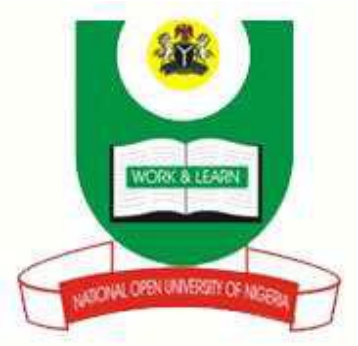

NATIONAL OPEN UNIVERSITY OF NIGERIA

COURSE CODE: INR211

COURSE TITLE:INTERNATIONAL LAW & DIPLOMACY IN EUROPE IN THE 19TH CENTURY

COURSE GUIDE

INR211
INTERNATIONAL LAW & DIPLOMACY IN EUROPE IN THE 19TH CENTURY

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Introduction

Welcome to INR211: International Law and Diplomacy in Europe in the 19th century.

This course is a two-credit unit course for undergraduate students of International Relations. International Law and Diplomacy introduces you to the historical development of diplomatic relations in Europe in the 19th century. The course x-rays the pattern of inter-state relations prior to introduction of international law and diplomacy in the 19th century in Europe. This course also exposes you to the wars fought in European continent in the early 19th century. The contributions of religions organisations to maintain peace at the period is also highlighted. This course also provides you with the requirements of becoming a good diplomat and functions of diplomatic missions.

Course Aims

The aim of this course is to provide you with a comprehensive knowledge of the historical development of international law and diplomacy in Europe in the 19th century. Thus, this course will appraise and analyse the patterns of inter-state relations among the European nations during and before the period in view. Consequently, this course has been prepared to:

- give you all encompassing definitions and meanings of diplomacy
- trace the historical development of diplomacy in the 19th Century Europe
- discuss the type of wars fought in the continent of Europe at the period
- explain the contributions of peace conferences held within the period
- appraise diplomatic method of the 19th Century.

Course Objectives

To achieve the aims set out above, INR211: International Law and Diplomacy in Europe in the 19th century has overall objectives. In addition to this, each unit of the course 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 assess your progress.

Here are the wider objectives for the Course as a whole. On successful completion of this course, you should be able to:

- state the steps taken to ensure peace in the 19th century Europe
- discuss the contributions of Westphalia Treaty in present state system
- give different definitions of diplomacy
- discuss the historical development of diplomacy in Europe
- discuss the origin of international law
- explain the sources of international law
- discuss the contributions of international courts of justice in ensuring peace
- identify the origin of international organisations
- assess the limitations of international law
- discuss the functions of the United Nations in
- discuss international law and diplomacy for ensuring peace in 19th century.

Working through This Course

To complete the course, you are required to read the study units and other related materials. In this course, there are exercises which will assist you to understand the concepts presented in each of the units. 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 Materials

The major materials you will need for this course are:

1. Course guide
2. Study units
3. Assignments file
4. Relevant textbooks including the ones listed under each unit

Study Units

There are four modules made up of 16 units in this course. They are listed below.

Module 1 Diplomatic History of Contemporary Europe

Unit 1 Pre-Westphalia Europe
Unit 2 The Emergence of the Westphalia System
Unit 3 Europe in Search of Peace
Unit 4 The Peace of Paris

Module 2 Diplomacy as a Concept

Unit 1 Definitions of Diplomacy
Unit 2 The Origins of Diplomacy
Unit 3 Professionalising Diplomacy
Unit 4 Modernisation of Diplomacy

Module 3 International Law

Unit 1 Historical Development of International Law
Unit 2 Systematisation of International Law 19th Century
Unit 3 Sources of International Law
Unit 4 Subject Matter and Jurisdiction of International of International Law

Module 4 Features from the 19th Century Diplomacy

Unit1 Institutionalised Approaches to the Control of Inter-State Relations
Unit 2 Approaches to Settlement of International Disputes
Unit 3 Emergence of International Organisations
Unit 4 International Law and International Courts of Justice

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 assignment and the written examination; you will be graded on the marks you obtain in these two areas. The assignments 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 constitute 30 percent of your total score.

Tutor-Marked Assignment (TMA)

Each unit in this course has a tutor-marked assignment. You will be assessed on four of them but the best three performances of the TMA will be used for your 30 percent grading. When you have completed each assignment, submit together with the tutor-marked assignment form, to your tutor before the deadline. 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. Endeavour to read the unit all over before your examination. The final examination will attract 70 percent of the total course grade. The examination will consist of questions, which reflects the kinds of self-assessment exercises and tutor-marked assignment you have previously encountered.

Course Marking Scheme

The table below shows the breakdown of the course marks.

Assessment	**Marks**
Assignments- best three assignments out of four	=30%
Final Examination	=70%
Total	**=100%**

Presentation Schedule

The dates for submission of all assignments and dates for examination will be communicated to you.

Course Overview and Presentation Schedule

Unit	**Title of Work**	**Week activity**	**Assignments**
Module 1 Diplomatic History of Contemporary Europe			
1	Pre-Westphalia Europe	Week 1	Assignment 1
2	The Emergency of Westphalia System	Week 2	Assignment 2
3	Europe in Search of Peace	Week 3	Assignment 3
4	The Peace of Paris	Week 4	Assignment 4

	Module 2 Diplomacy as a Concept		
1	Definitions of Diplomacy	Week 5	Assignment 1
2	The Origin of Diplomacy	Week 6	Assignment 2
3	Professionalising Diplomacy	Week 7	Assignment 3
4	Modernisation of Diplomacy	Week 8	Assignment 4
	Module 3 International Law		
1	Historical Development of International Law	Week 9	Assignment 1
2	Systematisation of International Law	Week 10	Assignment 2
3	Sources of International Law	Week 11	Assignment 3
4	Subject Matter and Jurisdiction of International Law	Week 11	Assignment 4
	Module 4 Features from 19th Century Diplomacy		
1	Institutionalised Approaches to Control of Inter-State Relations	Week 12	Assignment 1
2	Approaches to Settlement of International Disputes	Week 13	Assignment 2
3	Emergence of International Organisation	Week 14	Assignment 3
4	International Law and International Courts of Justice	Week 15	Assignment 4
	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 advantages of open and 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 class work, the study units guides you on where to read, your text materials or set books. 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 point out what you should be able to do at the end of the unit. These learning objectives are meant to guide your study. The moment you complete a unit, endeavour to check whether you have achieved the objectives; this will significantly improve your chances of passing the course. The main body 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, contact your tutor; remember that your tutor's job is to help you. Below are the tips to guide you in achieving success in this course.

a. Organise a study schedule 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.
b. Once you have created your own study schedule, endeavour to stick to it. The major reason why students fail is that they get behind with their course work. If you encounter difficulties with your schedule, please, contact your tutor.
c. Study each unit one after the other.
d. Assemble the study materials for 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.
e. Keep in touch with your study center. Up-to-date course information will be continuously available there.
f. Submit your assignments well before the relevant due dates (about 4 weeks before due dates), keep in mind that you will learn a lot by doing the assignments carefully. 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.
g. 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.
h. 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.
i. 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 submit your tutor-marked assignment to the study centre well before the due date (at least two working days are required). They will be assessed 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 you tutor's comments on an assignment or with the grading of the 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 will be answered instantly. 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 evolution of diplomacy and international law in Europe in the 19th Century and also teaches you the different peace conferences that took place during the period.

Course Code INR211
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MODULE 1 DIPLOMATIC HISTORY OF CONTEMPORARY EUROPE

UNIT 1 PRE-WESTPHALIA EUROPE

CONTENTS

1.0 INTRODUCTION

Core concepts in every field of study especially in international relations as an area of study were developed by historical circumstances. Policy-makers on the other hand search the past for patterns and precedents to guide contemporary decisions. In general, the major antecedents to the contemporary international system are found in European-centered western civilisation.

Great civilisation thrived in other parts of the world; of course, India and China among others have had extensive, vibrant civilisations before the historical antecedents of international law and diplomacy in 19th Century Europe. However, the European emphasis is justified on the basis that the contemporary international relations, both in theory and practical is rooted in the European experience. In this unit, we shall look at the period before 1648. This is referred to (in this course) as the Pre-Westphalia period.

The purpose of this historical overview is to trace important trends over time- the emergency of the state and the notion of sovereignty, the development of international state system. These trends have a direct impact on the evolving of diplomacy and international law as practiced in Europe in the nineteenth century.

2.0 OBJECTIVES

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

- explain the historical overview of events prior to 19th century Europe
- list the events and trends of the past in Europe
- explain the emphasis in European centered civilisation in the 19th Century
- evaluate the impact of history on international relations as practiced today.

3.0 MAIN CONTENT

3.1 Greece and the City-State System of Interactions

The classical Greek city-state system provides one of the antecedents for the New Westphalia order. The Greeks, organised independent city-states, were at the height of their power in 400 B.C and engaged in power politics as catalogued by Thucydides in history of the Peloponnesian War. As the militaries of the great city-states struggled, states carried on economic relations and trade with each other to an unprecedented degree. This environment clearly fostered the flowering of the strong philosophical tradition of Plato and Aristotle. In the city-states setting, each is an independent unit, conducting peaceful relations with each other, as they viewed for power. They became the precursor of the 19th Century diplomatic relations in Europe at the period.

SELF-ASSESSMENT EXERCISE 1

Discuss the historical overview of events prior to 19th Century Europe.

3.2 Inter-State Relations under Roman Empire

Most of the Greek city-states were incorporated into the Roman Empire (50 BC 400 AD). The Roman Empire served as the precursor for large

political system. The leaders imposed order and unity by force on a large geographic expanse-covering much of Europe, the Mediterranean portions of Asia, the Middle East, and Northern Africa. Having conquered far-flung and diverse peoples, the Roman leaders were preoccupied with keeping the various units, tribes, kingdoms and states within their sphere of influence and ensuring that the fluid borders of the empire remained secure from the roving hordes to the North and East.

In fact, the word "empire" came from the Roman experience, which was derived from the Latin *imperium*. The leaders imposed various forms of government, from Roman proconsuls to local bureaucrats and administrators, disseminating Latin language to the far reaches of the empire. They followed the practice of granting Roman citizenship to free peoples in the far-flung empire, while at the same time giving local rulers considerable autonomy to organise their own domain.

Roman philosophers provide essential theoretical underpinning to the empire. In particular, Marcus Tullius (106-43 BC) offered a mechanism for the uniting of the various parts of the empire. He proposed that men ought to be united by a law among nations applicable to humanity as a whole. However, such law among nation did not preclude Cicero's offering more practical advice to Roman leaders: he emphasised the necessity of maintaining state security by expanding resources and boundaries, while at the same time ensuring domestic stability (Cicero 1970). Above all, the Roman Empire provided the foundation for a larger geographic entity whose members, while retaining local identities, were united through universalisation of power.

SELF-ASSESSMENT EXERCISE 2

The Roman Empire served as the precursor for large political system. Discuss.

3.3 Decentralised Power in Europe

When the Roman Empire disintegrated in the fifth century, power and authority became decentralised in Europe, other forms of interaction such as tourism, commerce, and communication flourished, not just among the elite, but also among merchants groups and common citizens.

By 1000 AD, three civilisations had emerged from the rubble of Roman Empire. First was the Arabic civilisation, which had the largest geographic expanse, stretching from the Middle East and Persia through North Africa to the Iberian Peninsula? United under the religious and political domination of the Islamic Caliphate, the Arabic language, and advanced mathematical and technical accomplishment, the Arabic

civilisation was a potent force. The second civilisation was the Byzantine Empire located near the core of the old Roman Empire in Constantinople and united by Christianity. Third was the rest of Europe, where with the demise of the Roman Empire, central authority was absent, languages and culture proliferated, and the networks of communication and transportation developed by the Romans were disintegrating (Karen, 1999).

Much of Western Europe reverted to feudal principalities, controlled by lords and tied to fiefdoms that had the authority to raise taxes and exert legal authority. Lords exercised control over vassals, the latter working for the lords in return for the right to work the land and acquire protection. Feudalism, which placed authority in private hands, was the response to the prevailing disorder.

The preeminent institution in the medieval period was the church. Virtually all other institutions were local in origin and practice. Thus, authority was centered both in Rome and in its agents; the bishops were dispersed throughout medieval Europe or in the local fiefdom. The bishops, despite their overarching allegiance to the church, seized considerable independent authority. Economic life was also local.

In the late eighth century, the church's monopoly on power was challenged by Carolu Magnus, or Charlemagne, the leader of the Franks (what is today called France). Charlemagne was granted authority to unite Western Europe in the name of Christianity against the Byzantine Empire in the East. The Pope made him emperor of the Holy Roman Empire. In return, Charlemagne offered the Pope protection. The debate between religious and secular authority continued for several years with writers periodically offering their views on the subject. One of such writers was Dante Alighieri (1265 – 1321), who argued in Dante, 1977 that there should be a strict separation of the church from political life. This question was not resolved until 300 years later at the Treaty of Westphalia.

3.4 Developing Transnational Network

After 1000 AD, secular trends began to undermine both the decentralisation of feudalism and the universalisation of Christianity. Commercial activity expanded into large geographical areas as merchants traded along safer transportation routes, all forms of communication improved, new technology, such as water mills and windmills, not only made daily life easier, but also provided the first elementary infrastructure to support agrarian economies. Municipalities such as the reinvigorated city-states of northern Italy-Genoa, Venice, and Milan established trading relationships and met at key locations,

arranging for the shipment of commercial materials and even agreeing to follow certain diplomatic practices to facilitate commercial activities. These diplomatic practices led to establishment of embassies with permanent staff, sending special consuls to handle commercial disputes, and sending diplomatic messages through specially protected channels. These were the immediate precursors of contemporary diplomatic practices.

The desire to expand economic intercourse further coupled with the technological inventions that made ocean exploration safer, fueled a period of European territorial expansion. Individuals from Spain and Italy were among the earliest of these adventures. Christopher Columbus sailed to the New World in 4292, Herman Cortes to Mexico in 1519, and Francisco Pizarro to the Andes in 1533. During this age of exploration, European civilisation spread to distant shores. These events (the gradual incorporation of the underdeveloped peripheral arrears into the world capitalist economy, and the international capitalist system) marked the beginning of contemporary international relations.

In the 1500s and 1600s as explorers and even settlers moved into the "New World", the old Europe remained unsettled. In some key locales such as France, England, Aragon and Castile in Spain, feudalism was replaced by increasingly centralised monarchy. The move towards centralisation was highly protested against by the masses. The masses angered by taxes imposed by newly emerging states, rebelled and rioted. New monarchs needed the tax funds to build their armies. They used their armies to consolidate their power internally and to conquer more territory. Other parts of Europe were mired in the secular and religious controversy, Christianity on the other hand was turn by the catholic and protestant spilt. In 1648, that controversy inched its way toward resolution.

SELF-ASSESSMENT EXERCISE 3

Explain the emphasis in European-centered civilisation in the 19th century.

4.0 CONCLUSION

States had existed before Westphalia, and they had conducted relations with each other, but they had done so on different basis. The ancient world had known a succession of sprawling dynastic empires and tiny city-states, and it had known the vast of Roman Empire, which had encompassed the civilised Western Europe. However, it had never known a national state or a system of independent states resting upon something akin to the theory of sovereignty.

5.0 SUMMARY

In studying diplomatic relations in the 19th century Europe, it is necessary to discuss the nature of the evolution of the states of Europe prior to the 19th century. Consequently, in this unit, we have traced the historical overview of important trends, overtime leading to the emergence of the concepts of diplomacy and international law in interstate relations of 19th Century Europe. It is thus, established that, the major antecedents to contemporary international system are found in European-centered Western civilisation. The European emphasis is justified on the basis that contemporary international relations, in both theory and practice, is rooted in the European experience.

6.0 TUTOR-MARKED ASSIGNMENT

1. Which of the historical periods have mostly influenced the development of contemporary inter-state relations?
2. The classical Greek city-state system provides one of the antecedents for the Westphalia order. Discuss
3. What led to the disintegration of Roman Empire in the fifth century?

7.0 REFERENCES/FURTHER READING

Cicero, R. (1970). *Roman Politics and Society.* London: Oxford University Press.

Dante, (1977). "De Monrchia." In *the Portable Dante.* Paolo Milano (Ed.). New York: Pengun Press.

Karen, M. (1999). *Essentials of International Relations*. New York: W.W. Norton & Company.

Norman, D. P. & Howard, C. P. (2007). *International Relations* (Third Revised Edition) India: A. I. T. B. S. Publishers.

