NATIONAL OPEN UNIVERSITY OF NIGERIA

COURSE CODE : PCR 271

COURSE TITLE:
UNDERSTANDING CONFLICT AND WAR

COURSE GUIDE

PCR 271
UNDERSTANDING CONFLICT AND WAR

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Introduction

Welcome to PCR271 UNDERSTANDING CONFLICT AND WAR
This course is a three-credit unit course for undergraduate students in the School of Arts and Social Sciences. The materials have been developed with the Nigerian context in view. This Course Guide gives you an overview of the course. It also provides you with information on the organization and requirements of the course.

Course Aims

The aims are to help you to understand the Meaning/Definition of Conflict, Types of Conflict, Causes/Sources of Conflict, Conflict Theories, Conflict Analysis/Mapping, Definition of War, Causes of War, Types of War, Theories of War, Effects of War, Origin of International Law, International Law and War, Criticisms of International Law, War Crime and War Guilt, United Nations and War, International Humanitarian Law, Prisoners of War and War Victims, Human-Rights, Peaceful and Forceful means of settling dispute/conflict and war, Methods of ameliorating, if not preventing violent conflicts.

These broad aims will be achieved by:

(i) Introducing you to meaning of Conflict, types, causes theories of as well as conflict analysis/mapping,
(ii) Broadening your knowledge on the meaning, causes, theories and effect of war.
(iii) Explaining the stands of international law on war, peaceful and forceful methods of conflict/war settlement.

Course Objectives

To achieve the aims set out above, PCR271 has overall objectives. (In addition, each unit also has specific objectives. The unit objectives are at the beginning of each unit. I advise that you read them before you start working through the unit. You may want to refer to them during your study of the unit to check your progress).

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

a) Define what conflict is,
b) Explain types and causes/sources of Conflict,
c) List the attributes conflict theories,
d) Explain conflict analysis/mapping,

e) Define war, identify causes of war and types of war,
f) Differentiate between different types of theories of war,
g) Be able to enumerate consequences of war,
h) State origin of international law,
i) Know what the international law says about war,
j) Highlight criticisms of international law,
k) Differentiate between various forms of international criminal tribunal,
l) Discuss shortcomings of international criminal tribunal,
m) Discuss peaceful means of settling dispute/conflict and war;
n) Have a broad understanding of forceful means of settling conflict/war.

Working through this Course

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

(i) Course guide.
(ii) Study units.
(iii) Assignments file.
(iv) Relevant textbooks including the ones listed under each unit
(v) As a beginner, you need to read newspapers and interact with other mass media and internet as often as possible.

Study Units

There are 20 units (of four modules) in this course. They are listed below:

Module 1 Understanding Conflict

Unit 1 Definition Causes and Types of Conflict
Unit 2 Conflict Theories (Sociological Perspective)
Unit 3 Conflict Theories (Psychological Perspective)
Unit 4 Dynamics of Conflict
Unit 5 Conflict Analysis

Module 2 Understanding War

Unit 1 Meaning/Definition of War, Causes of War, War and State of Hostility
Unit 2 Theories of War
Unit 3 Theories of Just War
Unit 4 Wars in Traditional African Society
Unit 5 Appraisal of Contemporary and Traditional African War making and Conflict Resolution

Module 3 International Law War and Conflict

Unit 1 Origin and Nature of Law of Nations
Unit 2 Criticisms about Why International Law Should be Regarded as Law
Unit 3 International Humanitarian Law and War Crimes
Unit 4 The International Criminal Tribunal/Court
Unit 5 The Impact of Conflict / War and Post-Conflict Reconstruction and Peacebuilding

Module 4 The Settlement of Disputes

Unit 1 The Peaceful or Amicable Settlement of Disputes in International Law I
Unit 2 The Peaceful or Amicable Settlement of Dispute in International Law II
Unit 3 The Coercive or Forcible Means of Dispute Resolution/Settlement in International Law
Unit 4 The Coercive or Forcible Means of Dispute Resolution
Unit 5 The Coercive or Forcible Means of Dispute Resolution (Intervention)

Textbooks and References

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

Burton. John (1990). *Conflict: Resolution and Prevention*, London: Macmillan.

Cohen, Percy S. (1968). *Modern Social Theory*. London: Heinemann.

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Grundy, Kenneth (1971). *Guerrila Struggle in Africa:* An Analysis and Preview. New York: Grossman.

Hans Morgeuthau, (1960). *Politics Among Nations:* The Struggle for Power and Peace. New York.

S. Stadman, "Conflict and Conflict Resolution in Africa: A Conceptual Framework", in D Deng and I Zartman, *Op. Cit* p 369.

Y. Diallo, (1986), *African Traditions and Humanitarian Law:* Similarities and Differences, ICRC.

Azar, Edward (1990). *The Management of Protracted Social Conflict: Theory and Cases.* Worcester*:* Dartmouth.

Burton, John (1990). *Human Needs Theory.* London: Macmillan.

Fisher, Simon, et al. (2000). *Working With Conflict: Skills and Strategies for Action.* London: Zed.

Mitchell, Chris (1988). *The Structure of International Conflict.* London, Macmillan.

Otite, Onigu and Albert, Isaac A. (1999). *Community Conflict in Nigeria.* Ibadan: Spectrum, Academic Associates Peace Works.

Assessment

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 of this course; the tutor marked assignment (TMA) and the written examination. The marks you obtain in these two areas will make up your final marks. The assignment must be submitted to your tutor for formal assessment in accordance with the deadline stated in the presentation schedule and the Assignment file. The work you submit to your tutor for assessment will count for 30% of your total score.

Tutor Marked Assignments (TMAs)

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

Final Examination and Grading

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

Course Marking Scheme

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

Assessment	Marks
Assignments (Best Three Assignments out of Four marked)	= 30%
Final Examination	= 70%
Total	= 100%

Presentation Schedule

The dates for submission of all assignments will be communicated to you. You will also be told the date of completing the study units and dates for examinations.

Course Overview

Unit	Title of Work	Weeks Activity	
	Course Guide	Week 1	
Module 1 Understanding Conflict			
1	Definition Causes and Types of Conflict	Week 1	Assignment 1
2	Conflict Theories (Sociological Perspective)	Week 2	Assignment 2
3	Conflict Theories (Psychological Perspective)	Week 3	Assignment 3
4	Dynamics of Conflict	Week 4	Assignment 4
5	Conflict Analysis	Week 5	Assignment 5
Module 2 Understanding War			
1	Meaning/Definition of War, Causes of War, War and State of Hostility	Week 6	Assignment 1
2	Theories of War	Week 7	Assignment 2
3	Theories of Just War	Week 8	Assignment 3
4	Wars in Traditional African Society	Week 9	Assignment 4
5	Appraisal of Contemporary and Traditional African War Making and Conflict Resolution	Week 10	Assignment 5

Module 3	**International Law War and Conflict**		
1	Origin and Nature of Law of Nations	Week 11	Assignment 1
2	Criticisms about Why International Law Should be Regarded as Law	Week 12	Assignment 2
3	International Humanitarian Law and War Crimes	Week 13	Assignment 3
4	The International Criminal Tribunal/Court	Week 14	Assignment 4
5	The Impact of Conflict / War and Post- Conflict Reconstruction and Peacebuilding	Week 15	Assignment 5
Module 4	**The Settlement of Disputes**		
1	The Peaceful or Amicable Settlement of Disputes in International Law I	Week 16	Assignment 1
2	The Peaceful or Amicable Settlement of Dispute in International Law II	Week 17	Assignment 2
3	The Coercive or Forcible Means of Dispute Resolution/Settlement in International Law	Week 18	Assignment 3
4	The Coercive or Forcible Means of Dispute Resolution	Week 19	Assignment 4
5	The Coercive or Forcible Means of Dispute Resolution (Intervention)	Week 20	

How to Get the Most from this Course

In distance learning, the study units replace the university lecture. This is one of the great advantages of distance learning; you can read and work through specially designed study materials at your own pace, and at a time and place that suits you best. Think of it as reading the lecture instead of listening to the lecturer. In the same way a lecturer might give you some reading to do, the study units tell you where to read, and which are your text materials or set books. You are provided exercises to do at appropriate points, just as a lecturer might give you an in-class exercise. Each of the study units follows a common format. The first item is an introduction to the subject matter of the unit, and how a particular unit is integrated with the other units and the course as a whole. Next to this is a set of learning objectives. These objectives let you know what you should be able to do by the time you have completed the unit. These learning objectives are meant to guide your

study. The moment a unit is finished, you must go back and check whether you have achieved the objectives. If this is made a habit, then you will significantly improve your 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, telephone your tutor. Remember that your tutor's job is to help you. When you need assistance, do not hesitate to call and ask your tutor to provide it.

