc common line or position generally involves a lengthy, clearing process before daily sessions of a multilateral conference or meetings of an international or regional institution. Similarly, consultations may be undertaken intersession ally. Thus, the balance of EU diplomatic effort tends to be shifted to intra-bloc negotiations. The cleared position is invariably on a lowest common denominator basis.

In the second place, representation by the Commission in effect reduces the negotiating capacity of individual members-state and potentially effectiveness, in that negotiation is not conducted by a professional diplomatic service.

Thirdly, in areas of community competence member-states cannot take part in plenary or other debates of a conference, initiate proposals or broker compromise in open session In practice, the effect is to take out of plenary and informal conference processes European players with varying interests, diplomatic skills and traditional roles.

The effect is well illustrated by Sweden's non-role at the third session of the UN conference on Straddling and Highly Migratory Fish Stocks following entry into EU in 1995. Prior to that, Sweden as an active neutral power has played a prominent role at the conference. The effective removal of individual European players from parts of the conferences of negotiations has altered the dynamic of multilateral conference in a number of respects.

As a block actor, the EU cannot easily perform broker or moderate roles, especially in debates during fluid plenary or working group sessions, initiate flexible proposals. Multilateral conferences also lose the drafting input of individual European states. As a block, the EU tends to be susceptive to general attack if it opposes or appears intransigent on particular issue, and as a result therefore, often does not adopt a position. Consequently appearing passive or quiescent, for the sake of its bloc image.

One of the other reasons for EU non-position as earlier noted, is the internal clearing debate the EU undertakes on a daily basis during multilateral conferences. The excessive diplomatic time devoted to these internal debates means that not only is the EU conducting a conference within a conference, but its positions are often out of phase with other conference initiatives. The EUs bloc composition also means that its

negotiating style is one of tabling its own lowest common denominator amendments rather than acting strategically.

An indirect effect of these developments is to allow wider latitude for small or non-traditional players in multilateral conferences e.g. New Guinea, Morocco and Uruguay. The EU's block presence has not led to obvious counter-blocs so far but the bloc approach has been imitated to some extent, for example the South Pacific Forum.

SELF ASSESSMENT EXERCISE

Assess the activities of the European Court of Justice.

4.0 CONCLUSION

The European Union is the most highly developed regional organization in the world. No other bloc has a common parliament, few have a common external tariff and non is seriously contemplating a common currency or common defence policies. By contrast, the vast majority of the world's regional international organizations are much more inter-governmental in nature. This has a serious implication for diplomatic negotiation in the 20th century.

5.0 SUMMARY

The balance of European Union diplomatic efforts tends to be shifted to intra-bloc negotiation. The cleared position is invariably on a lowest common denominator basis.

6.0 TUTOR-MARKED ASSIGNMENT

1. Give the reasons for the establishment of the EU.
2. What are the implications of the emergence of EU as a bloc in multilateral diplomacy?
3. Critically assess the expansion of the European Union.

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