UNIT 2 THE EMERGENCE OF THE WESTPHALIA SYSTEM

CONTENTS

1.0 INTRODUCTION

The 30 years war in Europe stemmed up from the protestant-Catholic schism. It began with the protestant reformation and intensified by the catholic counter-reformation. It also involved dynastic rivalries of the Hapsburgs and the Bourbons as well as some issues among German Princes. After a long destructive struggle, the exhausted contenders accepted a religious and political settlement that paved way for a semblance of European stability. The Treaty of Westphalia formalised the nation state system in Europe through its recognition that the empire no longer commanded the allegiance of its parts and that the pope could not maintain his authority everywhere, even in spiritual matters. Thus, by 1648, the state system was fully established in Europe and the states Europe of were on their own establishing a form of diplomatic relations among themselves.

2.0 OBJECTIVES

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

- evaluate the contributions of the Treaty of Westphalia to development of diplomatic relations in Europe in the 19th Century
- identify the major principles of the Westphalia Treaty
- explain the reasons for westernisation of international system.

3.0 MAIN CONTENT

3.1 The Treaty of Westphalia

The 30 years war (1618-1648) devastated Europe, with armies plundering the central Europe landscape, fighting battles and surviving by ravaging the civilian population. However, the Westphalia Treaty ended the conflicts but had a profound impact on the practice of international relations.

First, the Treaty of Westphalia embraced the notion of sovereignty. Within a short period, virtually all the small states in central Europe attained sovereignty. The Holy Roman Emperor died and Monarchs in the West realised that religious conflicts had to be stopped. Consequently, the monarchs agreed to fight on behalf of either Catholicism or Protestantism. The monarch also gained the authority to choose the version of Christianity for his people. This means that the monarchs and not the church had religious authority over the people. This development showed general acceptance of sovereignty and it made the sovereign to enjoy exclusive rights within a given territory. With the power of the pope and the Emperor stripped by the Westphalia Treaty, the notion of the territorial state was accepted.

Secondly, the sovereigns had seen the devastating effects of mercenaries fighting wars. Thus, after the Westphalia Treaty, sovereigns sought to establish their own permanent national militaries. The growth of such forces led to increasingly centralised control as the new states had to collect taxes to pay for these militaries and the sovereigns assumed absolute control over the troops. As a result, the state with a national army emerged, its sovereignty was acknowledged, and its secular base was firmly established.

Thirdly, the Treaty of Westphalia established a core group of states that dominated the world until the beginning of the 19th Century. These states include Austral, Russia, Prussia, England, France and the United Provinces (Netherlands and Belgium). Those in the West (England, France and the United Provinces) underwent an economic revival under the ages of capitalism, while those in the East (Prussia and Russia) reverted to feudal practices. During this period, private enterprises were

encouraged in the West. These states improved infrastructure to facilitate commerce and great training companies and bank emerged. In contrast, in the East, serfs remained on the land and economic change was stifled. However in both regions, absolutist states dominated.

The Treaty of Westphalia, European politics was dominated by multiple rivalries and shifting alliances till the end of 18th Century. These rivalries were also played out in regions beyond Europe, where contending European states vied for power. The most notable one was Great Britain and France in North America.

SELF-ASSESSMENT EXERCISE 1

What do understand by "sovereignty?"

3.2 The Growth and Development of European Power

Europe was the centre of world politics in the 18th Century. At the beginning of the 19th Century, Europe occupied a position of power and importance out of all proportion to its size. Vast areas of Asia and Africa were under the colonial rule of different European powers. Australia was a part of the British Europe.

This domination and shaping of the world by the Europeans was a significant characteristic of the 18th and 19th centuries. The growth of the European powers enabled Great Britain, France and other European countries to thrust outward and take control of North and South America and some parts of Asia. Within this period, other non-European empires or dynasties began to decline and fall. The process accelerated in the 19th Century, and the Europeans came to dominate the world and to see themselves as forming an exclusive club enjoying rights superior to other political communities (Rouke 2008).

One reason for the global Westernisation was the scientific and technological advances that sprang from the renaissance in Europe. This sparked the industrial revolution, which began in the mid-17th Century in Great Britain. During the following 150 years, industrialisation spread rapidly but not globally, instead, it was mostly a western phenomenon, with the notable exception of Japan.

Industrialisation and associated advances in weaponry and other technology had a profound impact on world politics. Europe gained strength compared with unindustrialised Asia and Africa. Industrialisation also promoted colonialism, because the manufacturing countries need to expand resources and markets to sustain their economies. Many industrialised countries also converted colonies as a

matter of prestige. The result was an era of Euro-American imperialism that spread to all corners of the globe.

China, it should be noted, was never colonised, but after the 1840s, it was divided into spares of influence among the European powers. Only Japan and Siam (now Thailand) remained truly sovereign. Americans joined the scramble for colonies and acquired Hawaii and Samoa in the 1890s and in 1898 added Guam, Puerto Rico and the Philippines. Moreover, the American military interventions in the Caribbean, the Central American Region became so frequent in the following decades that the true sovereignty of those countries was questionable. Even though, these colonial empires were for the most part, not long-lived, they still had a major deleterious impact that led to many revolutions in Europe within the period.

3.3 Revolutions in Europe

A number of significant developments had taken place during the 18th Century. The industrial revolution that took place in Europe had the invention of steam engine by British James Watt in 1765 as the first step in the direction of industrial revolution. Within a very short period, the industrial development made modernisation possible not only in England, but also in France and Germany. Modernisation resulted into series of uprising against the European dominating imperial powers by the colonised states and empires.

The two major revolutions recorded within this period were the American Revolution of 1776 against British rule and the French Revolution of 1879 against absolute rule. The 13 British colonies in North America declared their independence in 1776. After a bitter struggle between the British armed forces and the colonial army led by George Washington, the British Government had to accept the independence of the 13 colonies in 1783. The newly independent colonies framed their constitution in 1787, and set up the federal country the United States of America. The United States assumed the role of protector of all the republics in the "new world" because of Monroe Doctrine in 1823. She became the dominant power in the American continent.

The third significant development was the French Revolution of 1789. With the slogan of liberty, equality and fraternity, a new era in European history began. The fourth major result of the European revolutions was the emergence of Russia and Prussia as powerful nations in Europe. The division of Poland between Russia, Prussia and Austria was the fifth important event of the 18th Century Europe. Parts of Poland were conquered by Russia and Prussia in 1772. In order to balance the power,

Austria annexed Poland Galicia province. Some more Polish territory was annexed in1793 by Russia, Prussia and Austria among themselves. Poland ceased to exist, but Polish nationalism could not be destroyed. Poland as a buffer state between Austria, Russia and Prussia was gone thereby creating tense situations between the three European powers.

Each revolution was the product of enlightenment thinking as well as Social Contract Theorists. During the modernisation period, thinkers began to see individuals as rational, capable of understanding laws governing them and working to improve their conditions in society.

SELF-ASSESSMENT EXERCISE 2

Identify the major events that led to the revolutions in Europe.

3.4 Aftermath of the Revolutions

Two core principles emerged in the aftermath of the American and French revolutions. The first is that the absolutist rule is subject to limits imposed by man. In the Treats on Government, the English philosopher John Locke (1632 – 1704) attacks absolute power and the notion of the divine right of kings. Locke argues that the state is a beneficial in situation created by ration men in order to protect both their national rights (life, liberty and property) and their self-interests. Men agree to establish government to ensure natural rights for all. The crux of Locke's argument is that political power ultimately rests with the people rather than with the leader or the monarch. The monarch derives his legitimacy from the consent of the governed (John Locke 1960).

The second core principle that emerged at this time is nationalism, wherein the masses identify with their common past, their language, customs and practices is a natural outgrowth of the state. Nationalism leads people to participate actively in the political process. For instance, during the French revolution, a patriotic appeal was made to the masses to defend the nation and its new ideals. This appeal forged an emotional link between the masses and the state. These two principles-legitimacy and nationalism rose out of the American and French revolutions to provide the foundation for the politics in the 19th Century Europe (Karen 1999).

SELF-ASSESSMENT EXERCISE 3

Discuss the core principles that emerged after the America and French revolution.

4.0 CONCLUSION

We have attempted an analysis of the state system, which emerged in Europe through the Treaty of Westphalia including two of its corollaries – sovereignty and nationalism. The history of the growth and development of Europe, which led to the revolutions in Europe in 18th and early 19th Century were also highlighted. We noted that sovereignty is the legal theory, which sustains the state and the state system, and that nationalism is the moving spiritual or emotional force of the state. They have led to revolutions, wars and to international anarchy. They are perhaps the most formidable forces that mobilised the European states in the 19th Century to search and inculcate the concept of diplomacy and international law in the inter-state relations to ensure peaceful co-existence for building a true European community.

5.0 SUMMARY

Modernisation paved way for nationalism, which prepared the people for the revolutions that occurred in Europe in 18th Century. Its immediate cause was the imperialism drive of the European states against themselves. It is most obvious result was the triumph of principle of national self-determination in Central and Eastern Europe. The last of the non-national empires on the continent were shattered in the cause of the revolutions and from their ruins were constructed new or enlarged European states, which set in the 19th Century to search for peaceful means of existence through diplomacy and international law.

6.0 TUTOR-MARKED ASSIGNMENT

1. Write short notes on:

(a) Nationalism
(b) Revolution and
(c) Sovereignty.

2. Give a detailed account of the American and French revolutions.
3. What are the major contributions of the Treaty of Westphalia to the development of early Europe?
4. Scholars usually designate 1648 (the date of the Treaty of Westphalia) as the time when the state system began to take on its modern form. Discuss.

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UNIT 3 EUROPE IN SEARCH OF PEACE

CONTENTS

1.0 INTRODUCTION

The 19th Century was described as a combination of quest for peace, nationalism, economic imperialism and balance of power in the European continent. Nationalism became the dominant factor after the French Revolution. It facilitated unification of Germany and Italy, gave birth to demand for nation-states; and indeed after the First World War, a number of states were created in Europe on the basis of nationalities. Economic imperialism was the outcome of ultra-nationalism, industrial revolution and capitalism. Vast empires were built by Britain, France, Germany, Portugal and European powers. These overseas colonies were used for securing raw materials and for marketing the finished goods of industrialised ruler nations of Europe. Most of Asia and practically the entire Africa came under their imperial rule.

Furthermore, within Europe, the principle of balance of power gave rise to frequent conflicts and secret diplomatic moves. If a country became or try to become more powerful than others do, her strength had to be balanced by other nations either individually or collectively. European politics was guided by the objective not to allow any country to become a powerful nation. In other words, balance of power was sought to be maintained. This led to formation of power blocks and military

alliances. These alliances were to some extent responsible for the First World War, which began in 1914.

2.0 OBJECTIVES

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

- explain the major events that led to Congress of Vienna
- identify the major principles of balance of power
- evaluate steps taken by the European nations to ensure peace
- list the contributions of nationalism to the practice of diplomacy in the19th Century Europe.

3.0 MAIN CONTENT

3.1 The Congress of Vienna (1814-15)

The Congress of Vienna (1814-15) was an important landmark in the diplomatic history of Europe. We had pointed out in the last unit that the famous French revolution took place in 1789. A promising army Commander, Napoleon Bonaparte took advantage of instability created by the revolution. He assumed the title of Emperor of France. Under his leadership, France became the most powerful nation in Europe. He launched aggressive attacks against various European countries. His ambition was to rule the entire Europe and even beyond. Thus, adventurism policy of France turned all-important states of Europe against her.

Despite many victories, France could not conquer many European areas due to the supremacy of the British Navy on the seas. Napoleon conquered many countries. Nationalism assumed dominant position in France as well as in the countries that had become victims of her aggression. Napoleon appointed his brother Joseph as the King of Spain. This aroused national sentiments of the people of Spain against the new ruler as well as France. Napoleon's fall became imminent by1814. The victorious nations concluded the first Treaty of Paris with France on May 30, 1814. Napoleon was sent to the Island of Elba, and the legitimate ruler of Spain (King Louis xviii) was reinstated. France was

restored to her pre-revolution frontiers. It was agreed in the Treaty of May 1814 that a "European Congress" would be held in Vienna (Austria) to redraw the political map of Europe (Khanna, 2004).

The Congress of Vienna met in September 1814 and accomplished its difficult task after more than six months. The settlement of Vienna was signed by European nations on June 9, 1815 a few days before the final defeat of Napoleon. We have seen that after May 1814 Napoleon was defeated and sent to Island of Elba. However, during the summer of 1815, he gathered a large army and moved to meet his enemy in the North. He was however defeated at the famous waterloo. The defeat of Napoleon and the spanning of the settlement at Vienna marked an important watershed in European politics. According to Albrecht-Carrie "the period of the French revolution and the Napoleonic episode was a major convulsion in the annals of Europe" (Khanna, 2004). Leading diplomats of Europe assembled at Vienna and concluded a Permanent Peace Pact. Practically all the European rulers attended the Congress. The prominent participants of the congress included Czar Alexander of Asia, Talleyrand as the representatives of Louis xviii of France, the Duke of Wellington and Castlereagh representing Britain and Austrian Chancellor (Prime Minister) Metternich. The Congress restored 'legitimacy' and boundaries of several European countries were redrawn. Metternich chaired the Congress.

The Congress decided not to push legitimacy so far as to restore the large number of small German states of 1789. However, a loose German Confederation of 38 states was created. Austria tried to dominate the confederation. The main agency for the enforcement of the Vienna settlement was the Quadruple Alliance of Austria, Great Britain, Prussia and Russia. Prussia was the most powerful of all the German states. The alliance became Quintuple Alliance with the addition of France in 1818. However, the hope of lasting peace was short-lived. New combinations and alliances took the place of old order. Different countries tried to establish their hegemony over others. These rivalries were aggravated by the rise of nationalism towards the end of the 19th Century.

SELF-ASSESSMENT EXERCISE 1

Discuss the events that led to the Congress of Vienna.

3.2 Balance of Power

The rise of Napoleon Bonaparte confronted Britain and other nations of Europe with a threat that they disposed only after many years of war. The allies formed one coalition or alliance after another, but Napoleon seemed able to shatter all. Consequently, British sea power and finances

combined with the nationalism that Napoleon himself had evoked in Europe brought allied success and the restoration of relative peace.

How was the relative peace in Europe achieved, managed and preserved for the relative period it lasted? The answer lies in the concept called "Balance of power". The concept of balance of power assumes that through shifting of alliances and countervailing pressures no one power or combination of powers will be allowed to grow so strong as to threaten the security of the rest. Thus, in the 19th Century balance of power meant that the independent European states, each with relative equal power feared the emergence of any predominant state among them. Thus, the European states formed alliances to counteract any potentially more powerful faction thereby creating a power balance in Europe.

The European states also promised in the Convention of April 23, 1814 "to put an end to the miseries of Europe, and to found her repose upon a just redistribution of forces among the nations of which she is composed of". The ensuing conference, the famous Congress of Vienna of 1814-15, sought to establish a new balance of power in Europe based upon the principles of legitimacy and, as far as possible, the preservation of the status quo. The treaties signed after 1815 were designed not only to quell revolution from below, but also to prevent the emergence of hegemony, such as France under Napoleon. The Vienna arrangements proved to be the last major peace settlement, which could be based unanimously and consistently on an avowed balance of power policy (Gulick, 1943).

SELF-ASSESSMENT EXERCISE 2

Explain the concept of balance of power.

3.3 The Breakdown and Solidification of Alliances

The balance of power, which was evolving from a simple to an increasing complex balance, was obviously an unstable one, which continued to threaten to break down into a global revolution until a more stable one develops or until other curative factors began to have effect. Thus, by the waning years of 19th Century, the balance of power system had weakened.

Initially, the alliances had been fluid and flexible, with allies changeable, but later in the 19th Century, the alliances became solidified. Two contending camps emerged, the Triple Alliance, which comprises of Germany, Austria, and Italy in 1882 and the Dual Alliance, which comprises of France and Russia in 1893. In 1902, Britain broke

from her "balancer" role and joined a naval alliance with Japan to prevent a Russo-Japanese rapprochement in China. This alliance marked a significant turn, for the first time in history, the European state (Great Britain) turned to Japan an Asian country in order to thwart the European ally (Russia). In addition, in 1904, Britain joined with France in the Entente Cordiale.