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

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

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

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

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

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

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

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

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

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

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

Facilitators/Tutors and Tutorials

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

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

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

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

Summary

The course guide gives you an overview of what to expect in the course of this study. The course teaches you the basic principles of the meaning, courses and types of conflict/war and international law and conflict/war. It also acquaints you with how conflict or war could be resolved amicably and forcefully respectively.

We wish you success with the course and hope that you will find it both interesting and useful.

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MODULE 1 UNDERSTANDING CONFLICT

UNIT 1 DEFINITION CAUSES AND TYPES OF CONFLICT

CONTENTS

1.0 INTRODUCTION

The word ‘Conflict’ is as old as human being because it has been in existence in all spheres of human life since the inception of the whole world. In the recent past, the world socio-political environs have been on the boil despite the colossal amount of human and material resources expended on global peace and conflict management by several Nations, States, Regional Organizations and the United Nations. Rather than the global crisis diminishing in spite of the several steps taken, it is becoming more virulent and destructive because it has continued to drain the energy and man power resources of the troubled spots if not the entire world and emasculate governance.

2.0 OBJECTIVES

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

- identify the origin of the word conflict
- define conflict in your own words
- discuss causes of conflict
- explain types of conflict

3.0 MAIN CONTENT

3.1 Origin of the Word Conflict

The word Conflict is derived from the Latin word "confligere" meaning to "strike together".

Lexically, Conflict means

> "to strike, to dasy. A fight, struggle or battle, clash, contention, confrontation, a controversy or quarrel, active opposition, strife or incompatibility, to meet in opposition or hostility, to contend, to be contrary or to be at variance".
> *(Webster Dictionary, Vol. 1, 1971)*

Conflict also means contradiction arising from differences in interests, ideas, ideologies, orientations, beliefs, perceptions and tendencies. Although, conflict is a normal, natural and inevitable phenomenon in any interactive situation of human life. The contradictions exists at all levels of the society – intra – psychic/personal, interpersonal, intra – groups, inter – group, institution, intra – national and international. Conflict is not necessarily negative in itself. It is often a by – product of social change and may lead to constructive transformation.

Many scholars have come up with different definitions, concepts, views or school of thoughts of conflicts from a more intellectual platform all over the world.

3.1.1 Definitions of Conflict

Quicy Wright (1990:19) defines conflict as opposition among social entities directed against one another, it distinguished from competition defined as opposition among social entities independently striving for something of which the supply is inadequate to satisfy all. Competitors may not be aware of one another, while the parties to a conflict.

Two points which are directly related to conflict analysis and management can be deduced from this definition. One is that Wright himself notes, contrary to the old perspective which regards conflict as national, it not inevitable, only competition can be so regarded.

Secondly, conflict and competition are two points of a continuum on which conflict represents aggravated competition. In order words conflict arises when disagreement emerges from competition cannot be resolved. It follows therefore that conflict management has to begin with and include management of supposedly ordinary competition. The other point that can be inferred from Wright definition is that conflicts are themselves processes that tend to degenerate from non-violent to violent and from crisis to full-scale war.

Conflict take on a wide variety of forms and have been classified on the basis of intensity or scale of violence, structural and character of parties in conflict (class, ethnic, groups, religious group, racial group) and so on and manifesting a distinct spatial character (national, regional, inter-state or international).

However, non-violent conflict has the potential to become violent if the regulatory mechanism is ineffective.

Wright also opines that, war is a species of conflict, thus by understanding conflict we may learn about the probable characteristics of war under different conditions and methods most suitable for regulating, preventing, and winning wars". Wright proceeds to give two senses in which war could be understood, that is, in the legal sense, war is considered a situation during which two or more political groups are equally entitles to settle conflict by armed force. Whereas in the sociological sense, which is of ordinary usage, war refers to conflicts among political groups carried on by armed forces of considerable magnitude.

Kriesberg (1973:17) simply defines conflict as "…… a relationship between two or more parties who….. <u>believe</u> they have incompatible goals".

Stagner defines conflict as …"a situation in which two or more human beings desire goals which they perceived as being obtainable by one or the other, but not both… each party is mobilizing energy to obtain a goal, a desired object or situation, and each party perceives the other as a barrier or treat to that goal".

Ross (1993 6:xiv) notes that: "If disadvantaged groups and individuals refuse to consider open conflict, they deny themselves what sometimes is their most effective means for bringing about needed change". Rose therefore saw nothing wrong in conflict, he saw it as a natural and inevitable human experience and as a critical mechanism by which goals and aspirations of individual and groups are articulated, it is a channel for the definition of creative solutions to human problems and a means to the development of a collective identity. What Ross is to infer is that without conflict we cannot have change.

Similarly, Laue (1990:256-7) tries to disabuse our minds about the dysfunctional perception of conflict. He notes that:

> "Conflict is not deviant, pathological, or sick behaviour per-se. It is not the opposite of order….. There is orderliness in conflict, although conflict can become disorderly. And it can be a very helpful and useful part of society".

What to be feared is destructive conflicts (that is, conflict that have started producing negative results) rather than conflict itself.

Action Aid (1994) and Hoivik and Meijer (1994) see conflict as "incompatible behaviour between parties whose interests are or appear to be, incompatible or clashing". Two things could be taken from these simple definitions. The first is that conflict emanates from (social) relationships. The conflicting group must groups must reside in close proximity whether physically or psychologically.

3.2 Causes of Conflict

As earlier mentioned, conflict is inevitable and it keeps occurring in every individual life, either at home, at work, at social outings or even when we sleep in our bedroom without interacting with anyone. Although, we are familiar with those inexhaustible things that cause conflicts, but in this context, they can be categorized into four namely:

- Conflicts over resources
- Conflicts over psychological needs
- Conflicts involving values
- Conflicts over inadequate information

3.2.1 Conflicts over Resources

These types of conflicts are usually easy to identify because they can be seen and are also more potentially easy to resolve. This conflict occurs when two or more people are competing for inadequate (or perceived to be inadequate) resources over a period of time. The competition may assume negative or destructive dimension when the available resources is not evenly and judiciously distributed. The relatively deprived would always struggle to improve their cot. This view synchronize with Marxian theory of conflict, which posits that the more the rate of unequal distribution of scarce resources in the society, the greater is the basic conflict of interest between its dominant and subordinate segments. Be also says that when practices of dominant segment create "alienation dispositions" the more the subordinate segments of a system become aware of their collective interest interests and question the distribution of scarce resources, the more likely they are to join in overt conflict against dominant segment of a system.

3.2.2 Conflict over Psychological Needs

Conflicts over psychological needs of groups and individuals are conflict which cannot be seen but affect the psyche of the individual and group self-actualization, need for individual and group respect, attempt to project one's group to be better than the others. With particular reference to Maslow's theory, he points out that when an individual psychological need is achieved or satisfied, such an individual becomes dominated by a drive for the other unsatisfied needs through a process he calls "Fulfillment Progression".

3.2.3 Conflict Involving Values

Contradicting value systems such as religious beliefs, ideological positions, and general worldview is another factor responsible for social conflict among the interacting parties. Conflict involving values are the most difficult to understand and resolve because most times people could die for what they believe in. According to Weaver, who likens culture to an iceberg, he says "internal culture", is implicitly learned and difficult to change. That is part of culture that is below the waterline in the iceberg analogy. It includes some of our beliefs, our values and thought patterns, attitudes, non-verbal communication and perception. Beliefs are interrelated and form "belief system", which because they are learned in life, are difficult to change.

3.2.4 Conflict over Information

The last but not the least of the factors causing conflict in any society is "manipulation of information". The pivotal role of information in societal conflict cannot be over-emphasised, they can either be manipulative or constructive. Especially in a widespread conflict situation, the role of information becomes more crucial, difficult and dangerous. When the information system in a society is tampered with there is bound to be conflict. The information system can be tampered with in different ways. This can be in form feeding people with lies or giving the right information at the wrong time. In our contemporary societies, the quantity and quality of information vary dramatically and are dependent on wide range of factors, form level of literacy to social cohesiveness and stability to available technology. Central to the availability and quality of public information is the media (print, audio and audio-visual).

Also, in a deeply divided societies, the media can also shape opinions and decisions related to the nature and scope of conflicts, as well as the potential alternatives to conflict, where social, political and economic conflict have degenerated into widespread violence, the role of information in mitigating the effects of violence or in presenting alternatives can be crucial. Because communication is an integral part of conflict, it comes as no surprise that those participating in organized violence often make use of the media to attack opponents, and "spread disinformation or misinformation" and "rally external and internal support."

3.3 Types of Conflict

It is important that we know types of conflict we encounter in our day to day activities. There are numerous kinds of conflicts but we will limit ourselves to the following:

a. Intra-Personal Conflicts

The type of conflict that occur within an individual. Examples of such are use of time, choice of partner, moral questions, goals and aspiration.

b. Inter-Personal Conflict

Conflict between two or more individuals over an issue.

c. Intra-Group Conflicts

Conflicts between individuals, or faction within a group.

d. Inter-Group Conflicts

Conflicts between groups such as club, class versus class, family versus family.

e. National Conflicts

Conflicts within a nation, involving different groups within the nation. This could be interethnic, inter-religious, or competition for resources.

f. International Conflict

Conflicts between nations. This could be for ideological reasons, territorial claims, political competition.

Classification of Conflict

Ted Robert Gurr, in his article A Comparative of Civil Strife and Quincy Wright in his paper The Nature of Conflict tightly argue that the Level of violence rather than its absence or presence is a better criterion for classifying conflicts.

Wright for example distinguishes between "Ordinary" conflict which involves small-scale violence usually at the individual and group levels and war, which is carried out by armed forces and involves violence of considerable magnitude.

Similarly, Gurr distinguishes between "turmoil" which includes both non-violent and small-scale violent conflict and rebellion or internal war. The point in this later classification is that notwithstanding their peculiarities, conflict differs largely in degree rather than kind and should therefore be analysed in terms of continuum which has violent conflict at one end and violent ones at the other. This enables us to pay close attention to the possible escalation or worsening of conflicts, sometimes a simple non-violent/violent classification appears to shade over.

Another popular classification categorises conflict into structural and non-structural conflicts. Structural conflicts which tend to be endemic are those which are predisposed by the innate character of the polity. Typically, the result from "unjust repressive and oppressive sociopolitical structure". Structural factors also include inequality

among groups in obtaining access to socioeconomic and political privileges and benefits such as education, income distribution, unemployment, and control of political power, as well as low levels of national integration which encourage "Zero-sum" context for state power.

Defined in such terms, Wherp, in his work Conflict Resolution opines that most conflicts in Africa are endemic by definition to the extent that the predisposing factors are not embedded in the political system. They result from specific policies or actions by the state or groups and do not generally last for too long.

The Third Classification of Conflicts is that based on the Character of the parties in conflicts and so on. Of these ethnic and religious conflicts (which are most prevalent in Africa) tend to be the most important bases of identity for most individuals and as such attract strong loyalties to the groups involved.

4.0 CONCLUSION

In the light of the above discussion on the concept of conflict, we can deduce that conflict is inevitable in human life, but the degree or intensity of conflicts is determined by the attitudes or mode of approaches adopted by the parties involved.

5.0 SUMMARY

In this unit, historical background and various definitions of conflicts postulated by different scholars were critically examined, which various causes and types of conflict were discussed to facilitate proper understanding of the concept.

6.0 TUTOR-MARKED ASSIGNMENT

1. Critically discuss the concept conflict from your own perspective.
2. Is conflict negative or positive to human existence?
3. Can conflict be totally eradicated? Discuss.

7.0 REFERENCE/FURTHER READINGS

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Drukkman, D. (1993). "An Analytical Research Agenda for Conflict and Conflict Resolution", in Dennis J. D. Samdole and Hugo Vander Marwe (eds), *Conflict Resolution Theory and Practice: Integeration and Application.* Manchester and New York: Manchester University Press.

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UNIT 2 CONFLICT THEORIES (SOCIOLOGICAL PERSPECTIVE)

CONTENTS

1.0 INTRODUCTION

In this unit, the theories and empirical studies conducted by scholars or researchers in the area of social conflicts will be discussed in order to have comprehensive understanding of the various school of thoughts and their diverse views and opinions. The rationale for the study of these theories is to enable students identify the strengths and weakness of the previous work done in the past in relation to the contemporary issues of social conflicts that have become protracted till now and with arrays of various emerging conflicts at all levels of the society the world over.

2.0 OBJECTIVES

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

- categorise different conflict theories
- analyse the various conflict theories
- identify and relate one or more conflict theories to different conflicts facing human race.

3.0 MAIN CONTENT

3.1 Conflict Theories from Sociological Perspective

3.1.1 Karl Marx Theory

Marx the great social philosopher opines that the degree of inequality in the distribution of resources generates inherent conflicts of interest. He explains that contradiction in capitalist modes of economic production and how these would lead to conflict processes that would usher in communism via a revolutionary action that would be carried out by the proletariats (the ruled). Although, his predictions were wrong, perhaps because of some fatal errors in his logic, but his analysis is still very much useful, applicable and relevant to most of the conflicts being experienced the world over.

Karl Marx views that the more the rate or degree of inequality in the distribution of the relatively available or the scarce resources in the society, the greater is the basic conflict of interest between its dominant and subordinate segments. The more the subordinate segments (proletariat) become aware of their true collective interests, the more likely they are to question the legitimacy of the existing pattern of distribution or allocation of scarce resources. Also the subordinates are more likely to become aware of their true collective interest when changes wrought by dominant segments disrupt existing relations among subordinates, practices of dominant segments create "alienative dispositions", members of subordinate segments can communicate their grievances to one another, which, in turn, is facilitated by the ecological concentration among members of subordinate groups, and the expansion of educational opportunities for members of subordinate group.

Marx also exerts that the more the subordinate segments at a system become aware of their collective interests and question the legitimacy of the distribution of scarce resources, the more likely they are to join in overt conflict against dominant segments of a system. The greater is the ideological unification of members of subordinate segment of a system and the more developed is their political leadership structure, the more likely are the interests and relations between dominant and subjugated segments of a society to become polarized and irreconcilable. The more polarized are the dominant and subjugated, the more will the conflict be violent. The more violent is the conflict, the greater is the amount of structural change within a society and the greater is the redistribution of scarce resources.

3.1.2 Max Weber Theory

Weber sees conflict as highly contingent on the emergence of "Charismatic Leaders" who could mobilize subordinates. He opined that subordinates are more likely to pursue conflict with super ordinates when they withdraw legitimacy from political authority when the correlation among members in class, status group, and political hierarchies is high, the discontinuity or degrees of inequality in the resource distribution within social hierarchies is high and when of social mobility up social hierarchies of power, prestige, and wealth are low.

Conflict between super ordinates and subordinates becomes more likely when charismatic leaders can mobilize resentments of subordinates. When charismatic leaders are successful in conflict, pressure mounts to routinise authority through new systems of rules and administration. As a system of rules and administrative authority is imposed, the more likely are new subordinates to withdraw legitimacy from political authority and to pursue conflict with the new super ordinates, especially when new traditional and ascriptive forms of political domination are imposed by elites.