The end of the balance of power system as well as the historic end of the 19th Century came with the First World War. The two sides were enmeshed in a struggle between competitive alliances. This was made all the more dangerous by the German position. Germany was not satisfied with the solutions meted out at the Congress of Berlin. Germany still sought additional territory, even if it means the entire European territory, then the map of Europe would have to be redrawn.
Germany being a "latecomer" to the core of European power, did not receive the diplomatic recognition and status its leaders desired. Thus, with the assassination of Archduke Franz Ferdinand, the hair of to the throne of the Austro-Hungarian Empire in 1914 at Sarajevo, Germany encouraged Austria to crush Serbia. This is because Germany did not want to see the disintegration of the Austro-Hungarian Empire, which was its major ally.

Within the system of alliances, once the fateful shot had been fired, states honoured their commitments to their allies thereby sinking the whole continent in conflict. Through support for Serbia, the unlikely allies of Russia, France, and Great Britain became involved and through Austria, Hungary and Germany entered the fray. It was anticipated that the war would be short and decisive, but it was neither. Between 1914 and 1918, soldiers from more than a dozen countries endured the persistent degradation of trench warfare and the horrors of gas warfare. According to (Karen, 1999) more than 8.5 million soldiers and 1.5 million civilians lost their lives. Thus, symbolically, the 19th Century ended as "the century of relative peacefulness ended in a system-wide confrontation calling for a new diplomatic relations guided by a general rule (international law) for a better relationship among European nations and the world at large.

3.4 The Concert of Europe

The Concert of Europe was successful application of peace idea by European states, which had been entertained for centuries and had promoted many earlier experiments in interstate co-operations. The alliance system, which emerged from the Congress of Vienna, entered in the Quadruple and Holy Alliances, extended, and applied at series of international conferences in the year following 1815. It was presumably based on just such concert and was in fact called the Concert of Europe.

The great powers of Europe were expected to cooperate harmoniously to prevent hostile groupings of powers; hence, it was conceived to be on a different and perhaps a higher plane than the balance of power.

The Concert of Europe was a loose relationship among the major European powers, which came into being soon after the Napoleonic Wars and lasted until World War 1, with the second half of the 19th Century as the time of its greatest effectiveness. Thus, it was a controlling mechanism in Europe during one of the periods of the most successful operation of balance of power. In addition, within its broad framework, the states of Europe played the power game according to rules, which for a time concealed the basic changes, which were occurring in relations of states.

The Concert of Europe helped to prevent major conflicts on the continent of Europe or in peripheral or colonial areas where the various European states appeared to be divergent. It was most successful in dealing with the Balkan areas, although it did not prevent serious wars such as the Crimean War of 1877-78. However, it did succeed for several decades in localising wars in the Balkans and in resolving the conflicting interests of the great powers there without resort to war (Palmer &Perkins 2007).

The Congress of Berlin of 1878 subjected the Concert of Europe to a critical test. In the late 19th Century, the Concert of Europe collapsed because its foundations had not been seen as secured as its proponent had fancied. Its existence had been possible only under peculiarly favorable conditions, but with the rise of Germany, the growth of imperialistic rivalries and the division of Europe into two armed camps with opposing alliances, the Concert disintegrated into a “melee” of contending states. Consequently, instead of superseding the balance of power, it had been depended upon a balance, which for a time had made great power cooperation both desirable and possible.

SELF-ASSESSMENT EXERCISE 3

What are the basic principles of Concert of Europe?

4.0 CONCLUSION

In this unit, we have established that the Congress of Vienna, balance of power and the Concert of Europe dominated diplomatic relations in the 19th Century Europe. The concepts were the major options applied by the European states to end revolutions and conflicts among the European nations. There was a belief that peace and security are best preserved by a state of equilibrium between the major players in a potential war. This

led to formation of alliances among nations and signing of treaties. However, these attempts could not ensure peace among nations, but resulted into the catastrophic World War 1 as most of these alliances lived only for a short period ending most of the time in new alliances threatening the former allies.

5.0 SUMMARY

The balance of power and the Concert of Europe and conditions laid on the Congress of Vienna worked best on European continent in those periods of modern history in which a number of states of approximately equal strength, with policies controlled by a limited number of persons, competed with each other according to well-established rules. After the French revolution, and particularly after the expansion of European balance system to a world system, conditions became less favourable for the successful adjustment of a balance among nations.

6.0 TUTOR-MARKED ASSIGNMENT

1. What do you understand by "Concert of Europe"?
2. Explain the conditions that led to the Congress of Vienna.
3. What are the historical origins of the European balance of power-system?
4. What do you understand by "Breakdown and Solidification of Alliances?

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UNIT 4 THE PEACE OF PARIS

CONTENTS

1.0 INTRODUCTION

The First World War started on July 28th, 1914 with the declaration of war by Austria-Hungary upon Serbia. It was described as the bloodiest and costliest war of the period. The war was fought between Allied and Associated Power simply put the "Allies" on the one side and the "Central Powers" on other. Prominent among the Allies were Great Britain, France, Russia, United States and Japan. The "Central Powers" were Germany, Austria-Hungary, Turkey and Bulgaria. The war ended with unconditional surrender of Germany in November 1918. Peace was formally restored with the signing of a number of peace treaties between the Allies and the Central Powers between 1919 and 1920. The most significant of all was the Treaty of Versailles concluded between the Allies and defeated Germany. The treaty was never negotiated with the vanquished. It was drafted by the Allies and imposed upon Germany. Thus, the Germans called it "diktat". It was signed on June 28, 1919.

2.0 OBJECTIVES

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

- explain the proceedings of the Paris Conference
- list the 14 points of President Wilson
- evaluate the Treaty of Versailles
- explain the organisation and procedures of the Paris Conference
- explain the reasons for the failure of the Treaty.

3.0 MAIN CONTENT

3.1 The Fourteen Points of President Woodrow Wilson

President Woodrow Wilson of the United States of America summarised his programme for "Peace without Victory" in January 1918, in a message to the Congress at Paris. He warned that victors should not claim any price and that the vanquished should not be punished. In January 1918, the war was still going on. The chances of Allied victory were still not very clear. However, expecting a victory of Allies, the US (United States of America) President made a statement of the war in his famous "Fourteen Points". He suggested the following:

1. "Open covenant of peace, openly arrived at", and the abolition of secret diplomacy.
2. "Absolute freedom of navigation upon the seas, outside territorial waters, alike in peace and in war" except by international action.
3. "The removable, so far as possible, of all economic barriers and the establishment of an equality trade conditions…"
4. "Absolute guarantees… that national armaments will be reduced to the lowest point consistent with domestic safety".
5. "A free, open minded and absolutely impartial adjustment of all colonial claims" in accordance with the "interests of the population concerned".
6. "The evacuation of all Russian territory" and "…an unhampered and unembarrassed opportunity for the independence determined by her own political development and national policy…"
7. The evacuation and restoration of Belgium.
8. The evacuation and restoration of France and return of Alsace-Lorraine.
9. A re-adjustment of the frontiers of Italy along clear lines of nationality.
10. The freest opportunity of autonomous development for the people of Austria-Hungary.

11. Evacuation and restoration of Romania, Serbia and Montenegro… free access to sea for Serbia…
12. Autonomous development for non-Turkish possession of the sultan…
13. Resurrection of independent Poland with access to the sea.
14. Formation of "a general association of nations… under specific covenants for the purpose of affording mutual guarantees of political independence and territorial integrity to great and small alike"

These 14 points were accepted as the basis of peace and negotiation by all the parties to the war. However, in practice many of these principles were not strictly observed by the peacemakers at Paris (Khanna, 2004).

SELF-ASSESSMENT EXERCISE 1

Discuss the 14 point agenda of Woodrow Wilson.

3.2 The Paris Peace Conference

The First World War ended with the unconditional surrender of Germany on November 11th, 1918. Representatives of Allied and Associated Powers assembled at Paris on 18th January 1919 to draw a new political map of Europe and the world. It was the most significant peace conference after the Congress of Vienna in 1814-15 after the Napoleonic wars.

The peace conference turned out to be merely "Victors Club". Only the leaders of the victorious countries attended the peace conference. The defeated countries were not allowed any say in the proceedings of the conference. For example, Germany delegations were not invited to Paris, but were lodged in a far away hotel surrounded with barbed wires and police officers on duty. The delegates were called only when the draft of the Treaty of Versailles was ready. They were asked to carry the draft to Germany and send suggestions and objections if any, in writing.

The second time the German delegates met the Allies' representatives was on the occasion of signing of the Treaty. The written comments submitted by the German delegation were considered but mostly rejected. The revised text of the Treaty was given to Germans with the threat that war would be resumed if it were not signed within five days. During the time of signing of the Treaty, the German delegates were brought in and taken out of the hall in the manner criminals are escorted by armed guards. They were not allowed to sit on the conference table.

The Germans were compelled to sign a document they totally disapproved.

Four prominent European leaders dominated the Paris Conference. They were President Woodrow Wilson of United States of America; Prime Minister Lloyd of Great Britain; Prime Minister George Clemenceau of France and Prime Minister Vittorio Orlando of Italy. Woodrow Wilson, a Professor of Political Science, was an idealist.

While Wilson wanted "peace without victory" and no punishment for vanquished, Lloyd George was determined to teach the Germans a lesson. George Clemenceau often called "Tiger" was a shrewd old man and being the leader of the host country was chairman of the conference. His aim is to "exalt and secure France, and to weaken Germany". He was prudent and diplomatic and paid "lip service to the US ideals and British hopes". Wilsonian approach was more upset by the cleverness of the British and French leaders. Vittorio Orlando of Italy was a professor of Law and had a little knowledge of English Language. His main concern was the fulfillment by other Allies, the promises made to Italy by England and France through the secret treaty signed by them at London in 1915, which brought Italy into the war. He wanted to secure all the territories promised to Italy. Wilson insisted on his idealism and his 14-point agenda; he refused to recognise the secret agreement. Orlando often irritated Wilson by his selfish arguments to the extent that Wilson at one state temporarily walked out of the conference.

Clemenceau was only interested in securing maximum gains for France and weakening Germany. He was rather indifferent to the proceedings of the conference. However, the problems being tackled by the conference were difficult and complicated. The peacemakers at Paris wanted not only to restore peace but also to create a new social order that will end all future wars. This turned out to be an impossible task. The conference leaders wanted to secure democracy in the world. They determined to establish an international organisation for the peaceful settlement of disputes. However, the biggest mistake made by the leaders of the conference was the exclusion of defeated countries and Russia from the conference. Consequently, the League of Nations set up by the conference never enjoyed universal support.

There was a great conflict between idealism of Woodrow Wilson and realism of Clemenceau and Orlando. While European leaders believed in imposing penalties on defeated powers, Woodrow Wilson wanted to create a new world order based on cooperation and understanding. Lloyd George adopted a middle course. He wanted to restrict the might of Germany; still he wanted a liberal attitude towards that country. He did

not want revenge. He worked for world peace and for strengthening the British trade and commerce.

It cannot be said that Wilson's idealism was totally given up; however, there is no doubt about the fact that Clemenceau had the final say in the settlement of the various demands and conflicts. The peace of Paris was largely based on materialism and revenge (Khanna, 2004).

SELF-ASSESSMENT EXERCISE 2

The Peace of Paris was largely based on materialism and revenge. Discuss.

3.3 The Treaty of Versailles

The Treaty of Versailles was the most important document signed at the Paris Conference. However, it turned out to be very controversial. The Treaty was concluded between the Allies and Germany. It was divided into 15 chapters and had 439. The first part of the Treaty contained the Covenant of the League of Nations. The League failed to enjoy universal recognition because its Covenant was product of Treaty that was never negotiated.

Article 231 of the Treaty declared Germany solely responsible for the war. This meant that German leaders were guilty and deserved punishment for the crime by them against international law and morality. The German Emperor, Kaiser William II was found guilty of violation of international law and treaties. The Allies also acquired the right to take to court and punish the Ex-Kaiser and his advisers. He was charged with having imposed the war on the Allies, for violation of law and treaties, and particularly for having caused damage to civilian population and property. According to the terms of the Treaty, the new German government was bound to hand over such persons for trial as may be determined by the Allies, to be guilty and deserving punishment.

However, the German people never accepted the view that their country alone was responsible for the First World War. Even, Hindenburg who was declared by the Allies to be one of the war criminals was in 1925 elected president of Germany.

Another important provision of the Versailles Treaty was the establishment of a world organisation known as League of Nations. Its constitution called "Covenant" was adopted at the Paris Conference; and included in all the peace treaties. The League was to consist of an Assembly, a Council and a Secretariat. The Treaty also set up a Permanent Court of International Justice and International Labour

Organisation. These bodies were meant to maintain peace in the world, settle international disputes peacefully, punish countries that might break the Covenant, and improve the social and economic life of the people including the workers all over the world.

4.0 CONCLUSION

The First World War was fought to avert future wars. The peace conference and treaties concluded after the war destroyed the hopes and aspirations of those who called the war as "war to end wars". The peace conference at Paris started with a lot of hopes and expectations. However, the treaties concluded at the conference were below the expectations. The Versailles Treaty was never accepted.
The organisation and procedure of the conference and negotiation violated the principles and rules that were supposed to be followed. The German delegation was not consulted when the Treaty was being drafted. As earlier stated, the German delegates came face to face with the conference leaders only on two occasions - the time of receiving the draft and the time of signing the Treaty.

Furthermore, the German government was threatened with the resumption of war if it did not accept the Treaty within a stipulated period (5 days). Every treaty or agreement is ordinarily negotiated between the parties to the treaty or pact. Versailles Treaty was never negotiated. It was imposed on Germany. Thus, the Germany delegation called it "dictated peace" (Khanna, 2004).

Versailles Treaty was never negotiated; the victors on the vanquished imposed it. However, most peace treaties are in a way dictated, but in the case of the Treaty of Versailles, the element of dictation was more apparent than in previous peace treaty of the period. The Treaty was not only condemned by Germans and later destroyed by Hitler, but was also described all over the world as unfair and unjust. There can only be peace if there is satisfaction but, the Versailles Treaty and other peace treaties concluded at Paris Conference created dissatisfaction. In fact, the Treaty of Versailles was the prelude to the Second World War.

5.0 SUMMARY

The Treaty of Versailles was a betrayal of Germany who surrendered on the basis of Wilson' "14 Points". These points included among others, the principle of self-determination and reduction of armaments to a point only necessary for self-defence. Wilsonian principles were openly flouted. The Paris Conference as explained turned out to be a "Victors Club". The leaders of the Conference were busy in dividing the booty of the war among themselves and in the destruction of the vanquished. The

terms of the Treaty were one-sided. Certain conditions were imposed on the vanquished, which were not accepted by the victors. In fact, the 14 points were observed only to the disadvantage of Germany. They were ignored where the Allies' interests were affected.

The leader of the Germany at Paris pointed out that his country was surrendering under pressure, but that Germany will never forget that it was unjust Treaty. The primary purpose of the Treaty was to "teach a lesson" to Germany. Lloyd George admitted that those who started the war (Germany) must be taught a lesson not to do the same again (Khanna 2004). In fact, the Allies went too far in their attempt to teach Germany a lesson. Germany indeed caused another war within 20 years.

6.0 TUTOR-MARKED ASSIGNMENT

1. The Paris Conference turned out to be a "Victors Club". Explain this phrase in relation to the flaws of the Paris Conference.
2. Explain the watershed in the 14-point agenda of Woodrow Wilson.
3. The Germans never accepted the Treaty of Versailles. Discuss.
4. The purpose of using the First World War as end to "future wars" was not actualised. Discuss.

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MODULE 2 DIPLOMACY AS A CONCEPT

UNIT 1 DEFINITION OF DIPLOMACY

CONTENTS

1.0 INTRODUCTION

No general definition of diplomacy can be satisfactory or very revealing. The Oxford English Dictionary defines diplomacy as "The management of international relations by negotiation" or "The method by which these relations are adjusted and managed". Quincy Wright defined diplomacy 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).

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.

In addition, 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 utilise 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. The essence of diplomacy therefore is flexibility, adaptation to continually changing conditions. In this unit, we are concerned with basic definitions of diplomacy by relevant authorities.

2.0 OBJECTIVES

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

- define diplomacy in line with the politics of 19th Century Europe
- discuss definitions of diplomacy by different authors
- identify the reasons for having different definitions of diplomacy
- evaluate diplomacy in accordance to different definitions.

3.0 MAIN CONTENT

3.1 Basic Definitions of Diplomacy

As indicated in the introduction, there is no general definition of diplomacy, which is all embracing or consensual. Consequently, there are as many definitions of diplomacy as there are writers on the concept. However, in this unit we are concerned with basic definitions of diplomacy by relevant authorities in diplomacy. This is in order to have a good fundamental understanding and knowledge of diplomacy and diplomatic relations among nations.