3.1.3 Conflict – Theory Model of Dahrendorf

Dahrendorf (1958) introduces to the theory of conflict the view of productive and constructive conflict. He sees conflict as necessary for achieving an end in the society or for realization of social goals. He holds that social conflict produces change in the system which is necessary and good. Dahrendorf's attempt was to determine a systematic locus and a specific framework for a theory of conflict in sociological analysis. He contends for two different kinds of struggles in an organization. He calls them "Exogenous" and "Endogenous" conflicts.

The endogenous conflict is the conflict that is generated with the organization, system or a society. In this, he agreed with Marx that internal conflict comes from the present social structure. He went beyond the internal dynamics of conflict to allow for external factors, which he called exogenous conflict. This also influences social change. In order words, exogenous conflict is brought upon or into a system from the outside. The theory asserts that certain conflicts are based on certain social structural arrangements and hence are bound to arise whenever such structural arrangements are given.

Furthermore, the dichotomy of social roles within imperatively coordinated groups, and the division into positive and negative dominance riles are fails of social structure. Here are the assumptions

for the structural arrangement which could lead to conflict as Dahrendorf presents in his conflict theory model.

- In every imperatively coordinated group, the carriers of positive (status quo) and the negative (change of status quo) dominant roles determined two quasi-groups with opposite latent interest.

- The bearers of positive and negative dominant roles organize themselves into groups with manifest interests unless certain empirically variable conditions intervene.

- Interest groups which originate in this manner are in constant conflict concerned with the preservation or change in the status quo.

- The conflict among interest groups in the sense of this model leads to changes in the structure of the social relations in question through changes in the dominant relations.

3.1.4 Pluralist Perspective of Conflict

The advocates of the pluralist school of thought such as Hugh Clegg *el al*, holds a different view about conflict. The school views conflict as having a CONSTRUCTIVE contribution towards what is defined as healthy industrial order. Thus, given the appropriate institutions of regulation, the overt and active manifestation of conflict resolves discontent, reduces tension, clarifies power relation and adjusts the industrial structure. Accordingly, it creates as many solidarity groups as it devices and re-embodies the principles of self-determination.

The pluralist school emerged as a criticism to the political doctrine of SOVEREIGNTY, the notion that in an independent political system, there must be a final authority whose decision is supreme. Contrary to this assumption, the pluralists believed that within any political system, there are groups with their own interests and beliefs and the government itself depends on their consent, loyalty and cooperation to survive. Rather than existence of a definitive decision by final authorities, this theory contends that there are instead ONLY continuous (conflicts, antagonisms) and compromises.

In essence, a plural social or industrial relation has to accommodate different and divergent pressure groups in order to ensure that the differing group interests are harmonized such that social and political changes take place peacefully. Thus, to the pluralists, same is achievable through continuous negotiation, concession and compromises within and among these pressure (interest) groups and between the authorities.

Given these backgrounds, and based on expositions of the functionalist and the pluralist schools, and their identification of the place of effective communication in the prevention and management of industrial conflicts, as evident on the need for clear communication, understanding, continuous dialogues, negotiation, concession and compromises within and among the differing groups in the work place, institution or society.

3.1.5 Structural – Functional Theory

Talcott Parson (1960) champions the course of this theory after the World War II. The structural functionalist asserted/projected that individual will adjust to a given structure in an organization institution or society. Any change in the structure of the organization or institution causes conflict and it destabilizes the organization. Conflict should then be minimized in order to maintain stability with both individual as well as the institutions. The theory reflects a system approach where each part has one or more functions to perform. The theory sees conflict as dysfunctional, abnormal, and a disease which can be endemic to a society. It focuses on things that will maintain the state of equilibrium and collaboration in the organization.

3.1.6 The Theory of Structural Balance

Helder (1958) in this theory states that Ego tends to like whom his friend likes, but dislike whom his enemy likes. Also Ego tends to dislike whom he dislikes, and likes whom his enemy dislikes. This non-rational approach to theory of conflict has the following assumptions according to Mazur, (1968):

1. For any three persons or groups, there are four trials: like – dislike, support – conflict, conformity – divergence, and positive identity – negative identity. All these tend to balance.

2. Within any triad, an increase in magnitude of one sign leads to an increase in magnitude of all signs.

3. Relationship of like, support, conformity, and positive identity tend to coincide. On the other hand, the relationship of dislike, conflict, divergence and negative identity tend to coincide. The tendency increases with increasing intensity of the signs, and consonant relationship increase together.

3.1.7 Assumption on Ethnicity and Conflict

According to Person, Novak, and Gleason (1982:1), the word "ethnic" was derived via Latin from the Greek ethnos, which means nation or race. Ethnicity has been viewed since the earliest times in terms of a group setting associated with the idea of nationhood. But in recent years, the instrumentalists' view of ethnicity and ethnic conflicts in Africa and the rest of the world hold that "ethnicity is not a natural cultural residue but a consciously crafted ideological creation", ethnic conflicts result from the manipulations of the (radical) elite who incite and distort ethnic/nationalist consciousness into an instrument to pursue their personal ambitions.

The problem with the theory despite the fact that it contains some validity, it almost ignores completely the core motives and elements in ethnic conflicts such as the roles of fear and group psychology and importance of symbolic controversies which are often less comprehensible to the "outsider".

Thomson (2000:58) defines an ethnic group as "a community of people who have the conviction that they have a common identity and common fate based on issues of origin, kinship, ties, traditions, cultural uniqueness, a shared history and possibly a shared Language".

Toland (1993:3) basically agrees with Thomson in her conception of an ethnic group, but takes it one step further by adding a sense of longing on the individual level: "…(ethnicity is) the sense of people- hood held by members of a group sharing a common culture and history within a society.

Bamass R. argues the assumption "ethnicity and nationalism are not 'givens', but are social and political constructions. They are the creations of elites, who draw upon distorted and sometimes fabricated materials from the cultures of the groups they wish to represent in order to protect their wellbeing or existence or to gain political and economic advantage for their groups as well as for themselves… this process invariably involves competition and conflict for political power, economic benefits, and social status between the political elite, class, and leadership groups both within and among different ethnic categories" (Kruger 1993: 11).

In the light of the discussion above, it is important to note that mere differences in values or regional development, or between ethnic groups for that matter, do not as such promote ethnicity and ethnic conflict, according to Kruger (1993:12). Quoting Brass, he states "… Ethnic self-consciousness, ethnically based demands, and ethnic conflict can occur

if there is some conflict either between indigenous and external elites and authorities or between indigenous elites".

Nevertheless, the assumption on ethnicity and conflict therefore, states that, "ethnic identity has a symbolic dimension which makes conflict arising from it more intense than otherwise. Ethnicity has the symbolic capability of defining for individual the totality of his existence including embody his hopes, fears and sense of the future. Any action or thought that is perceived t undermine the ethnic group which include those that diminish its status in the eyes of the members evokes very hostile and some times violent response". An aggressive and murderous ethnic militia man may even believe that his very existence is threatened by the perceived injury to his ethnic group. Similarly, a poor villager believes that a cabinet minister from his village represents his own interest and share of the national cake even though he may never receive any personal material reward as a result of the appointment.

3.1.8 Assumption on Culture and Conflict

Culture simply means the sum-total of all human existence which comprises norms, values, traditions, beliefs, customs, languages, patterns of behaviours, art music, food, mode of dressing and so on. Cultures have been delineated along a number of dimensions by various writers such as:

Glen Fisher, in an interesting book called MINDSETS and in his chapter in Weaver's book (1998:140) characterizes two kinds of societies: those based on achievement and those on ascription. Those described as "achievement" emphasize doing, in contrast to being, which describes "ascriptive" societies. The former value change and action, whereas the latter value stability and harmony.