SELF-ASSESSMENT EXERCISE 1

Explain diplomacy in line with Quincy Wright's definition of the concept.

Random House Dictionary defines diplomacy as:

- The conduct by government officials of negotiations and other relations between nations; the art or science of conducting such negotiations, skills in managing negotiation, handling of people so that there is little or no ill; tact.

The Oxford English Dictionary defines diplomacy as:

- The management of international relations by negotiations; the method by which these relations are adjusted and managed by Ambassadors and Envoys; the business or art of the diplomatist.

As already stated, because of many definitions of diplomacy, there is no one definition considered comprehensive or universal in nature.
Sir Earnest Satow asserts that:

- Diplomacy is the application of intelligence and tact to the conduct of official relations between the governments of independent states, extending sometimes also to their relations with vassal states; or briefly still, the conduct of business between states by peaceful means (Satow, 1962).

Adams Watson on the other hand 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 attempt to find mutually acceptable solutions to conflicts of interests increase that awareness and respect (Watson, 1987).

Some leading diplomats and scholars of international relations have used the word "diplomacy" to mean the practice of international legal principles and norms in international relations. In the words of E.J.J Johnson (Johnson, 1964):

- Although diplomacy might be described as a complex and delicate instrument that measures forces working at epicenters of international relations…, the subtle measures of diplomacy can be used to arrest, ameliorate or reduce, discard misunderstandings and disagreements which precipitate international crises.

From the different definitions of diplomacy by these authorities, it is therefore believed that diplomacy is concerned with the management of relations between independent states and between these states and other actors. Diplomacy is often thought of as being concerned with peaceful activity, although it may be used during war or armed conflict or be used in the orchestration of particular acts of violence. The blurring of line between diplomatic activity and violence is one of the developments of note distinguishing modern diplomacy. The point can be made more generally in terms of widening the content of diplomacy. Certainly, what constitutes diplomacy today goes beyond the definitions, which sometimes narrow down politico-strategic conception given to the term. Thus, diplomacy should be seen rather as undertaken by officials from a wide range of domestic ministries or agencies with their foreign counterparts, reflecting its technical content between officials from international organisations (such as International Monetary Fund (IMF) and the UN Secretariat) or involve foreign corporations and a host of government transnational with or through- nongovernmental organisations and private individuals.

SELF-ASSESSMENT EXERCISE 2

1. Define diplomacy in line with the politics of 19th Century Europe
2. Explain the reasons for having different definitions of diplomacy.

4.0 CONCLUSION

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. It is important to understand the origin of the tact, the nature of the concept and appreciate diplomacy and foreign policy as concepts in international relations.

5.0 SUMMARY

Diplomacy is the totality of the strategies through which an independent state relates to other independent states and other international

organisations 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 government may need to manage its international relations by applying different forms of pressure. The success of this pressure depends on the national, economic and military power of the nation.

6.0 TUTOR-MARKED ASSIGNMENT

1. What is diplomacy?
2. The blurring line between diplomatic activity and violence is the developments of modern diplomacy. Discuss.
3. Evaluate diplomacy in accordance to different definitions.

7.0 REFERENCES/FURTHER READING

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UNIT 2 THE ORIGINS OF DIPLOMACY

CONTENTS

1.0 INTRODUCTION

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 dispatch and receive with due accreditation those who present their cases openly before the rulers or assemblies to whom they were sent. By 15th Century, the principle and method of Greek city-states have developed. As the middle age proceeded, the sovereignty of individual sate, presentation of credentials began to be required if an ambassador wants to be received by a sovereign power. At the beginning of 16th Century, the practice of accreditation diplomatic envoys has 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 independent 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. Hereafter, 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 want to know what agreement that 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.

2.0 OBJECTIVES

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

- discuss the historical development of diplomacy
- identify the origin of the modern diplomacy
- explain the developmental stages of diplomacy.

3.0 MAIN CONTENT

3.1 Seminal Stages of Diplomacy

The beginning of organised diplomacy is the relations among city-states of ancient Greece. In the fifth century BC, (Nicholson 1939) stated, "Special missions between Greek city-states had become so frequent that something approaching our own system of regular diplomatic intercourse had been achieved." Thucydides wrote extensively on diplomatic procedure among the Greeks. For instance, in his account of a conference at Sparta in 432 BC the Spartans and their allies considered what action should be taken against Athens.

The Romans did little to advance the art of diplomacy by negotiation, but they did make important contributions to international law. In the Eastern Roman Empire, which was established after Constantine had moved his capital to the city that honoured him for many centuries; diplomatic methods were employed with great effect. The Eastern Emperors had marked success in playing off potential rivals against each other, and the reports of their representatives at foreign courts gave them information, which they were able to utilise to their advantage. Their representatives therefore became skilled diplomats and trained observers, thus extending the practice of diplomacy to include accurate observation and reporting as well as representation.

Until the later 18th or early 19th Century, diplomacy more often meant the study and preservation of archives than the act of international negotiation. This conception was especially prevalent in the middles ages. It was in papal and other chanceries, under the direction and authority of successive "master of the rolls" that the usages of diplomacy as a science based upon precedent and experience first came to be established.

SELF-ASSESSMENT EXERCISE 1

Discuss the historical development of diplomacy.

SELF-ASSESSMENT EXERCISE 2

Discuss the seminal stages of the growth of diplomacy.

3.2 Diplomacy under City-State System

By the 15th Century, the Italian city- state system had developed under clearly secular rulers. Politics to them was not based on religion, but on reasons of the state (*raisond'etat*). Savagery that characterised religious wars had reduced, but was not totally eradicated. 'Necessary wars' (interest of the state) replaced 'just wars' (wars for religious justification). Dogmatism was eradicated and the leaders of the Italian city-states unashamedly gave room to compromise. In fact, the origin of good diplomatic practice, establishment of embassies and the attendant privileges could be traced to the Italian-city states system.

Italian city-states established permanent diplomatic missions that is, embassies, career diplomats and complete privileges and immunities that go with it, whereas the Greeks, Egyptians, Assyrians, and the Romans established ad hoc envoys. When diplomacy failed, the Italian rulers resorted to the whole arsenal of threat, bribe, subversion, assassination, and war ultimately. These wars would not even be fought between

individual citizens but between mercenaries that are paid; this is what is referred to as **professional soldiering**. The wars were not prominently fought to destroy the opponent so as not to stimulate unfavorable reaction or coalition, but to strike a desirable balance in order to cause stability in the state system. In view of this, some scholars have argued that the Italian state practice is the bridge between the Medieval and the modern international society and state system.

3.3 Diplomacy in Concert System & the Treaty of Versailles

The Treaty of Westphalia, which ended the 30 years war, which engulfed Europe, also gave impetus to modern diplomacy. In fact, some scholars believe that modernity or at least the modern state system started in 1648 when the treaty was signed. Though the Westphalia Treaty was not a panacea or did not result in total termination of wars in Europe, it however gave credence to diplomacy.

The treaty brought about the idea of establishing permanent diplomatic missions as well as rules of diplomacy, such as the acknowledgement of diplomatic immunities, extra- territoriality of embassies, which means working in an international space, which is immune from the laws of the state.

Another development in modern diplomacy is the Concert System, which was an epoch-making event in European periodic summit, or conference system meant to discuss or settle matters bordering on common interests. The Concert System started in1815 when the Napoleonic wars nearly imploded the whole of Europe.

Furthermore, in the annals of diplomatic history is the Peace Conference, which was convened after the First World War (The Versailles Treaty). It also encouraged the notion of self-determination in the modern international system. The League of Nations that was instituted shortly after World War 1 could not contain the outbreak of the Second World War. This led to the establishment of the United Nations Organisation (UN) in 1945. Although the UN has been handicapped on several international issues, it has been able to weather the storm and the heat generated by the Cold War-super power politics.

3.4 The Origin of Modern Diplomacy

Modern diplomacy as an organised profession arose in Italy in the late Middle Ages, the rivalries of the Italian city-states and the methods, which their rulers used to promote their interests, are described in masterful fashion in Machiavelli's *The Prince*. The Holy See and the Italian city-states developed systems of diplomacy at an early date.

There are views that the Holy See was the first to use the system of permanent representation, which is a characteristic feature of modern diplomacy. However, the first known permanent mission was that established at Genoa in 1455 by Duke of Milian. During the following century, Italian city-states established permanent embassies in London and Paris and Francis I of France devised something like permanent of diplomatic machinery.

However, for over three centuries, the machinery appeared to have been neither adequate nor standardised. Diplomacy was still the diplomacy of the courts, its object was to promote the interests of the sovereign abroad, by various means, direct or devious, fair or foul and its standards were low and ill defined. The ambassador then as now, was deemed the personal representative of his head of state in a foreign country. An affront to him was an affront to the head of state himself and hence to the nation that they symbolised.

In the absence of well-defined rules of procedure, frequent dispute, which sometimes leads to duels or even to wars arose from questions of precedence and immunity. Ambassadors who attempted to entertain in a style befitting the dignity of their sovereigns often found themselves in dire financial straits, especially if the sovereigns whose dignity they were trying to enhance by sumptuous display neglected to pay them salaries.

By the 17th Century, permanent missions were the rule rather than the exception and diplomacy had become established profession and a generally accepted method of international intercourse. The rise of nationalism and the nation-states system made such machinery essential, especially after the Peace of Westphalia of 1648 has crystallised and formalised the state system. Diplomats from all European countries as well as noblemen and other countries from all parts of France graced the court of Louis XIV, and gave it that pomp and splendor which dazzled his contemporaries and set a pattern for decades to come. Many other Monarchs of Europe tried, but not too successful to copy the “sun king” and to establish their own courts of Versailles.

The diplomacy of the courts entered its golden age in the 18th Century. The game was played according to understood rules, with a great deal of glitter on the surface and much incompetence and intrigue beneath. Diplomats represented their sovereigns and were often merely the willing tools in the great contests for empire and for European supremacy that were waged in that century. Strong rulers such as Peter the Great of Russia and Frederick the Great of Prussia used diplomacy and force to achieve their ends. The same comment might be made of important ministers of state, men like Pitt the Elder and Vergennes.

By the late 18th Century, the industrial, American and French revolutions have ushered in a new era of diplomacy and indeed of history. Captains and kings passed from the scene in many lands, and the voice of the people began to be heard. The unassuming figure of Benjamin Franklin in the streets of Paris and London, representing a nation in the making, symbolised the coming era of more democratic diplomacy. Attempt to represent a nation rather than ruler imposed more complicated duties on the diplomat. Indeed, it called for a new kind of diplomat, but the remuneration remained so inadequate that the diplomatic profession was still largely confined to those who have other sources of income. Inevitably, this meant that so-called democratic diplomacy was still carried on by representatives of the aristocracy of wealth and often of rank.

As diplomacy became less formal and restricted, its rules became more standardised and more generally accepted. The Congress of Vienna made particularly important contributions in this respect. To place diplomacy on a more systematic and formal basis, the Congress laid down certain rules of procedure, which are still commonly observed. These rules were embodied in the Regalement of March 19, 1815 and in regulations of the Congress of Aix-la-Chapelle in 1818.

The present diplomacy can be said to have started in the 19th Century, which then demanded new methods as well as new personnel. These methods were defined in many international agreements and became an intricate and generally observed code. Under the aegis of the Holy Alliance and the Concert of Europe buttressed by the operations of the balance of power system, the game was played according to the new rules with fair degree of success.

SELF-ASSESSMENT EXERCISE 3

Discuss modern diplomacy as an organised profession.

4.0 CONCLUSION

The history of diplomacy is as old as man himself. Between 700 and100 BC, many city-states of ancient Greece were noted to have sent and received delegations for some period. The sending of Ambassadors grew out of the practice of dispatching, particularly in time of war and conflict, heralds who were accorded certain immunities.

By the early 20th Century, the term “democratic diplomacy” had become a common term. It seemed to symbolise a new order in world affairs, one in which governments were fast losing their aristocratic

learning and their aloofness and peoples were speaking to peoples through democratic representatives and informal channels. Actually, the new order was not as different from the old as it seemed in the atmosphere of hope that ushered in the 20th Century.

5.0 SUMMARY

Before the development of modern diplomacy or organised diplomacy, as it is known today with the establishment of permanent missions, many embassies were maintained and negotiations performed during the middle ages; however, such missions were for a short while. The first step towards the establishment of permanent diplomatic missions was made in Italy where the cities of Florence and Papal Rome were preparing grounds as well as skillful makers of diplomatists.

Historically, the Greek city-states contributed tremendously to the development of organised diplomacy. However, as already mentioned, the relations between many city-states of Sparta and Athens were mainly influenced by considerations of internal policy, expediency and defence strategy. Diplomacy has a rich history from the practice among the Geek city-states and other European sovereigns. It has practices that have evolved over centuries, but sometimes modified to suit the modern times.

6.0 TUTOR-MARKED ASSIGNMENT

1. Historically, the Greeks contributed immensely to the development of diplomacy. Discuss.
2. What are the contributions of the Romans to the development of diplomacy?
3. Assess the 20th century diplomacy practice and compare it with the practice of the previous centuries.

7.0 REFERENCES/FURTHER READING

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UNIT 3 PROFESSIONALISING DIPLOMACY

CONTENTS

1.0 INTRODUCTION

The Congress of Vienna of 1814-15 provided an opportunity for revision and regulation of established diplomatic practices. From the outbreak of the First World War, five or six great powers dominated the affairs of European continent; consequently, there was orderliness in the conduct international politics what was more than superficial.

During the years between the revolutionary and world wars, ex-ambassadors were inclined to look back nostalgically upon what seemed like the golden age of the career diplomat. The 19th Century did indeed witness the gradual professionalisation of diplomacy in Europe.

2.0 OBJECTIVES

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

- explain the major events that led to Congress of Vienna identify contributions of 19th Century to development of diplomacy
- explain the changes that have taken place in diplomatic practice
- point out the peculiarities of present-day practice of diplomacy
- evaluate the future of diplomacy.

3.0 MAIN CONTENT

3.1 Professionalising Diplomacy

According to diplomatic regulations laid down in 1827 and amplified in 1842, admission to a diplomatic career in Germany and Prussia was to be through examination. According to the regulations, candidates must have:

i. completed three years at the university
ii. passed two first examinations as required by the state civil service
iii. served for 18 months in a provincial government. If then selected by the minister, the candidate has to work for one year as "unpaid attaches" before further examinations in modern political history, commerce and law, oral and written tests in French. Failure in any of the stages may mean exclusion from the service.

In France, the French revolution transformed the ancient 'regimes' secretariat of state for foreign affairs into a ministry for external relations, and despite the administrative turmoil of these years, department's autonomy and authority was confirmed and expanded. The executive orders issued by the directory gave it sole jurisdiction over official foreign correspondence, and the consular service was brought under its auspices.

Prior to 1877, entrance to the French Foreign Service tended to depend more on patronage than on academic achievement. At the time of restoration, there seemed to have been no generally accepted rule concerning selection of diplomats or foreign ministry officials. Good handwriting was usually specified as an important qualification while all other entry requirements depended on nepotism. Moreover, since would-be diplomats were chosen by their heads of missions, and only have to serve long apprenticeships as unpaid attaches, but also has to possess incomes 6,000 Frances per annum, diplomacy remained a noble calling. The revolution of 1830 and the deposition of Charles X, France's last

Bourbon King, led some aristocrats to resign their diplomatic posts, but there was little change in the methods of recruitment.

However, Edward Thouenel, the minister of Foreign Service in early 1860s explicitly rejected the idea of an entrance examination on the grounds that in France, 'who says examination say competition' (Hamilton & Langhorne 1998). He nevertheless implemented professionalising measures. First, he introduced in 1844 a measures, which required applicants to have a law degree, and a ministerial report, which proposed that in some circumstances candidates without degrees, might be permitted to sit an examination in international law, political history and foreign languages.

SELF-ASSESSMENT EXERCISE 1

Prior to 1877, entrance to the French Foreign Service depended on patronage than on academic achievement. Discuss

Starting from 1859 aspiring Russian diplomats had to pass an examination in modern languages, 'diplomatic science' (that is, international law, economics and statistics) and precise writing. The regulations governing the eligibility of candidates for the Russian civil and foreign services were however, almost oriental in their inspiration. Nobles were thus admitted in personal right- a provision which helped to explain how diplomatic careers sometimes passed from one of a family to another. However, this did not impede the modernisation/professionalisation of Russia's foreign relations. Thus, in an attempt to streamline the management of diplomacy an imperial ministry of foreign affairs was founded in 1802. Over 250 officials were employed in the ministry and the needs of expanding diplomacy were met by the creation of provincial branch offices in such cities as Warsaw and Odessa.

Business generated by the revolutionary and Napoleonic wars represented the largest proportion of the number of clerks employed in the British Foreign Office. Notwithstanding, by 1822 the British Foreign Office had a staff of not more than 31 including two under-secretaries, two office keepers, a door porter and a printer). Thus, despite an ever-increasing workload, the office grew slowly in size. By 1861, the office had in all only 52 employees, most of whom had a very little, if any say in the framing of policy. Many were there to provide the foreign secretary with clerical assistance in the handling of his correspondence diplomats and other departs of state.

Junior staff of the office was nevertheless largely engaged in the administrative drudgery of copying, ciphering, distributing, docketing

and registering of papers. The employment of talented young men in essentially mechanical tasks was by the end of the century a persistent course of complaint. The foreign office claimed that diplomatic work was so confidential that completely trustworthy staff that were known or recommended to the foreign secretary could only do it. It was not until 1906 that the office's menial chores were delegated to a general registry. This permitted a greater devolution of diplomatic work and allowed the more precocious junior clerks a greater chance to exercise their intellects.

The professionalisation of foreign was also accompanied by a reform in its methods of recruitment. In 1855, the Northcote-Trevelyan report proposed admission to the civil service by competitive examination, Lord Clarendon the then British foreign secretary insisted on the Foreign Offices having its own examination. He succeeded in retaining the right to nominate candidates and the diplomatic service, with its separate and evolving career structure to set different and initially tougher papers. Consequently, by the end of the 19th century, the vast majority of the entrants came from the major public schools, with Eton predominating. It was customary for intending applicants to spend some time abroad perfecting their modern languages before attending a cramming establishment to acquire the skill and knowledge to pass the services examination.

A university degree was not a necessity as a result between 1871 and 1907, only 38% of Foreign Service recruits were graduates. Academic standard were however, raised as a result of the changes of 1905, and during the seven years that preceded the outbreak of First World War in 1914 all but four of the successful candidates had been to university. Nevertheless, not until 1919 that budding diplomats were required to have a private income of four hundred pounds per annum, and their professional survival depended more upon their family fortunes than the public purse.

Between 1815 and 1860, 60% of the attaches appointed to British missions were from aristocracy, and of the 23 diplomats made ambassadors in these years only three were commoners. However, in the following 44 years the proportion of aristocrats in the diplomatic service dropped to less than 40%, 19 of the 31 career diplomats who attained ambassadorial rank were of aristocratic origin. This is because diplomats of noble birth were more acceptable in the courts of Europe, and the great political families of England were usually capable of persuading foreign secretaries to nominate their offspring. However, the composition of Europe's diplomatic services eventually tends to reflect the political structure of the societies they represent.

SELF-ASSESSMENT EXERCISE 2

Discuss the requirement for new diplomatic officials in Germany and Prussia.

3.2 Diplomatic Ranking

The aristocratic ethos of the 19th Century diplomacy was in large part derived from the social origins and aspirations of its European practitioners. However, their place in the wider international hierarchy was fixed by rules established at the Congress of Vienna. Prior to 1815, there had been no general agreement on diplomatic precedence. In an attempt to overcome the discord to which this had given rise to, the congress formed a committee to examine the issues involved.

After two months of deliberations, the committee recommended that states should be divided into three classes, and that these should determine the relative positions of their diplomatic agents. In order to avoid further wrangling, it was eventually decided that precedence amongst diplomats of the same rank should be based on seniority of their residence in a particular capital. The Congress at the same time recognised three categories of diplomats:

(i) ambassadors, nuncios and legates
(ii) envoys, ministers or other agents' accredited to a sovereign
(iii) *charg'es d'affaires'* accredited to ministers of foreign affairs. In 1818 another category-minister-resident which was added. It was also agreed to suppress the *alternat* the system whereby different copies of a treaty were prepared so that the signatures of each of the plenipotentiaries appeared at the top of one document. Instead, it was agreed at Vienna that appending of signatures would be decided by a drawing of lots. But at the Congress of Aix-la-Chapels, this method was abandoned in favour of a system whereby representatives signed according to alphabetical order of the French spelling of their country' name. This was a minor but not insignificant triumph for use of French language in the 19th Century diplomacy and its employment throughout the Congress of Vienna including the drafting of the final act.

The staffing of diplomatic missions was in part determined by their classification, and that in turn reflected the importance, which countries attached to specific relationship. After 1876, all the great were represented in each other's capitals by ambassadors, and the reciprocal elevation of legations to embassies was associated with the political status of the countries involved.

4.0 CONCLUSION

The emergence of the modern state with its centralised and complex bureaucratic structure played the major role of professionalising diplomacy in 19th Century. It led to creation of services with regular career patterns and rules governing such matters as recruitment, education, promotion, retirement pay and pensions.

The distinction between those who determined and those who executed foreign policy was often blurred and the duties of home-based officials were more usually clerical than advisory. However, the standards set by governments for admission to the profession and its aristocratic ethos ensured that diplomacy retained at least the aura of a socially exclusive occupation.

In the great capitals of Europe and especially in those with a flourishing court life, the corps *diplomatiques* formed an important component of society. Impressive buildings were acquired to house embassies and legations, and foreign ministries were provided with new and extended offices to enable it cope with expanding workloads.

5.0 SUMMARY

In this unit, we have discussed in detail the attempts made in 19th Century to professionalise diplomacy. This was to ensure that only people with dignity were employed in order to ensure perfect diplomatic relationship to maintain peaceful co-existence among sovereign states. The professionlisation actions took the form of revision and regulation of diplomatic relations. Furthermore, we x-rayed the procedures of the 19th Century diplomats in grading of diplomatic envoys to maintain the dignity of the profession among the practitioners.

6.0 TUTOR-MARKED ASSIGNMENT

1. Explain the steps taken to professionalise diplomacy in the 19th Century.
2. The distinction between those who determined and those who executed foreign policy was often blurred. Discuss.
3. What are the essentials of diplomatic ranking?

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UNIT 4 MODERNISATION OF DIPLOMACY

CONTENTS

1.0 INTRODUCTION

Throughout 19th Century, diplomacy in Europe remained a function of the state system it served and during the post-Napoleonic era, its form and procedures were in part determined by the readiness of statesmen to subscribe to the notion of a concert of Europe.

The term "concert" was derived from the Italian "concerto" and since 16th Century, when applied to diplomacy, concert embraced the idea of states acting in accord or harmony. However, during the struggle against the hegemony of Imperial France, the word acquired a new connotation. Napoleon's opponents began to associate it with the prospect of a continuing allied coalition, not just for achievement of victory, but for

the containment of revolution, the maintenance of peace and the re-establishment of what were referred to as its clearest manifestation. Prior to this period, international congress had only assembled to terminate hostilities and had suffered from stultifying arguments over precedents and procedures. However, with the regulation of established diplomatic practices coalition leaders sought to assure their unity of purpose.

Furthermore, of much more significance is the conduct of international politics, which enshrined diplomatic principles as the procedural decisions of the allies, and in particular the distinction that they began to make between the great powers and the lesser powers. The result was a system of real and permanent balance of power in Europe derived and regulated according to principles determined by modernizing and expanding diplomatic institutions and practices.

2.0 OBJECTIVES

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

- identify the basic principles of change that took place to modernise diplomacy in the 19th Century
- explain the principles of congress diplomacy
- evaluate the reasons for expansion of diplomacy.

3.0 MAIN CONTENT

3.1 Congress Diplomacy

Congress diplomacy, like the conference diplomacy of the early 1920s, had its origin in a wartime coalition and came to depend largely on individuals involved and their relationship with each other. Nevertheless, despite the gulf which seemed sometimes to separate the conservative autocracies of Austria, Prussia and Russia from the constitutional and liberal monarchies of Britain and France, the great powers continued to adhere to the notion of a European concert.

Ambassadorial Conferences, rather than ministerial congress became the means by which they (Great Powers) sought to regulate the affairs smaller and weaker neighbours and to meet the challenges, which national revolutions posed to the territorial status quo. By 1816, a standing conference of the ambassadors of the various allies had been

established at Paris to oversee the application of the Peace Treaty to France diplomatically.

SELF-ASSESSMENT EXERCISE 1

Discuss the Concert of Europe in relation to diplomatic activities of 19th Century Europe.

Other conferences that followed in most part dealt with specific issues, which required urgent attention. Thus, in 1852 and 1864 ambassadorial conferences at London wrestled with the intricacies of the Schleswig-Holstain question. In 1854 at Vienna, in 1876 at Constantinople, and in 1912-13 at London, the Great Powers tried through their ambassadors to achieve some kind of accord on the seemingly intractable problems of the near east. Indeed, between 1822 and 1914 there were some 26 conferences in which all great powers were represented, and when the interests of smaller powers were involved, they were also represented. There were also two congresses: one at Paris, which followed the ending of the Crimean War in 1856 and another at Berlin, after the Russo-Turkish conflict of 1877-78. These two congresses, like the previous ones, differ from mere conferences in as much as senior statesmen and ambassadors attended them from the Great Powers.

However, the trouble was that the successful functioning of the Concert of Europe required a degree of consensus among the Great Powers, which was rarely present in the years between the outbreak of the Crimean War in 1854 and the conclusion of the Franco-Prussia War in 1871. Moreover, in March 1871, by the London Protocol the six great powers – Austria-Hungary, France, Germany, Great Britain, Italy and Russia re-affirmed that treaties could only be changed with the consent of all their signatories. Henceforth, however, peace in Europe seemed to depend more on armed might than upon cooperation among the great powers. Diplomats were increasingly engaged in building alliances to deter potential enemies and to ensure military superiority in the event of war.

The new nationalism in Europe in 19th Century bred new imperialism in Africa and Asia and this was reflected in the subject matter of diplomacy. Conferences at Madrit in 1880 and Algeciras in 1906 dealt with questions pertaining to Morocco, and at Berlin in 1884-5, the representatives of the Great Powers considered the future of West Africa and the Congo Basin.

Participation in these conferences/congresses was not restricted to European states. By 1880, relations among the European powers were being conducted upon a world stage and commercial interests counted

for more than dynastic legitimacy in Africa's partition. The Madrid Conference was in any case concerned with the "protection" granted by foreign consuls and diplomats to subjects of the Sultan of Morocco. Therefore, all powers with representatives at Tangier, US and Brazil were also invited to take part. Later at Berlin and Algeciras, US was able to make its own peculiar contributions to the diplomacy of imperialism. However, this confirmed that the world had grown smaller and neither the state system nor its values could any longer be confined to the "Great European Family" (Hamilton & Langhorne 1998).

Apart from the questions of who were to be the participants, two other issues had to be settled before a congress or a conference could assemble, first-the agenda, and second, the venue of the congress. The choice of one city rather than another could have political and symbolic implications. Custom in the 19th Century Europe required that the chief delegate of the host country should chair conferences, and as far as chairman could influence procedure, this could be of added advantage.

Consequently, the convening of a congress at Paris in 1856 demonstrated that France had regained position of strength in Europe and the summoning of a congress at Berlin in 1878 an indicative of the transformation, which Prussia's victory brought in the continental balance of power. Vienna, Paris and Berlin each were briefly the diplomatic and social capitals of Europe. On the other hand, conferences in small provincial towns afforded delegates many opportunities to come to know each other better.

It is important to note that, the success of a congress/conference depend largely on the composition of participants, venue and more importantly, agreed agenda. This was particularly the case when the interests of the great powers were directly involved. The British Foreign secretary in 1895 once observed:

- Conferences and Congresses are no good, observed unless everyone agrees in advance what they are going to accomplish. There was after all, little to be said for holding a congress if there were no prospect of agreement, and few diplomats or statesmen were prepared to run the risk of isolation and public humiliation. Yet it could take months before an understanding was reached on the subjects with which conference should or should not attempt to deal.

In1878, Britain and Russia were prepared to convene a congress on the Near East, but the two countries were to come close to war before finally settling on an agenda. By the time the Berlin Congress assembled in June, agreement had already been reached on most contentious issues.

Then in 1905, the Germans only succeeded in overcoming French opposition to an international conference on Morocco by first accepting France's special interests in the country.

Notwithstanding, when the Great Powers were disposed to co-operate, congress diplomacy could of course alleviate local tensions. This was also a function of the one permanent diplomatic assembly to result from the Vienna Settlement of 1815.

SELF-ASSESSMENT EXERCISE 2

Discuss the required conditions to have a successful congress.

3.2 Expansion of Diplomacy

The unification of Germany and Italy simplified the diplomatic map of Europe in the 19th Century. However, the emergence of new states in the Bulkans and Latin America and the institution of formal and regular contacts between the European governments and some of the ancient monarchies of Africa and Asia meant that the international network of diplomatic relations continued to expand throughout the 19th Century. Great Britain had in 1815 19 resident diplomatic missions, only two of her embassies at Constantinople and her legation at Washington were in non-European countries. Other major power experienced similar developments in their overseas representations.

The establishment of diplomatic relations did not however always lead to exchange of ministers or *charge's d'affairs*. Thus, British consulates in Greece, Serbia, Romania and Bulgaria effectively served as diplomatic agencies while these lands remained under Ottoman suzerainty. Moreover, between 1827 and 1842, France appointed legations to Brazil, Mexico, Colombia and Argentina in their relations with other former Spanish Colonies; the French simply utilised their existing Consulates-general as diplomatic missions in some instances adding *charg'e d'affaires to consularttles.* Gradually, the majority of the latter were upgraded and by 1905, France had in Latin America 12 ministers-plenipotentiary, two minister-resident and two permanent *charge's d'affair*, with one single legation at Guatemala city covering all five central American republics.

However, the outbreak of the First World War brought to an end 40 years of peace among the Great Powers of Europe. They were years in which the European nations became more aware of their interdependence, particularly in the economic, social and technological spheres. As a result, the field of diplomacy as explained by *Quai d' Orsay* report of 1890 is truly unlimited. No human interest is foreign to

it (ibid). The inter-war years constituted for the foreign services of most of major powers as a new period of adaptation and reform. Governments acting partly in response to public criticism, attempted to reorganise their foreign ministries to broaden and with varying degrees of successes, democratise the recruitment of diplomatic personnel, and to restructure career patterns to allow for greater flexibility and improve promotion prospects for individuals with special skills. In some instances, this was no more than a continuation of a process of institutional modernisation that had began before the First World War.

However, almost everywhere changes were effected which took into account technological advances and gave greater recognition to the enhanced significance of economic issues and public opinion for the conduct of international politics. The number of specialists on the staff of diplomatic mission was thus increased. Military and Naval attachés who were initially forbidden by the defeated powers and with whom some disarming neutrals were dispensed were eventually joined to the air attachés. The enlarged volume of international debt and interest taken by governments in propaganda work led to the emergence of new breeds of financial and press attaches. The ambassadors because of the semi-autonomous status they acquired frequently resented their appointment. In addition, the involvement of ministries of commerce, finance and in some countries propaganda in their selection and designation highlighted once more the problem of defining the roles of departments other than foreign ministries in the making and execution of foreign policy.

SELF-ASSESSMENT EXERCISE 3

Discuss the steps taken to modernise diplomatic institutions in Europe.

4.0 CONCLUSION

In the 19th Century Europe, diplomacy adjusted to technological advances and changes in economic, political and social circumstances. Railways, steamship and electronic telegraph revolutionised communication, which increased the level of interaction among nations. The commercial and financial problems of industrialising societies helped to define policy objectives.

The result of the changes was modernisation of diplomatic institutions and expansion of diplomatic activities. Expansive buildings were acquired by the viable nations to house foreign offices. Diplomatic relations were increased to accommodate the increase in business and financial relations among states.

5.0 SUMMARY

In this unit, we have discussed the processes of congress diplomacy and expansion of diplomacy in Europe in the 19th Century. We were able to substantiate that diplomatic practices in Europe responded to technological advances by modernising established diplomatic institutions. This was to accommodate the changes and ensure better diplomatic interactions among nations

6.0 TUTOR-MARKED ASSIGNMENT

1. The outbreak of the First World War brought to an end 40 years of peace among the great powers of Europe. Discuss.
2. Discuss the importance of expansion of diplomacy.
3. What is congress diplomacy?