Weaver (1998:72-74) likens culture to an iceberg, in which only the tip is seen above the water line. The part that is obvious is the External Culture, which is explicitly learned, is conscious and more easily changed. The External Culture includes many of the elements that we normally think of as "Culture": music, literature, drama, foods, dress, customs, and verbal communications. These are all aspects of "behaviour". External Culture may also include some of our beliefs, such as religion and explicit ethnics.

These aspects of culture are all obvious to a newcomer. However, there is also an Internal Culture, which is implicitly learned and difficult to change. That is the part which is below the waterline in the iceberg analogy. It includes some of our beliefs, our values and thought patterns, attitudes, nonverbal communication, and perceptions. Beliefs are

interrelated and form "belief system", which because they are learned early in life, are difficult to change. It is also very difficult to perceive and fully understand the Internal Culture of someone from a different group. Yet it is this part of culture that defines who we are and what really is important to us. Because we are often unaware of these elements it is difficult to articulate them to others, even to those whom we love. And we most unlikely to expose our inner-selves to someone with whom we are in conflict.

Geert Hofstede (In Weaver 1998:148-158) describes four dimensions by which he placed a number of societies on graphs. Two are particularly relevant o conflict transformation (p.149):

1. Power distance – defines the extent to which the less powerful person in a society accepts inequality in power and considers it normal. All societies are unequal, but some are more unequal than others.

2. Individualism – opposes collectivism (in the anthropological sense). Individualist cultures assume individuals look primarily after their own interest and those of their immediate family. Collectivist cultures assume that individuals – through birth and possibly later events – belong to one or more close "in-groups" from which they cannot detach themselves. A collectivist society is tightly integrated; an individualist society is loosely integrated.

Hofstede characterizes American and Northern European societies as generally having low power distance and high individualism. Many African and Latin American societies have large power distance and low individualism. Some of the Southern European societies are in the middle with large power distance and medium individualism.

John Paul Lederach, probably one of the best known theorists and practitioners in the field of conflict transformation today, posits that "social conflict emerges and develops on the basis of the meaning and interpretation people involved attach to action and events. Social meaning is lodged in the accumulated knowledge, i.e. a person's bank of knowledge" (1995:8). Conflict is related to meaning, meaning to knowledge, and knowledge is rooted in culture. People act on the basis of the meaning that things have for them. The symbolic interactionist, Herbert Blummer (1969) emphasizes the importance of symbols and meanings attach to them. Therefore, Ladarach's assumptions (1995:9-10) can simply be liberally summarized as follows:

1. Social conflict is a natural, common experience present in all relationships and cultures.

2. Conflict is a socially constructed cultural event, people active participants in creating situations and interactions they experience as conflict.

3. Conflict emerges through an interactive process based on the search for and creation of shared meaning.

4. The interactive process is accomplished through and rooted in people's perceptions, interpretations, expressions, and intentions, each of which grows from the cycles back to their common sense knowledge.

5. Meaning occurs as people locate themselves and social "things" such as situations, events, and actions in their accumulated knowledge. A person's common sense and accumulated experience and knowledge are the primary basis of how he creates, understands and responds to conflict.

6. Culture is rooted in the shared knowledge and schemes created and used by a set of people for perceiving interpreting, expressing and responding to social realities around them.

However the term "culture" is often linked with ethnicity, as both the external and internal cultures are often determined by our ethnic groups, along with influences from the larger world through socialization, education, the media and exposure to a different way of thinking and behaving. We talk about "the culture of violence", "the culture peace", "the culture of poverty", "the culture of corruption", "corporate culture" and so on as they pervade different societies in various or different forms.

3.1.9 The Role Theories of Turner

Role is defined as that set of activities associated with any given position in an organization, which include potential behaviours in that position, and not only those of the incumbent in question. Although Turner accepts a process orientation, he was committed to developing interactionism into "something akin to axiomatic theory". He recognized that role theory was segmented into a series of narrow propositions and hypotheses and that role theorist had been reluctant "to find unifying themes to link various role processes".

Turner's strategy was to use propositions from the numerous research studies to build more formal and abstract theoretical statements. He therefore, sought series of statements that highlight what tends to occur in the normal operation systems of interaction. To this end, Turner

provided a long list of main tendency propositions on (a) roles as they emerge, (b) roles as an interactive framework, (c) roles in relation to actors, (d) roles in societal settings, (e) roles in organizational settings, and (f) roles and the person. The most important of these propositions to this study will be examined, which are this:

Role as an Interactive Framework

1. The establishment and persistence of interaction tend to depend on the emergence and identification of ego and alter roles.

2. Each role tends to form as a comprehensive way of coping with one or more relevant alters roles.

3. There is a tendency for stabilized roles to be assigned the character of legitimate expectations and to be seen as the appropriate way to behave in a situation. (Tendency for legitimate expectations).

In these three additional propositions, interaction is seen as depending on the identification of roles. Moreover, roles tend to be complements of others as in parent/child, boss/employee roles – and this operate to regularize interaction among complementary roles.

Role in Societal Settings

1. Similar roles in different contexts tend to become merged, so they are identified as a single role recurring in different relationships. (Tendency for economy of roles).

2. To the extent that roles refer to more general social contexts and situations differentiation tends to link roles to social values. (Tendency for value anchorage).

3. The individual in the society tends to be assigned and to assume roles consistent with one another. (Tendency for allocation consistency).

Many roles are identified, assumed, and imputed in relation to a broader societal context. Turner first argued that people tend to group behaviors in different social context into as few unifying roles as is possible or practical. This people will identify a role as a way of making sense of disparate behaviors in different contexts. At the societal level, values are the equivalent of goals in organizational settings for identifying, differentiating, allocating, evaluating, and legitimating roles. Finally all people tend to assume multiple that are consistent with one another.

Role of business in Conflict Situations

Widening communities of business actors around the world is moving to adopt new approaches to corporate social responsibilities, and a "triple bottom line" of profitability, social and environmental responsibilities. Under the right conditions, the private sector may be able to help prevent violent conflict. Like public and aid supported investments, the private sectors needs to be guided by an informed commitment to guard against side effects of its investments which may have negative impacts on the "structural stability" of the local and national host society, and plan for ways in which it can ensure the maximum positive benefits.

Business – local, small and medium – sized enterprises, multinationals and large national companies – can play a useful role in conflict situations. Conflict implies higher risks and costs for businesses, and it is therefore, in the interest of most businesses to support efforts that prevent, resolve or avoid exacerbating conflicts. It thus becomes imperative for each and every business enterprises/organizations to support peace making and peace building activities. It is only under a peaceful atmosphere and environment that the "corporate culture" of any organization could be accomplished. Challenges include how to:

- Develop a sufficiently long – term perspective to promote sustainable development and help reduce conflict, and strike a balance between long–term thinking and short–term investment horizons, with the need for quick returns in unstable situations.

- Understand the roles of some trade actors or networks in causing or exacerbating conflict – in particular in extractive industries (diamond, oil, forest products, etc.) that are major sources of revenue for warring parties and arms sellers.

- Encourage big business to stimulate local development, job creation and basic social infrastructure, especially in remote areas. This can contribute to long – term social stability and improved local livelihoods.

- Link the social investment programmes that are sometime supported by companies, in particular in the health or education sectors, to wider development and conflict concerns.

- Harness the potential role of companies as powerful players who could use their influence positively on political actors not only to negotiate immediate conditions for their investments but also to avert violent conflicts.

- Ensure that the use by companies of public security agents and military personnel to secure installations and protect staff is not at the expense of the local population, and that illegitimate armed groups or the youth are not being inadvertently supported or financed by them.

4.0 CONCLUSION

However, the conflict theories from sociological perspective have exposed us to various views, opinions, ideologies and assertions propounded by different scholars about how conflicts emerge or arise among individuals during the course of social interaction at the individual, institution and societal levels.

5.0 SUMMARY

This unit has considered some of sociological theories of conflict. The first and second theories discussed were propounded by Karl Marx and Max Weber. Dahrendorf's Conflict Theory Models, Pluralist Perspective of Conflict and Theory of Structural Balance were also examined. Assumption on Ethnicity and Conflict, Culture and Conflict and Role Theories of Turner were also explained in order to broaden the student's knowledge and to expose them to various multidimensional theories of conflict.