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MODULE 3 INTERNATIONAL LAW

UNIT 1 HISTORICAL DEVELOPMENT OF INTERNATIONAL LAW

CONTENTS

1.0 INTRODUCTION

Like many other institutions, international law had its origin in the prehistoric world. Historians' argue that tribal communities must have been driven to some sort of understandings about places of habitations, water holes, hunting areas, trespass, warfare and perhaps inter-marriage. At first, these inter-group relations were conducted on the assumption that war and conflicts of interests were normal conditions and peace was to be achieved only by express agreement.

Friendship between tribal groups were not unknown, however, as states emerged in the ancient world, certain peoples perhaps the Hebrews and the Hindus, asserted ideals of justice and order in the relationship among states. The increasing respectability of commerce added personal interests in law and order and thus, contributed to peaceful relations among trading peoples.

2.0 OBJECTIVES

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

- explain the event that led to development of international law
- identify contributions of ancient empires to development of international law
- evaluate the roles of scholars to evolvement of international law.

3.0 MAIN CONTENT

3.1 International Law under Ancient Greece

The distinctive nature of the political organisation of ancient Greece in the times of its greatness was the supremacy of local loyalties and law. It was in relationship among the city-states that the Geeks made their greatest contribution to the law of nations. They also extended orderly inter-state or international relationship through their belief that these relations should be based on certain rules.

Furthermore, in their inter-city state relations, ancient Greece acknowledged rules of war and diplomatic immunity. In their inter-state relations, they made considerable use of arbitration. They evolved a

system of maritime law. With greater genius for government and administration, the Romans extended the authority of Rome by conquest and alliance until they over-ran the Greek city-states and achieved what can be referred to as world state.

SELF-ASSESSMENT EXERCISE 1

Discuss contributions of Greek city-states to the development of international law.

3.2 International Law under the Roman Empire

The contributions of the Romans like those of the Greece sprang from the effort to regulate the relations of peoples and areas, which did not qualify as "states". Moreover, their legacy to international law was the ideal of a common citizenship and impartial justice everywhere, the idea of a universal law, and the breaking down of the old isolationism and the old contempt for foreigners.

In addition, Roman jurists formulated the principles of the *jus gentium*, or law of peoples, a body of rules and usages believed to be applicable to all peoples and resting upon natural justice to assist the Romans in the government of conquered arrears,. These principles survived the chaotic centuries that followed the fall of Rome and towards the close of the Middle Ages, these principles were accepted as part of the emerging international law as practical in the 19th Century. In this manner, way was prepared for the present belief that definite legal principles generally recognised should control the relations among sovereign states.

With the rise of Britain, France, Portugal and Spain as nation-states, international law in the modern sense began to develop regulations; international law became imperative for the conduct of war, the preservation of neutrality, the use of the seas in both peace and war, and the fixing of boundaries in colonial claims. Agreements were made between states by treaty and conference. A law of neutrality also took form, the principles of Roman law respecting private property were applied to boundary lines and colonial claims, and a law of war was gradually formulated.

The progressive character of international law is well illustrated in the evolution of maritime codes. The earliest of these known today was that of the Island of Rhodes, dating from the third or second century B.C. The Rhodian Sea Law imitatively named after the earlier code, was formulated during the late Roman Empire as a guide to Roman practice; it embraced both old and new principles. The Italian codes were written

in the 11th century, and by the close of the 13th century, many cities of Mediterranean had their own compilations of maritime customs.

In the early 12th Century, the Rolls of Oleron, showing the influence of the Rhodian Sea Law, was accepted by many countries of Europe and as late as 1779, it was approved by the state of Virginia. The famous *consolato del Mare* (consulate of the sea) complied in Barcelona about 1340 exerted great influence in Italy and the West Mediterranean. The last of the great maritime codes was the *French Ordinance de la Marine*, issued in 1681 after 10 years of preparation. It was widely observed in England, which has never had a maritime code of its own. It was also cited in American admiralty courts as late as the 20th Century.

SELF-ASSESSMENT EXERCISE 2

Explain the roles of the Romans in development of international law.

3.3 Contributions of Scholars to Development of International Law

Scholars from the 16th century began to point out that there was a growing body of rules of conduct, which states were approving by observance and commitment, in the agreements of states of states, in the principles of Roman law, in practice and custom, and what they called "natural law". Thus, while international law was made by actions and agreements of rulers, it was collected and systematised by scholars through researches in the past and current relations of states. According to Pitman B. (Pitman 1998), "international law as now practiced by the states of the world is largely the product of private scholarship, taken over later by the states more or less in spite of their natural instincts".

One of the prominent scholars in the development of international law is Legnano, an Italian whose study of the rules of war written in 1360 and published in 1477 is regarded as the first of important scholars in the 15th Century. Six legal scholars produced notable legal works in the 16th Century. First is Vitoria, a Spaniard who "laid down the principle that the nations formed community based upon natural reason and social intercourse". Suaerez, also Spaniard who first distinguished between reason and custom as sources of international law, followed him. This distinction is still observed until now. The next was Gentilis, a British subject of Italian extraction. He added historical and legal precedents to

natural reason and natural law as sources of international law. Gentilis is remembered today for his *De jure belli* and even more as the forerunner of the man known as the father of international law- Hugo Grotius.

In 1869, Hugo Grotius published *Mare liberum*, wherein he advocated for freedom of the seas, a view which was then not generally accepted. In 1625, he published the work, which gave him a permanent fame, *De jure, belli ac pacis,* or the "Law of War and Peace." It is important to note that this notable work appeared in the midst of the bloody 30 years' war. He issued an enlarged and revised edition in 1631 and later three other editions. A total of 64 editions had been issued by 1928.

With the publications particularly Part II, according to (Oppenhim, 1931) "the science of the modern Law of Nations commences … because in it a fairly complete system of international law was for the first time built up as an independent branch of the science of law". It is described as having four main characteristics. First, it holds states to the same rules, which regulate the lives of individuals and make the violation of them a crime subject to punishment. Secondly, basing the researches upon scriptures, ancient history and the classics, it formulated the "law of peace" which became the foundation of the whole system. Thirdly, it argued that states might properly punish other states, which violate the law. Finally, it accepted natural law- or right reason- as the primary basis of determining rules for the rightful conduct of states.

Grotius is much admired today for his earnest desire to bring nations to accept the principles of humanity. Indeed, in the present esteem for international interactions based on moral principles and in the growing conviction that peace-loving states must accept the obligation to punish lawless states are closer to the spirit and mind of than were the men of 19th Century with their glorification of sovereignty.

SELF-ASSESSMENT EXERCISE 3

Grotius is today regarded as the father of international law. Discuss his roles to the development of international law.

4.0 CONCLUSION

In this unit, we have traced the contributions of ancient empires to the development of international law as practiced in the 19th Century and even beyond. We have also highlighted the theories of some scholars in their bid to give an acceptable basis for international law.

We have established that natural law or law of nature to which Grotius and others advocated for, was made up of those rules of conduct which

rose from the attempt to reason out the way by which men and states could best get along with each other. Grotius particularly defined it as "the dictate of right reason" which points out that a given act, because of its opposition to or conformity with men's rational nature is either morally wrong or morally necessary, and accordingly forbidden or commended by God, the author of nature. In a sense, it was a theoretical approach; it sought to assert what ought to be the law rather than to list the rules to which men and states had actually committed themselves by custom or agreement.

5.0 SUMMARY

We have been able to pinpoint in this unit that international law as practiced in the 19th Century started developing in Greek city-states interactions. Under the Roman Empire, the Romans in their attempt to maintain universal control of different people under the empire contributed a lot the development of a code of conduct, which will maintain peaceful co-existence among the different peoples and nations. These rules later became the genesis of the present international law as practiced by sovereign states in the 19th Century Europe. The theories of some important scholars that contributed to the development of international law were also discussed in details.

6.0 TUTOR-MARKED ASSIGNMENT

1. Discuss the contributions of the Greece-city states to the development of international law.
2. Identify contributions of the Romans to the development of international law
3. Explain the roles of Rhodian Sea Law to the practice of maritime law.

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UNIT 2 SYSTEMATISATION OF INTERNATIONAL LAW IN 19TH CENTURY

CONTENTS

1.0 INTRODUCTION

Several attempts were made by individual scholars and institutions to systematise different existing laws that were recognised and in practice, like the maritime law, law of war, law of peace and neutrality

In the 17th and 18th centuries, scholars of international law conceived three schools of thought:

a the naturalists who took their cue from Grotius but often went far beyond him to deny all positive law
b the positivists who rejected Grotius natural law and supported Zouche's customary law, some even outdoing Zouche and denying all natural law and
c the Grotians, who accepted both natural and customary law, although, most of them accepted customary law than had Grotius.

However, during the 19th Century, international law lost most of the subjective character and the distinguished names associated with it came to be those of compliers of treaties rather than of philosophers and moralist. The positive way of thinking slowly rose in prominence until its method won general although not exclusive or universal acceptance.

2.0 OBJECTIVES

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

- identify contributions of early scholars of international law to its development
- explain the differences between the three schools of thought
- evaluate the role of League of Nations to codification of international law
- discuss the meaning of international legislation.

3.0 MAIN CONTENT

3.1 International Law in the 19th Century Europe

The 19th Century was characterised by serious growth of secularism and constitutionalism. Thus, every development reflected the secularism of the times with its emphasis on practical rather than the idealistic. Furthermore, the rising popularity of written constitution as in the US and the new republics of Latin America played a vital role. Commerce and representative government were driven men to insist on the precise

terms of their rights and obligations, which can be measured by custom and statute rather than by some uncertain law of nature.

The writers of the two-thirds of the 19th Century reflected the influence of Grotius; while most of them were positivists, they were unable to exclude completely all assumptions based on natural law, sometimes using it merely to fill the gaps in positive law. As scholars in considerable number delved into archives, they narrowed the field in which positive law was lacking. Moreover, as more states frequently entered into law-making treaties, scholars lessened the need for appeals to natural law. Consequently, by the end of 19th Century, positivism had become the prevailing school of thought and thus, the foundation upon which the principles of international law is built and the subsequent development.

Legal scholars tended to accept the separation of positive law and natural law was in progress during the 19th Century. Although, many books and articles were written on the rules of conduct that ought to be embraced and practiced by states, they were regarded more as ethics and less as law. However, they gave a real impetus to the making of international law. They often stimulated the making of international agreements on subjects not already covered by law.

The most significant development took the form of an expanded interest in the collection and systematisation of existing law and organised efforts to translate ideas of improved inter-state relation into the law of nations by multilateral agreements. These developments were commonly known as codification and international legislation. This gives a better understanding of the progress that was made in international law in the 19th Century. However, the difference between the two, though clear in theory, often becomes completely vague in practice.

To formulate a code means to systematise the law in certain field, a system which entails filling in the gaps. States ratifying the code are therefore in a position of approving new law. In other words, they are sharing in a legislative process. Professor Eagleton notes, “The codification of international law, if it means anything at all, means systematic legislation (Eagleton, 1948).

SELF-ASSESSMENT EXERCISE 1

Identify the peculiarities of the 19th Century international law.

3.2 Codification of International Law

Proposals for the codification of international law date from the 18th Century; however, it was not until the 1870s that the first steps were actually made. The first practical step was the précis formulated in1861 by an Austrian Jurist. In 1861, Francis Lieber (1800-1872) prepared A Code for the government of Armies, which revised form, was used by the Union Armies in the civil war and by Germany in Franco Prussian war. In1868 Bluntschli (1808-81) produced a more comprehensive codification, declaring that his intention was to formulate clearly the existing ideas of the civilised world. In1872, an American, David Dudley Field (1805-94) issued a draft outline of an international code, and an Italian Jurist, Pasquale Fiore (1837-1914) published a code covering the whole field of international law.

In the 19th Century, many scholars in Europe published excellent treaties on international law. However, the preparation of codes with their more formal arrangement and definitive treatment was almost entirely the work of private association and of international conferences and commissions of jurists.

The year 1873 saw the founding of *Institut de Droit* International and the Association for the Reform and Codification of the Law of Nations, which in 1895 changed its name to the International Law Association. The Institute issued a number of draft codes, the most important being the manual of the Laws of War on Land published in 1880.

Official Codification of International Law began when the representatives of 12 states assembled at Geneva in 1864 to describe existing practice in respect to the care of the wounded in the battle. At Brussels in 1874, representatives of the leading powers drew up a draft code of rules of war on land, but it was never ratified. The famous Hague Conference of 1899 and 1907 undertook more ambitious attempt in codification of international law. The conference of 1907 adopted conventions on codifications of the rights and duties of neutrals and in certain phases of the conduct of naval warfare. Both conferences also accepted many conventions that embodied new rules of international law.

In 1909, the leading maritime nations sent delegates to a conference in London to work out a code of warfare on sea, but the resulting Declaration of London was ratified by only a few states. World War1 prevented other efforts. Thus, as Professor Fenwick puts it “until the creation of League of Nations, attempts at codification of international law were haphazard and infrequent (Fenwick, 1965).

3.3 Codification by the League of Nations

The Covenant of the League contained nothing on codification of international law. However, sentiment mounted in favour of such action. Thus, in 1924 the Assembly and Council set up a committee of experts to carry out the task of codification of existing recognised rules by civilised states.

After years of preparatory work, a Codification Conference was convened at the Hague in 1930 where three subjects- nationality, territorial water and the responsibility of states for damage caused in their territory to the person or property of foreigners- were considered. One convention and three protocols were adopted. However, the delegates clung tenaciously to the practices of their respective states and governments. Consequently, the giant stride of the League of Nations into the codification of international law accomplished little or nothing.

SELF-ASSESSMENT EXERCISE 2

Discuss the contributions of League of Nations to codification of international law.

3.4 International Legislation

International legislation does not imply a specific procedure. Rather, international legislation closely resembles the conventional multilateral treaty process. However, there are certain important differences. 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 the obstacles that capricious sovereignty may devise, there is some evidence that states feel a stronger moral obligation to accept the legislation in good faith.

The Congress of Vienna of 1815 may be taken to have inaugurated the process of international legislation. Agreements of continuing importance were reached at the Vienna on the classification of diplomatic agents and on the free navigation of international rivers of Europe. Another notable conference-the Paris Conference of 1856 approved a declaration on the abolition of “privateering” which became securely fixed in the international law, international legislation on telegraphic matters from 1874, and weights and measures from 1875.

During these years, technological changes in communication and transportation were creating problems of general concern that could be

handled only by what amounted to almost continuous international legislative activity. This commonly took the form of ad hoc conferences which, becoming somewhat standardised and regularised and at times being supplemented by the maintenance of permanent offices, led inevitably toward a more general form of permanent international organisation. The Hague Conference of 1899 and 1907 may be assumed to have represented a transitional step from ad hoc conferences and special international organisation toward the League of Nations, the first great experiment of an organisation open to all states and without a special-purpose character.

The League of Nations ushered a new era of legislative effort. In its first few years, the League produced more international legislation than had issued from all sources during the entire century before World War 1. The subjects were almost as broad as human interest. They included communication 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 (Palmer & Perkins 2007).

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

SELF-ASSESSMENT EXERCISE 3

Discuss the nature of international legislation.

4.0 CONCLUSION

In this unit, we have tried to trace the steps taken by both institutions and individuals for institutionalisation and systematisation of international law. International law has grown over the years corresponding to the expansion of world society and increase in the inter-dependence of states especially in nineteenth century.

It is proved that war was a dominant feature of the 19th century; hence, the law of Armed Conflict was one of the early-developed branches of international law. Hugo Grotius earned the appellation "father of international law" for his tremendous contribution in his *Jus Bellum ET Pacis*. Indeed international lawyers in the nineteenth century believed that international law oscillated between peace and war- inter *bellum nihil est medium*.

5.0 SUMMARY

This unit has shown that codification of international law and international legislation was the major development on the law of nations in the 19th Century. The result is the accepted principle of international law as practiced today by sovereign nations in their inter-relationship. Furthermore, it is shown in the study that the law of Arm Conflict was the first branch of international law to be developed at the period. This was in a bid to control conflict among nations.

6.0 TUTOR-MARKED ASSIGNMENT

1. What is codification of international law?
2. Discuss the international legislation.
3. Write short note on: (a) natural law (b) positive law (c) moral law.

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UNIT 3 SOURCES OF INTERNATIONAL LAW

CONTENTS

1.0 INTRODUCTION

The sources of international law are three in number: treaties, customs 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

recognised by the contesting states, international custom, as evidence of a general practice and accepted as law, and the general principles of law recognised by civilised nations.

2.0 OBJECTIVES

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

- identify the three sources of international law
- explain the meaning of treaties, customs and general principles of law
- evaluate the implication of states signing or ratifying treaties.

3.0 MAIN CONTENT

3.1 International Conventions

A convention is an agreement creating binding obligations between subjects of international law. Other words used synonymously with convention are treaty, protocol, accord, arrangement, understanding, regulation, provision, pact, charter, statute, act, covenant, etc. The word "convention" should 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 obligations derived from customary law. Conventions have been proliferated as evidenced in the large number of treaties registered with the United Nations. Conventions have reduced 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 instance, 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 organisation in which case, the treaty is also the constitution of the international organisation.

Although treaties normally bind only the parties, (*pacta tertus nec nocent nec prosunt*) yet they are the nearest to legislation in a partially organised 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.

SELF-ASSESSMENT EXERCISE 1

What is an international convention?

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 criticised for its clumsiness. In fact, the general practice of states 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 laws 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 materialise, 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 two small states. A state may contract out of custom by refusing to be bound at the time of its formation. However, opposition by one or more states may hinder the development but not necessarily halt it indefinitely. A custom may cease to exist through desuetude or 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, for example, law of diplomatic immunities. The International Law Commission has the codification of law as major responsibilities. Codification has the advantage of clarifying doubts and minimising disputes.

3.3 General Principles of Law as Recognised by Civilised Nations

The statute mentions general principles of law by civilised nations as the third source of international law. "It does not define civilised", the provision is reminiscent of exclusiveness of international law in the past to Christian nation and then to "civilised" 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 recognise 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 draw 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, 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 examples, the principles of "acquired rights" and full compensation for nationalisation, which they considered 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 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.

SELF-ASSESSMENT EXERCISE 2

Explain "Principles of Law as Recognised by Civilised Nations".

3.4 Judicial Decisions and Text Writers

Article 38 of the statute of the International Court of Justice (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 to which 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.

SELF-ASSESSMENT EXERCISE 3

Discuss judicial decisions as a source of international.

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 the community of states has accepted a particular rule in practice 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. This evidence comes from judicial decisions, diplomatic correspondence, state papers, and the findings of research societies and private scholars.

5.0 SUMMARY

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

6.0 TUTOR-MARKED ASSIGNMENT

1. Name the four sources of international law.
2. What are the major disadvantages of each of them?
3. Write short notes on: (a) Judicial Decisions (b) Text Writers as sources of international Law.

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UNIT 4 SUBJECT MATTER AND JURISDICTION OF INTERNATIONAL LAW

CONTENTS

1.0 INTRODUCTION

Better understanding of the subject matter of international law may be gained by reading the International Law Commissions list of 25 topics

in the field, prepared at an early stage of the commission's 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.

Each of the 25 topics addresses fundamental questions of international obligations and conducts, and each has been the subject of careful examination and decision. Jurisdiction on the other hand is the authority a state exercises over natural and juristic persons within it. It concerns mostly the exercise of this power on the state territory or quasi-territory. Some states however, exercise a measure of jurisdiction exterritorialy especially when acts performed within outside the territory/quasi-territory have harmful consequences therein.

2.0 OBJECTIVES

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

- explain the meaning of the law of neutrality
- distinguish between law of war and law of peace
- identify the principles of jurisdiction
- evaluate the advantages of classification of jurisdiction.

3.0 MAIN CONTENT

3.1 The Laws of War

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

Some 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 humanise 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 flamethrowers, 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 related to laws of neutrality are the forms of neutrality and neutralisation; the proclamation of neutrality, and the relations between neutral states and belligerent states and between states and individuals.

Specific problems involving the rights and duties of neutrals include, 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 because 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 their rights as the greatest neutral state. His adamant position in this matter led to stained 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 pervious codes. Perhaps even more important is the questions of the relationships of neutrality to collective security.

SELF-ASSESSMENT EXERCISE 1

What are the differences between law of peace and neutrality law?

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 deals with. To illustrate this, 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 aspect covers 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 is rather well developed. At the same time however, as Dickson pointed out, there are deficiencies in the law that has been generally agreed upon, characterised by weakness, importing gaps, and extraordinary paradoxes. The deficiencies observed in various divisions of the law of nations are no more than varying aspects of the same thing due to the character of the international society.

3.4 Classification of Jurisdiction

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 engage in 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 harbors. The principle of territorial jurisdiction enjoys universal recognition, although there may be arguments as to the extent of recognised 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.

Quasi-territorial jurisdiction is exercised by states over ships, submarines, aircrafts and spacecraft as well as persons and things in them. It is also exercised over a vehicle carrying a national flag for the purpose of jurisdiction, assimilated to that state's floating or flying territory, although some writers object to this notion. However, some perceived 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 deals 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.

3.5 Principles of Jurisdiction

Certain aspects of state jurisdiction were not fully explained in the above classifications hence, they would be discussed here exhaustively.

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 principle 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. Moore's view was 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 state 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 citizen who is guilty of serious crime (such as piracy and murder) that is generally repressed and for which the state in which the accused resides has refused to try or extradite him. Certain crimes have been made punishable in treaties that have been so widely adopted in international agreements and in the

resolutions of international organisations, 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 include 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.

f. Objective Territorial Principle

This principle provides for punishment for crimes committed 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 corporations can be taken under this principle.

SELF-ASSESSMENT EXERCISE 2

Explain the major principles of jurisdiction.

3.6 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. He divides jurisdiction into three hierarchical orders viz: territorial, quasi-territorial and personal. Each of these is further divided into what he described as jurisfaction 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.

SELF-ASSESSMENT EXERCISE 3

What are the advantages of classification of jurisdiction?

4.0 CONCLUSION

The subject matter of international law is expanding rapidly to various aspects of individuals and nations. 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 matter 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.

5.0 SUMMARY

In this unit, we have discussed in detail the subject matter of international law as well as the jurisdiction of international law including the principles and advantages of jurisdiction. 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, it may be given in advance to cover all, or certain

stipulated classes of disputes, but in theory consent are always a pre-requisite.

6.0 TUTOR-MARKED ASSIGNMENT

1. Discuss the six grand aspects of the law of Peace according to Professor Dick.
2. What are the subjects of Laws of Neutrality?
3. Write short note on (a) Subjective territorial principle (b) protective principle.

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MODULE 4 FEATURES FROM THE 19TH CENTURY DIPLOMACY

UNIT 1 INSTITUTIONALISED APPROACHES TO THE CONTROL OF INTER-STATE RELATIONS

CONTENTS

1.0 INTRODUCTION

Sovereignty is a corollary of state system. It is the main symbol of statehood and the legal basis of its existence. Sovereignty connotes the supreme political characteristic and central legal formula of the international system. It refers in legal terms to the appearance of a centralised power that exercises law making and law-enforcement within a certain territory. The Social Contractarians, notably John Locke, Thomas Hobbes, Rousseau, share their view of sovereignty and emphasises the absolutism, illimitability, indissolubility and indivisibility of the sovereign powers in the state.

Based on the international perspective, however, sovereignty expresses the freedom of the state to do what it pleases; however, the state is bound by a true international law. In other words, external sovereignty presupposes the legal existence of a state as an independent state, and to that effect, no nation should interfere in its internal affairs. It also includes the right of a state to conduct its inter-state relations based on equity without attachment to a particular country. Rather the guiding principle of inter-state relations should be applied based on "no permanent friend or permanent enemy, but permanent interest".
Nevertheless, most states are on friendly terms with other states most of the time. This condition therefore implies that some restraints or controls must be in continuous operations. These controls of inter-state relations were the basic contributions of international law and diplomacy in the 19th century. In this unit, we shall discuss some of these control measures with special focus on International Regime, Collective Security, International Law, Balance of Power, and Coercive Diplomacy.

2.0 OBJECTIVES

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

- explain the rationale for controls of inter-state activities
- evaluate the contributions of international regimes to the control of inter-state relations
- discuss the meaning of international regime
- appraise the use of coercive diplomacy in resolving international disputes.

3.0 MAIN CONTENT

3.1 International Regimes

The earliest references to international regimes recognise them as one of the key parameters of international controls of inter-states actions or international governance. Although, regimes can be the embodiment of governance, today the more accurate assessment is that global governance occurs in part through international regimes.

The term "regime" has been used by scholars to refer to high level of cooperation, which is beyond the willingness to negotiate internationally and to coordinate policy outcomes on a periodic basis. The notion of a regime suggests that states develop principles about how certain problems should be addressed. Overtime, these principles became practically acceptable. Such rules and principles may be explicit as indeed some international law when codified or they may be implicit. Regimes refer to principles, norms, rules and decision-making procedures around which actors expectations converge in a given issue area. The convergence of expectations means that participants in the international system have similar ideas about what rules will govern their mutual participation, each expects to play by the same rules.

Regimes can help solve collective problems by increasing transparency. This is because "the assumption that everyone knows what everyone is doing" is very costly. The current revolution in information technologies is strengthening regimes particularly in this respect. Also with better international communication, states can identify conflicts and negotiate solutions through regimes more effectively. The common conception of regimes combines elements of realism and liberalism. States are seen as autonomous units maximising their own interests in an anarchic context. Regimes do not play a role in issues in which states can realise their interests directly through unilateral applications of leverage. Rather, it seeks to overcome collective good dilemmas by coordinating the behaviors of individual states. Although, states continue to seek their own interest, they create frameworks to coordinate their actions with those of other states when such coordination is necessary to realise self-interest.

Because regimes depend on state power for their enforcement, there is an argument that regimes are most effective when power in the international system is most concentrated, that is when there is hegemony to keep order. However, regimes do not always decline with the power hegemony (control) that created them; instead, they take on a life of their own. Although hegemony may be crucial in establishing regimes, it is not necessary for maintaining them. Once actors'

expectations converge around the rules embodied in a regime and realise that the regimes serves their own interests, working through the regimes becomes a habit and national leaders do not consider breaking out of established rules.

In part, the survival of regimes rests on their embedding in a permanent institution such as UN. However, whether or not the principles are formalised in an organisation or international treaty, regimes guide state actions. Realists accept the notion of international regimes because states agree to participate in regimes out of their self-interest. States benefit from the increased information and from the stable expectations created by regimes. In addition, as the rules of the game persist overtime and become habitual, formal institutions develop around them. These institutions become tangible manifestation of shared expectation as well as the machinery for coordinating international actions based on those expectations.

SELF-ASSESSMENT OF EXERCISE 1

What is international regime?

3.2 Collective Security and Balance of Power

The concept "collective security" is in reality a complex and elusive term. It has been defined by George Scharzenberger as "machinery for joint action in order to prevent or counter any attack against an established international order (Scharzenberger, 1951). Collective security clearly implies collective measures for dealing with threats to peace. The concept of balance of power on the other hand has been explained by A.F Pollard as equilibrium of the type represented by a pair of scales.

When the weights in the scales are equal, balance will result. When applied to world of sovereign states, the concept of balance of power assumes that through shifting alliances and countervailing pressures, no one power or combination of powers will be allowed to grow so strong as to threaten the security of the rest.

A system of collective security has often been pictured as a pattern of international relations, which is able to dispense with the balance of power thereby elevating the nature and tone of the society. When nations are bound together in an international organisation or association and cooperate to allow peace, there will be no need for alliances, burdensome armaments, shady territorial deals, political manipulations

and rivalries, instability or war, all of which are inherent in the balance of power system.

However, the records of attempts at collective security to date shows that short of effective world government, such efforts are to be associated with balance of power policies and cannot operate unless a foundation of power politics exists. Consequently, Quincy Wright asserted that "the relations of balance of power to collective security have therefore, been at the same time complementary and antagonistic (Wright, 1954). Until world opinion is more unified that it is likely to be for a long time", Wright believed "collective security must rely upon a balance of power which maintains such general stability that a localising of policing actions is possible. The three outstanding examples of systems of collective security in the 19th century have been the Concert of Europe, the League of Nations and the United Nations.

SELF-ASSESSMENT EXERCISE 2

Discuss the problems of collective security and balance of power.

3.3 Coercive Diplomacy

Coercive diplomacy is an approach to bargaining between states engaged in a crisis in which threats to use arms or inflict high financial costs are made to force an adversary to reach a compromise.

The strategy of coercive diplomacy employs threats or limited force to persuade an opponent to stop or cease pursuing an action already under way. In some cases, group of nations can also use coercive diplomacy on any nation that threatens the peace of international system. The goal is to alter the target state's calculation of costs and benefits such that it is convinced that acceding to another's demands will be better than defying them. This result may be accomplished by delivering an ultimatum that promises an immediate and significant escalation in the conflict, or by issuing a warning and gradually increasing pressure on the target.

Coercive diplomacy reliance on the threat of force is designed to avoid the bloodshed and expense associated with traditional military campaigns. It seeks to "resolve without violence, or with minimal violence, those conflicts that are too severe to be settled by ordinary diplomacy and that in earlier times would have been settled by war"

(Snyder & Diesing, 1977). Nevertheless, these attempts at intimidation carry some risks of war.

SELF-ASSESSMENT EXERCISE 3

Discuss the arguments against coercive diplomacy.

4.0 CONCLUSION

Limiting our attention to the above concepts as institutionalised approaches to the control of inter-state relations do not mean that other controls may not be of equal or even greater significance. Most of them however, are too intangible for measurement or appraisal. These include moral conviction, humanitarianism, pacifism, toleration, enlightened self-interest and many other ways of thinking that normally lead people and states to prefer to live in peace than in anarchy.

5.0 SUMMARY

The principle of the above mentioned concepts was fully applied in 18th and 19th Century Europe and was even written into several treaties of 18th Century. They are still the basic principles guiding inter-state relations and will continue as long as the nation-state system remains the controlling pattern of world politics. However, under the present conditions they operate far less efficiently and satisfactorily than in the 19th Century when Europe was the main arena of international politics.

6.0 TUTOR-MARKED ASSIGNMENT

1. What are the uses and limits of coercive diplomacy?
2. We should not regard international law as alternative to diplomacy. Discuss.
3. Write short notes on (a) Collective Security (b) Balance of Power.
4. What is international regime?

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UNIT 2 APPROACHES TO SETTLEMENT OF INTERNATIONAL DISPUTES

CONTENTS

1.0 INTRODUCTION

Disputes are inevitable part of international relations just as disputes between individuals are inevitable in domestic relations. Like individuals, states often want the same thing in a situation where there is not enough to go round. Moreover, states frequently want to do different things, but their claims are incompatible. Admittedly, one side may change its position, extra resources may be found, or on looking further, it may turn out that everyone can be satisfied after all. However, no one imagines that these possibilities can eliminate all disputes. Therefore, disputes whether between states, neighbours or brothers and sisters must be seen as part of human relations and effort should be focussed on how to manage it.

Commitment from everyone that disputes will only be pursued by peaceful means is a basic requirement for settling dispute. Within states, this principle was established at an early stage and laws and institutions were set up to prohibit self-help and to enable disputes to be settled without disruption of social order. On the international scene where initially the matter was regarded as less important, equivalent arrangements have been difficult to develop (Merrills, 1991).

The emergence of international law, which in its modern form can be dated from the 17th Century, was accompanied by neither the creation of world government, nor a renunciation of the use of force by states. Thus, from 1918-1945 with the consequences of the unbridled pursuit of national objectives still fresh in the memory, the founding members of the League of Nations and the United Nations agreed to find ways to settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered. What these peaceful means are and how they are used is the focus of this unit.

2.0 OBJECTIVES

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

- identify international disputes, their causes and means of resolution
- explain the different methods of resolving international disputes
- evaluate the contributions of League Nations in ensuring international security.

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 regional or international organisation. However, the first step whenever a dispute arises is to settle invariably by direct negotiation. This step is at the very heart of diplomacy; and it is the key 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 great 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 state, 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 UN 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 are 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 the Kashmir dispute, and the former UN Secretary-General Dag Hammarskjöld himself in series 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.

In 1948 and 1949, the General Assembly of the UN appointed a Conciliation Committee headed by the President of the Assembly to

meet with the big powers and with representative 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 UN has also appointed mediation or conciliation commissions to seek settlement of critical issues through negotiation with states directly involved in various dispute. Outstanding examples are the commissions appointed to assist in the resolution of the 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 UN. 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 power, 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 service in helping to settle the many dispute between the Dutch government and the self-proclaimed Indonesian Republic in the period following World War II.