6.0 TUTOR-MARKED ASSIGNMENT

1. Justify the relevance of Karl Marx's Theory to the modern day conflicts.
2. Explain the relationship between culture and conflict.

7.0 REFERENCES/FURTHER READINGS

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UNIT 3 CONFLICT THEORIES (PSYCHOLOGICAL PERSPECTIVE)

CONTENTS

1.0 INTRODUCTION

In this unit, we shall examine some conflict theories from psychological points of view. This is important because it will enable us to have a clear understanding of the influence of psychological human needs on individual behavior and how inability or failure of such an individual to ignore or suppress growth or developmental needs can lead to conflict.

Nevertheless, the core of this unit examines how effective and poor communication management can bring about peaceful co-existence among people living in a society or promote mistrust and conflict eventually respectively.

2.0 OBJECTIVES

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

- explain Maslow's Conflict Theory
- understand Burton's Human Needs Theory
- appreciate the importance of communication management in conflict prevention in the society security agents and military personnel to secure installations and protect staff is not at the expense of the local population, and that illegitimate armed groups/the youth are not being inadvertently supported or financed by them.

3.0 MAIN CONTENT

3.1 Psychological Perspective of Conflict Theories

ABRAHAM MASLOW'S THEORY

Maslow proposes an interesting theory concerning human needs and their effect upon human behavior. He suggested that human needs may be classified into five different groups or classes:

1. Physiological Needs

These are basic needs of the organism such as food, water, oxygen and sleep. They also include the somewhat less basic needs such as sex or activity.

2. Safety Needs

Maslow is referring to the needs of a person for a generally ordered existence in a stable environment which is relatively free of threats to the safety of the person's existence.

3. Social Needs

These are the needs for affectionate relation with other individual and needs for one to have a recognized place as a group member – the need to be accepted by one's peers.

4. Esteem Needs

The need of a stable firmly based self evaluation. The need for self respect, self esteem and for esteem of others.

5. Needs for Self Actualization

The need for self-fulfillment. The need to achieve ones full capacity.

The important thing about Maslow's theory, however is the hierarchy of need structure. That is, it proceeds from basic needs to cluster social needs. Porter (1961) researched on Maslow's model and defined need fulfillment as the difference between how much there should be, and how much that is now connected with management positions. The fulfillment stood for those factors that affected job/human satisfaction most.

According to Maslow, the starting point for motivation theory is the so called physiological needs. When one is achieved or satisfied, an individual becomes dominated by a drive for the other unsatisfied needs through a process he calls “Fulfillment Progression”.

Burton’s Human Needs Theory

Burton’s human needs theory comes closest to providing an inclusive explanation of the spectrum of motives which under girds African conflicts.

Human needs theory of conflict begins with the hypothesis that in addition to obvious biological needs of food and shelter, there are basic socio-psychological human needs that relate to growth and development. Such needs include needs for identity, security, recognition, participation and autonomy. Conflicts result from ignoring or suppressing such developmental needs which “must be satisfied and catered for by institutions, if these institutions are to be stable, and societies are to be significantly free of conflicts”.

Human needs theory discounts explanatory models of conflicts that fault the innate sinfulness and rejects mechanistic perspectives that tends to view the individual as infinitely malleable biologically; “there are limits to the extent to which the human person, acting separately or within a wider ethnic or national community can be socialized or manipulated”. This view echoes John Stuart Mill’s earlier contention that:

Human nature is not a machine to be built after a model, and set to do exactly the work prescribed for it, but a tree, which requires to grow and develop itself on all sides, according to the tendency of inward forces which make it a living thing (emphasis added).

Given this limitation on the malleability of the individual, deep-rooted conflicts arise out of demands on individuals and groups to make certain adjustments in behaviors that are unacceptable and probably beyond human tolerance and capabilities. For whereas the individual is responsive to opportunities for improvement in life-style, and in this sense malleable, there is no malleability in acceptance of denial of ontological needs such as security, recognition, participation, autonomy and dignity.

Consequently, any political system that denies or suppresses these human needs must eventually generate protest and conflict. Hence, if we want to go beyond the mere and ultimately ineffectual containment of “dissident” behavior symptomatic of deep-rooted conflicts, we need

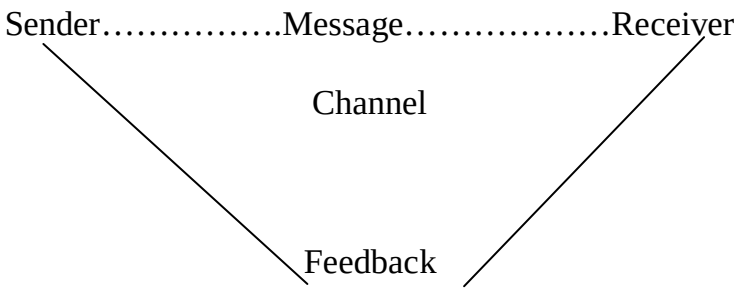
alterations in norms, institutions and policies to bring adjustment within the range of human acceptability and capability.

The Concept of Communication

The concept of "communication" is broad and rich with meaning. As a basic social process, communication is the means by which people relate to each other. It is a human process. Through various channels or media, this process can take place over great distance and over time. It is a shared process, involving five elements namely – 1. Sender, 2. Message, 3. Channel, 4. Receiver and 5. Feedback.

The sender constructs a message, which he hopes will stimulate a certain kind of response in the receiver. This message is shared through a channel. The receiver is equally active in the process, giving meaning to the message when – and if it is received. This receiver sends feedback to the sender. This feedback helps the sender to know if the message had been received and how it has been understood. Communication cannot be a one – way process. Messages are not "magic bullets" which knock over "target audiences".

The Communication Process



Some common communication terms

Audience – A specific group of people with whom we wish to communicate with or pass information about something to.

Message – These are signs and symbols of many kinds designed to stimulate a certain kind of response in a receiver.

Channels – These are the media, which connect peoples making communication possible. Channels include the great mass media (audio, visual and prints) small group discussion, oral literature, meetings at the village square etc.

Sender – Is an individual that constructs a message and then send to intended receiver.

Receiver – Is someone or a group of people that a message is targeted at, and who in return sends feedback to the sender after reading meaning to it.

Feedback – Is decoded message that helps the sender to know if the message had been received and how it has been understood.

It has been observed that the primary requisite for the organization of any community is some EFFECTIVE mode of communication. In essence, 'communication makes man'.

According to Oyeleye (1997) in a paper presented on "Development of Effective Communication Techniques in the Local Government Workers", he submits that communication is the sharing of messages, ideas, etc, among participants; it is not restricted to the use of words alone. It includes all means such as signs and symbols by which meanings are covered from one person to another. For example, silence is a means of communication in the sense that it coveys meanings. Oyeleye opines that "Information is the content of communication". Information tends to be abstract, formal and impersonal. When feelings and other human elements are added to the transmission of information, it is called communication. Depending upon the situation, these elements help or hinder the understanding of information by others.

Similarly, psychologists have also been interested on communication. They emphasize human problems occur in the communication process of initiation, transmitting and receiving information. They have focused on the identification of barriers to good communication, especially those that involve the interpersonal relationships of people.

Much as we might be thinking that communication may be crucial to conflict management, it has therefore been given further impetus that most human problems, societal conflicts and invariably, industrial relation, problems had been traced to communication problems and the more reason why many SOCIOLOGISTS, INFORMATION THEORIST as well as PSYCHOLOGISTS have concentrated more on the study of communication.

Bornstein Jurgenson and Papciak (1988:889), argue that "communication enables group to cooperate" and discussing the dilemma, forges a group's identity and enables people to commit themselves to cooperation, thereby often doubling cooperation. They

submit further that open, clear, forthright communication also reduces MISTRUST.