SELF-ASSESSMENT EXERCISE 1

Explain the differences between concept of "good offices" and "negotiation".

3.3 Enquiry 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 provisions for such provisions have been incorporated into many bilateral and multilateral treaties. The Assembly of the League of Nations strongly endorsed the idea in 1922. In spite of all this, 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, the commission of enquiry may also present conclusions and recommendations, these are in no way binding on the disputants. Conciliation differs from enquiring in that; conciliation 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 affect an understanding between the contending parties. Conciliation is scarcely to be distinguished from mediation; the notable difference is that an individual mostly performs mediation while a committee, commission, or council performs conciliation. Conciliation is often held to be especially constructive approach to those disputes, which are not only justifiable in nature but are also 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 utilised to the full.

Nevertheless, substantial progress has been made in establishing conciliation procedure and machinery on a regional basis. Generally, the development of international organisation, 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 UN has been trying to call attention to these opportunities and to suggest procedures for appointing and utilising 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 organisation 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 instance, 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 organisations, especially those which tend to regard the UN as 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 greater variety of issues. At the same

time, they reason that UN facilitates the settlement of potentially explosive question using 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.

3.4 Arbitration and Judicial Settlement

Judicial settlement or adjudication in a sense is 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 unprepared than arbitration, requires permanent tribunals. It assures a larger measure of jurisdictional and procedural consistency. It should also assure a somewhat more favorable claim 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 19th Century added some 400 examples of successful arbitration to the precedents set by the arbitrations under the famous Jay's Treaty of 1794 between Great Britain and the US.

The US stood as the foremost champion of arbitration during the 19th Century, but in the last and present century, her interest has slackened. Although the US did participate in about 85 arbitrations up to the end of World War I, in several cases US refused to arbitrate or delayed action for many years.

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 first Hague Conference took place, 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 because of the nature of the state system. 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 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.

SELF-ASSESSMENT EXERCISE 2

Discuss the qualities of a good diplomat.

4.0 CONCLUSION

In spite of its obvious limitations and some conspicuous failures, peaceful settlement of international disputes has a rather encouraging record. It provided 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 where it plays an active and constructive role. While it is concerned with disputes arising out of past and present tensions, peaceful settlement of international disputes looks to the future and is compatibility with other and more hopeful patterns of international relations. In time, it may help to bring into being an effective system of collective security. Together with collective security, peaceful settlement of international disputes may lead to a society based on justice under law.

5.0 SUMMARY

Collective security and peaceful settlement of international disputes are only two of the approaches to prevention of war. Indeed, some alternatives seems 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. Discuss the peculiarities of enquiry and Conciliation in settling disputes.
2. Explain in detail the use of negotiation in settlement of international disputes.

3. Write short notes on the following: (a) good offices (b) mediation.

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UNIT 3 EMERGENCE OF INTERNATIONAL ORGANISATIONS

CONTENTS

1.0 INTRODUCTION

One of the promising developments in the 19th Century in interstate relations has been the proliferation of international organisation. For the first time in history, permanent organisation of a nearly universal type emerged. Although the word "permanent" may seem hardly justified, the League of Nations lasted for only about a quarter of a century with an effective period of barely 15 years, and the future of the UN after all these years of active existence is still very uncertain.

In addition, starting from the 20th Century, scores of public international organisations concerned with almost every conceivable aspect of international relations, and several private international organisations otherwise called nongovernmental organisations, such as International Red Cross or Rotary International or the International Chamber of Commerce have emerged and they play useful although less publicised roles in inter-state relations.

2.0 OBJECTIVES

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

- identify the main roles of international organisation
- evaluate the success of these organisations in attaining their objectives
- assess the relevance of the roles of these organisations to interstate relations.

3.0 MAIN CONTENT

3.1 The Origins of Modern International Organisation

The modern pattern of international organisation has been evolving ever since the nation-state system emerged several centuries ago, and especially since the Congress of Westphalia of 1648. The term "International Organisation" is defined as, "any cooperative arrangement instituted among states, usually by a basic agreement, to perform some mutually advantageous functions implemented through periodic meetings and staff activities".

Long before the golden age of Ancient Greece, inter-state relations of a sort existed in many parts of the known world, including China, India, Mesopotamia, and Egypt. Contracts between rulers and kingdoms were not uncommon, and there was a fair area of agreement on diplomatic practices, commercial relations, treaties of alliance, and codes of warfare

and terms of peace. The treaties of the past are the first steps towards international organisations.

Although local loyalties prevented the Greeks from achieving true national unity, the procedures and patterns in use among their city-states as well as their theories of interstate relations appear strikingly modern. In some ways, Ancient Greece seems much like the modern world in miniature. Treaties, alliances, diplomatic practices and services, arbitration and other methods of peaceful settlement of disputes, rules of war and peace, leagues and confederation, and other means of regulating interstate relations were well known and widely used in the 19th Century Europe.

The Roman contribution to international organisation was of a different sort. After the final defeat of Carthage and the conquest of the entire Mediterranean world, most Western and Central Europe, Rome established a kind of universal empire. The inclusiveness of this empire and its remoteness from other centers of power such as China and India precluded interstate relations. The idea of international organisation was therefore foreign to Romans. Nevertheless, the Romans contributed legal, military, and administrative techniques, and they established the basis of the *Jus gentium*, which became a fertile source of international law.

The Congress of Westphalia was a notable milestone in the development of modern international organisation, as it was in the evolution of the modern state system. The significance of this great congress has been discussed in earlier units of this course.

During the dynastic and colonial struggles of the 18th Century, alliances, coalitions, diplomacy, wars, conferences and peace settlement became commonplace techniques of international relations. The conference system, which has been perhaps the most conspicuous feature of modern international organisation, was developed to a high degree in 17th and 18th centuries. Some of the best-known early plans and proposals for peaceful relations and for international organisation were advanced in Europe in 19th Century.

A permanent general international organisation (League of Nations) of a nearly universal character came into existence for the first time after World War I. This development marked another stage in the history of international organisation. The new era owed much to the experience and experiments, including the many abortive plans and projects of the past. Modern international organisation with its wide array of institutions, evolved from the conferences of the 19th Century. Most of these conferences took place in the central Europe. Although, in the new

world of the 21st century, the 19th Century techniques are not adequate, but they did provide the foundations upon which the present complex structure of international organisation has been built.

SELF-ASSESSMENT EXERCISE 1

Trace the origin of international organisation.

3.2 Roles of International Organisations

Most international conflicts are not settled by military force. Despite the anarchic nature of the international system (based on state sovereignty), the security dilemma does not usually lead to a break down in basic cooperation among states. States generally restrain from taking maximum short-term advantage of each other such as invading and conquering. States work with other states for mutual gain and take advantage of each other only at the margin. The international organisation provides the platform for this mutual relationship.

States work together by following rules they develop to govern their interactions. Overtime, the rules become more firmly established and institutions grow around them. States then developed the habit of working through those institutions and within the rules. They do so because of self-interest. Great gains can be realised by regulating international interactions through institutions and rules thereby avoiding the costly outcomes of breakdown of cooperation. The rules that govern most interaction in the international system are rooted in norms. International norms are the expectations actors hold about normal international relations.
Some norms, such as sovereignty and respect for treaties, are widely held, they shape expectations about state behaviour and set standards that make deviations stand out. Constructive scholars in international relations emphasise the importance of these global norms and standards. In the 19th Century, such ideas were embodied in the practical organisations in which states participated to manage specific issues such as international postal service. In time of change when shared norms and habits may not suffice to solve international dilemmas and to achieve mutual cooperation, institutions play key role. They are act as concrete, tangible structures with specific functions and missions.

These institutions have proliferated rapidly in recent years, and continue to play an increasing role in the inter-state relations. International organisation includes intergovernmental such as the UN, and NGOs such as the International Committee of the Red Cross. Religious groups are among the large NGOs, their membership span many countries both in today's world and historically. Sect of Christianity, Islam, Buddhism,

Judaism, Hinduism, and other world religious have organised themselves across state borders, often in the face of hostility from one or more national governments. Missionaries have deliberately built and nurtured these transnational links. The Catholic Church historically, held a special position in European International system, especially before the 17th Century.

SELF-ASSESSMENT EXERCISE 2

Identify the major roles of international organisation in interstate relations.

3.3 The League of Nations / UN

In the early 19th Century, many world leaders sought to create a cooperative community of countries that would ensure the collective security of its members. The idea behind collective security organisation is that they enhance the chances for maintaining peace because an aggressive act against any member would be met with a collective response. In short, an attack against one is an attack against all. The notion of collective security, combined with the harsh lessons of World War I led US President Woodrow Wilson to propose the formation of the League of Nations in 1918. Consequently, the main mission of both the League of Nations and United Nation is maintaining international peace and security.

Despite the League's inability to prevent World War II, many political leaders did not conclude that intergovernmental organisations were useless in preventing war. On the contrary, with the nuclear age upon them, they saw even more clearly the need for international cooperation. This helps to explain why the idea of a global security organisation survived and thrived amidst the ashes of World War II. The UN emerged from those ashes, and it is best known for its role in maintaining international peace and security. Thus, the UN was founded in 1945 in San Francisco by 51 States. UN succeeded the League of Nations, which failed to effectively counter aggression that led to the Second World War. Like the League of Nations, the UN was founded to maintain international order and the rule of law to prevent another world war.

3.4 Structure of the United Nations

The UN structure centers on the General Assembly. The General Assembly coordinates a variety of development programme and other autonomous agencies through the Economic and Social Council (ECOSOC). Parallel to the General Assembly is the UN Security

Council, which is made up of five great powers and ten rotating members that make decisions about international peace and security. The Security Council dispatches peacekeeping forces to trouble spots. The administration of the body takes place through the UN Secretariat, led by the Secretary General of the organisation. The world court (International Court of Justice) is the judicial arm of the UN.

A major strength of the UN structure is the universality of its membership. The UN had 192 members in 2008 (Goldstein & Pevehouse, 2008). Virtually every territory in the world is either a UN member or formerly a province or colony of a UN member. Switzerland, which traditionally maintains strict neutrality in the international system, joined only in 2003. Formal agreement on the charter, commits all states to a set of basic rules governing their relations. The old League of Nations, by contrast, was flawed by the absence of several important actors.

One way the UN induced all great powers to join was to assure them that their participation in the organisation would not harm their national interests. Recognising the role of power in world order, the UN charter gave five great powers each a veto over substantive decisions of the Security Council.

The UN Charter established a mechanism for collective security – the binding together of the world's states to stop an aggressor. Chapter V of the charter explicitly authorises the Security Council to use military force against aggression if nonviolent means called for in chapter VI fails. Under chapter VII of the charter, the UN authorised the use of force to reverse Iraqi aggression against Kuwait in 1990.
However, because of the great-power veto, the UN cannot effectively stop aggression by a great power nation or nations having a great power backing. As often happens with the dominance principle, this structure creates resentments by smaller powers.

SELF-ASSESSMENT EXERCISE 3

Discuss the main structures of UN.

4.0 CONCLUSION

The intellectual roots of international organisations extend back into history and include the early global concept of a common humanity. One stream of this view focused on establishing intergovernmental organisation to promote peace. However, the first intergovernmental organisation with nearly a universal character was the League of Nations, which was formed immediately after the First World War.

Today there are nearly 300 intergovernmental organisations, and they perform a wide variety of functions. It has been pointed out that, membership of these organisations ranges from near universal to only a few countries and the functions of intergovernmental organisations range from the UN's broad range of missions to the single purpose of the international cassava organisation.

5.0 SUMMARY

A web of international organisations of various sizes and types now connects people in all countries. The rapid growth of this network, the increasingly intense communications and the interactions that occur within it indicate rising international interdependence.

These organisations in turn provide the institutional mesh to hold together some kind of world order even when leaders and contexts come and go, and even when norms are undermined by sudden changes in power relations. At the center of that web of connection stands the most important international organisation today, the UN.

6.0 TUTOR-MARKED ASSIGNMENT

1. Give a brief history of the development of modern international organisation.
2. Discuss the main functions of the major non-governmental organisations
3. What are the major features of United Nations?

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UNIT 4 INTERNATIONAL LAW AND INTERNATIONAL 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 disputes and one of such is legal method, which is arbitration. The first Hague Conference of 1899 established the Permanent Court of Arbitration. Despite its limitations, the permanent court was used successfully in 15 cases before 1914.

From 1907 to 1917, a Central America Court of Justice, which may be called the first real international court ever established, functioned with some successes in eight cases. It was wrecked by the refusal of the US, 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, you should be able to:

- explain the genesis of international arbitration
- evaluate efforts made in establishing permanent international legal system
- discuss the problems facing international courts of justice
- explain the reasons for establishing the International Criminal Court.

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 have been the Permanent Court of International Justice, which functioned in the inter-war period in 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 UN. 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 since recorded little success. Usually,

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

The Permanent Court of International Justice and the International Court of Justice made a real advance in the prospects for compulsory adjudication. Paragraph 1, Article 36 of the statute of the former court, with almost the exact word 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 maters 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 on their own accord, accept the compulsory jurisdiction of the court in all legal disputes concerning:

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

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

SELF-ASSESSMENT EXERCISE 1

Explain the operations of permanent court international justice.

3.2 International Criminal Court (ICC)

In 2002, the International Criminal Court (ICC) officially came into existence after the several countries had ratified the treaty to create it. UN under Secretary-General then, Hans Corell, said "with the creation of International Criminal Court, a page in the history of international humankind is being turned, may all these serve our society well in 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 that the future political leaders will refrain from committing atrocities because they know that eventually, they will be hauled before the new court.

If Corell is correct and a new page in the history of humankind has in fact been turned, the atrocities of the type that took place in Rwanda and Bosnia in the 1990s for instance, 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 US. This spells out why the US opposes the ICC and why its failure to ratify the ICC treaty could have adverse effect on the effectiveness of the new international court.

At present, 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 UN and has existed since the late 1940s. The world's prominent international court 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 20th Century have been the non-permanent military tribunal set up for specific cases. In this respect, the International Criminal Court goes further than the International Court of Justice in many instances. For instance, ICC proceedings may be initiated not just by a state but also by the ICC prosecutor or UN Security Council.

The International Criminal Court consists of 18 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 were 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 ICC also has its own prosecutor elected by an absolute majority of the Assembly of the State parties. However, the ICC does not hold jury trials.

The ICC is designed specifically to prosecute individuals accused of committing genocide, crimes against humanity and war crimes. As ICC's Website states, the 20th Century saw some of the worst atrocities in the history of humanity. These crimes were committed with impurity, which has only encouraged others to defy the laws of humanity in many cases. The ICC is thus urgently needed to help end gross violations of international humanitarian law.

The 1998 treaty establishing the ICC 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. Therefore, 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 if her citizens will be subjected to ICC scrutiny. When compare with the US, Canada has more active peacekeepers, which could be subjected to ICC scrutiny. However, Canada has been an enthusiastic supporter of the ICC in part because; ICC knows that Canada has adequate procedures in place for prosecuting its own citizens.

SELF-ASSESSMENT EXERCISE 2

What are the problems of international criminal court?

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 as well as international criminal court ruling. Contrarily, 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, however the form of judicial process is not present unless the state condemned or acted against has consented to the procedure used. This is because states that sign the ICC treaty may be able to prevent the court from prosecuting its citizens. For example, the state whose citizen is a suspect may not turn its citizen over to the ICC. 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 NGOs combined with the media, can make human rights violations known to the world almost instantly. An ICC ruling as well as pressure from NGOs 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. States are however free to accept or ignore the Optional Clause (when 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 US being perhaps the most far-reaching. Thus, there is nothing like real compulsory jurisdiction in international law, either outside the UN or within it.

3.4 Limitations of International Law

The failure of International Criminal Court to achieve international consensus highlight 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 greed and aggrandisement. 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. 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, Iranians stormed the US embassy in Iran's capital, Tehran and held many of the embassy's staff hostages for 444days. The US filed suit against Iran before the International Court of Justice, but Iran refused to recognise International Court of Justice jurisdiction. Thus, the US 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 however ignored the court's ruling.

Furthermore, the way in which international law is written further reduces its effectiveness. 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 binding on states; it simply offers guidelines for states to follow. Another notable limitation of international law is that it 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 3

Critically examine the prospects and problems of International Criminal Court.

4.0 CONCLUSION

An average person 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 law 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, 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. 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 so 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?

2. Appraise the contributions of International Court of Justice to settlement of international disputes.
3. Why were Permanent Court of International Justice and International Court of Justice Established?

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