"Without communication, those who expect others to cooperate usually refuse to cooperate themselves". (Messe and Sivacek, 1979, Pruitt and Kimmel, 1977). One who mistrusts almost has to be uncooperative (to protect against exploitation). In essence non-cooperation in turns feeds further mistrust (what also could I do? It's a dog-eat-dog world").

Even in experiments, these proponents have further discovered that communication reduces mistrust, thus enabling people to reach agreement that lead to their common betterment. Knowing the good does not necessarily lead to doing the good. Yet individual's commitment and compliance can be explored through communication.

To Eyre (1983) communication is not just the giving of information, it is the giving of understandable information and receiving and understanding the message. Communication is the transferring of a message to another party so that it can be understood and acted upon.

However, a more all encompassing definition of communication was provided by Ugboajah (1985) when he writes that the "communication process involves all acts of transmitting messages to channels which link people to the Language and Symbolic codes which are used to transmit messages, the means by which messages are received and stored and the rules, customs and conventions which defines and regulate human relationship and events".

The basic assumption that can be derived from the above definitions is that the process of communication is a transfer for information, ideas, thought and messages. Because of this assumption, we can say that the communication process is a transaction that will affect two or more participating individuals and that communication is a personal symbolic process requiring a shared code or codes of abstractions. It has the characteristics of being a dynamic process, and it is transactional, instrumental, affective, personal and consummatory in nature.

Moreover, it is obvious that the pivotal role of information providers in conflict situation cannot be over-emphasised they can either be manipulative or constructive.

There is little doubt that information is a key component of power… power to change social, political and economic conditions for good or ill. Because communication is an integral part of conflict, it comes as no surprise that those participating in organized violence often make use of the media to attack opponents and spread disinformation or

misinformation and rally external and internal supports. As David Keen has written, "The need for good information on political process is underlined by the fact that interest groups who are manipulating crisis may also be manipulating the information surrounding the crisis".

In contemporary societies, the quantity and quality of public information vary dramatically and are dependent on a wide range of factors, from level of literary to social cohesiveness and stability to available technology. Central to the availability and quality of public information is the media….. the written press, radio, and television as well as other means of public communication, such as theatre, film and video, books, public meetings, words of mouth. Whether in predominantly literate or illiterate societies, cultural activities… in the form of live music, dance, satire, drama and poetry…also communicate social, economic and political ideas.

The media helps shape popular perceptions of the nature and scope of conflicts, as well as potential alternatives to conflict. Where social, political and economic conflicts have degenerated into widespread violence, the role of information in mitigating the effects of violence or in presenting alternatives can be crucial.

However, one of the major weaknesses of African media, especially the print, is its glaring deficiency in reaching rural people who make up the majority of population (the growth of indigenous language press is progressively filling this gap). Although African controlled radio services have large audience which include these people, the quality of information being disseminated is often very poor.

It has also been observed that "men and women who manage the information, education and communication programmes/activities in local community peacemaking efforts have difficult and complicated (if not delicate) jobs" because of language barrier.

Despite the fact that globalization led to time-space compression, exogenous media cannot provide or cater effectively for information dissemination needs of rural dwellers because the prevailing social and environmental factors that compelled the Africans to evolve a way of communicating that best suited the circumstances in which they found themselves is still very much prevalent in our rural communities. Illiteracy, lack of electricity and other socio-economic amenities/facilities in the rural areas and high cost of installing communication gadgets make exogenous media of communication unsuitable for our rural communities. In addition, rural African still very much believes in traditional modes of information dissemination. Therefore, for rural communication to be effective, it must take

cognizance of the fact that endogenous (traditional) media of communication must be used together with exogenous (modern) media of communication.

In support of the importance of traditional media of communication, Owens – Obie (1994) views that "traditional network have been the most significant discovery in the last few years of working with grassroots people often broad called indigenous communication, it represent a breakthrough in information campaign and innovation diffusion strategies over the year".

4.0 CONCLUSION

The above discussed theories, assumptions and concept are imperative and expedient for this course because it will provide enabling opportunities for the students to be able to appropriate practical linkage among variables during the course of writing assignments, term papers and their projects.

5.0 SUMMARY

With reference to the theories, empirical and research studies accomplished by those scholars, the students will derive enough benefits, understanding and skills in the authentication or negation of these theories during their course of studies and for further academic work.

6.0 TUTOR-MARKED ASSIGNMENT

1. Make a reference to a conflict of your choice and apply one or more of the theories discussed relevant to your chosen conflict in explaining the conflict.
2. Identify and discuss any theory applicable to the present Nigerian socio-economic and political situations.
3. Which of the theories can be adapted to the global socio-political conditions and why?

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UNIT 4 DYNAMICS OF CONFLICT

CONTENTS

1.0 INTRODUCTION

To a novice in the field of peace studies and conflict resolution, conflict is usually perceived or seen as something negative that be avoided, ignored or taught about. Although due to our individual differences, conflict is an inevitable and recurrent fact of life. We should therefore develop our understanding of conflict and its positive management.

The Chinese do not see conflict as negative in their language; conflict means “an opportunity or chance for change as well as risk or danger”. Therefore, conflict is neither positive nor negative but how it turns out to be is determined by our response which is a function of our perception, attitude, background and the environments. Knowing the root causes of conflicts does not automatically proffer solution or clue on how to prevent or resolve them, as the inherent dynamic of conflicts tend to give them a Life of their own. Conflict tends to emerge/evolve in a cyclical pattern, often with several vicious cycles that are closely entertained. Even a removal of the original problems may not guarantee an end to a conflict, as addition been generated by the conflict itself.

However, having a positive approach to conflict help one to manage it in constructive manner with positive results while people with negative connotation of conflict tend to handle conflicts in a destructive way with negative effects.

Each conflict situation contains certain predictable elements and dynamics that are amendable to regulation and change. There are two key propelling variables in conflict (escalation) cycle: OPPORTUNITY and WILLINGNESS.

Opportunity

This has to do with the available resources at the disposal of a person, group or a country such as money, people, arms, land, minerals, good organization, and external support and so on.

Willingness

Is the desire or need to act. This is a situation whereby a group of people are determined and convinced to embark on an action aimed at changing their situation irrespective of the likely consequences.

Both the opportunity and willingness are complimentary in nature in the sense that one may have the means to act but may not be willing to do so or the willingness to act may be there but the means is lacking. In the light of the above, for conflict to move from one stage to the other, both must be present because they are dependent on each other.

2.0 OBJECTIVES

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

- explain dynamism of conflict
- discuss stages of conflict or conflict cycle
- enumerate two sides of conflict energy
- state various forms of conflict handling styles.

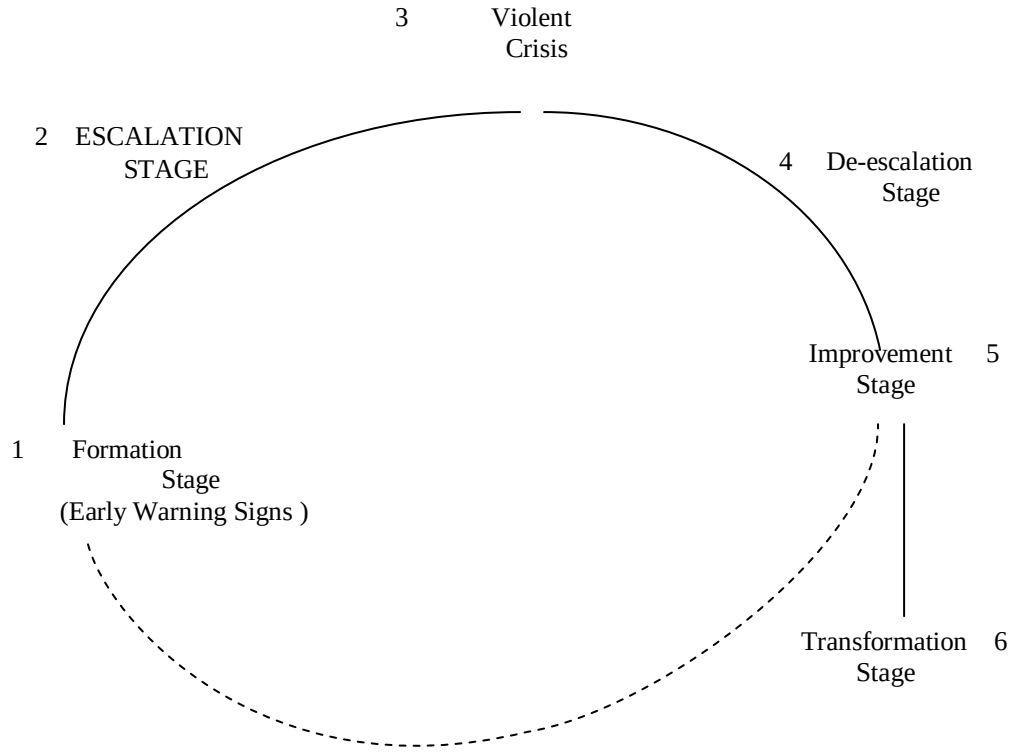
3.0 MAIN CONTENT

3.1 Stages of Conflict/Conflict Cycle

Conflict tend to progress from one place to another when the stakeholders (the oppressed and the oppressor) become more aware of a conflict of interest, means to act and then mobilize to alter the prevailing situation to each group advantage. In the course of altering the situation or addressing the injustice being faced by the oppressed, a sporadic violence can erupt if either parties should fail to adopt positive approach of conflict management.

3.2 Stages of Conflict

The following are the various stages of conflicts emerging in different parts of the world:



Conflict Resolution Stakeholders' Network (CRESNET) Training Manual 2001.

STAGES

A. The Formation Stage

This is the first stage of conflict whereby a problem emerges and acts or things, or situations that were previously ignored or taken for granted now turn to serious issues. The obvious antagonistic shifts in attitude and a behaviour patterns is a clear indication of the early warning signs of conflict formation which need to be addressed if further escalation is to be avoided.

B. The Escalation Stage

This stage is characterized by the formation of enemy images. People begin to take sides, positions harden, communication stops, perception becomes distorted and parties begin to commit resources to defend their position, leaders begin to make inflammatory public statements regarding their positions and street demonstrations intensity.

C. The Crisis Stage

At this stage, parties in conflict now begin to use physical barricades to demarcate their territories. Attempts to defend or expand territories or interests lead to direct confrontation and eruption of violence. Stockpiled weapons or arms are now freely used in an attempt to dominate or have upper hand leading to breakdown of Law and order and essential. Services are virtually disrupted and people begin to experience discomfort due to lack of water, food, electricity and other essential goods and services.

D. De-escalation Stage

This is the stage at which parties in conflict begin to experience gradual cessation of hostility arising from conflict weariness, hunger, sanctions or external intervention.

E. Improvement Stage

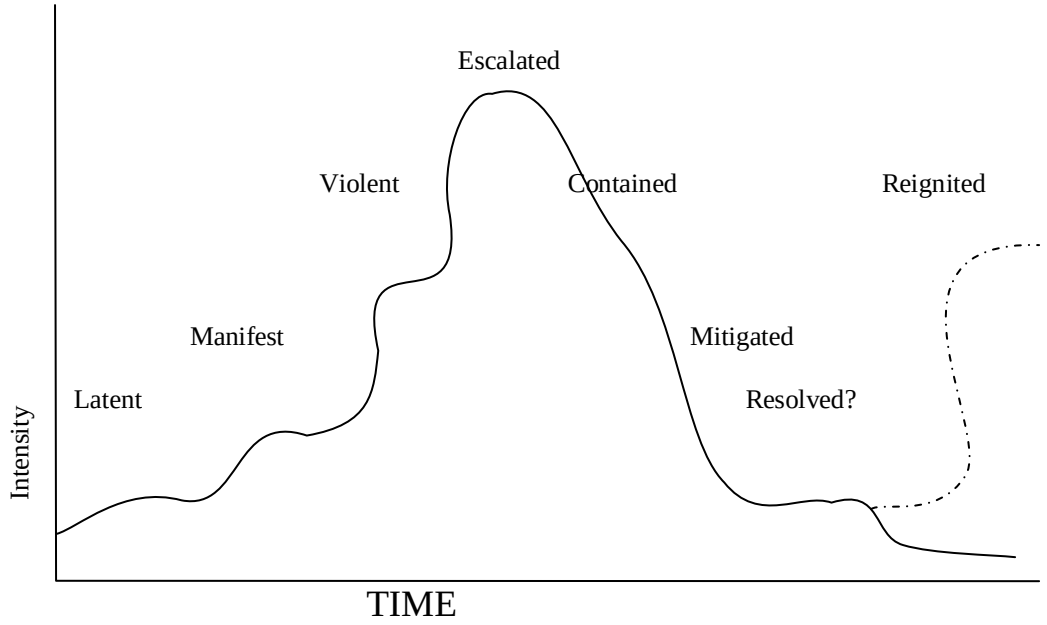
At this stage, stakeholders begin to have a rethink, shift ground and needs for dialogue are recognized and efforts are made towards attaining relative peace.

F. Transformation Stage

All causes of conflicts have been removed at this stage and reconciliation has occurred. This stage is the most difficult stage to attain in any conflict situation, though desirable, attainable and accomplishable.

3.3 Conflict Cycle

It is now generally believed that conflict most times evolve in a cyclical pattern that are closely related.



Background Paper for the Danida Conference on Conflict Prevention and Peace Building in Africa 2001 Prepared by Bjorn Moller.

i. Latent Phase

This is the first phase of the conflict cycle where a conflict is dormant and barely expressed by the conflicting sides that may not even be conscious of their conflicting interests or values. At this phase, a conflict can easily be "nipped in the bud" through a preventive action on the basis of early warning in principle. Although, latent conflicts are difficult to detect with any degree of certainty – and their presence and absence may be hard to verify. Despite that, we can still identify various indicators of impending conflicts, such as inequality, growing poverty, frustrated expectation, unemployment, pollution and a growing tendency to view problems in "us versus them – terms" etc.

ii. Manifest Phase

At this phase, conflicting parties express their demands and grievances openly, but only by legal means. It is easier to identify both problems and stakeholders, at this stage while preventive action can still be taken to prevent conflict escalation or degeneration into violent confrontation. Despite limited time available, exhibit conflict behaviour and regroup themselves in opposing camps. Mediation efforts geared towards compromise solutions still stand a reasonable chance of success provided violence has not occurred.

iii. Violent Phase

This phase is characterized by direct physical attacks and confrontations leading to spilling of blood and loss of life of both conflicting parties and innocent people and thereby produce additional motives for struggle elongation, if only to "get even" or escape retribution for atrocities committed. Moreover, people having their various private agendas and that are personally benefiting or profiting from the continuing crisis often usurped the initial/existing leadership structure in order to have influence and control over their groups.

iv. Escalation Phase

Under this phase, violence breeds further violence, producing an escalatory momentum. Moreover, the longer the struggle has lasted, and the more destructive it has been, the more do the warring parties (and especially their leaders) have to lose by laying down their arms. Only victory can justify the preceding bloodshed, hence the proclivity to struggle on as long as there is even a slight hope of prevailing, thereby attaining the power to set the terms. Neither the violence nor the escalation phases therefore leave much scope for peaceful intervention, mediation or negotiations. On the other, embarking on military intervention at this stage could be regarded as a risky enterprise despite the fact that it might make a difference.

v. Contained Phase

It is a stage at which escalation comes to a halt, which could be due to the fact that the conflicting parties have temporarily exhausted their supply of weaponry, leading to lower intensity. At this stage, there appears hope for negotiations and mediation efforts by the intervention of a third party aiming towards a truce. Most times peacekeeping forces can be introduced to protect each side against the possible breaches of the truce by either of the conflicting parties. The truce agreed upon allows for the provision of humanitarian aid to the civilian victims without supporting either of the warring sides.

vi. Mitigated Phase

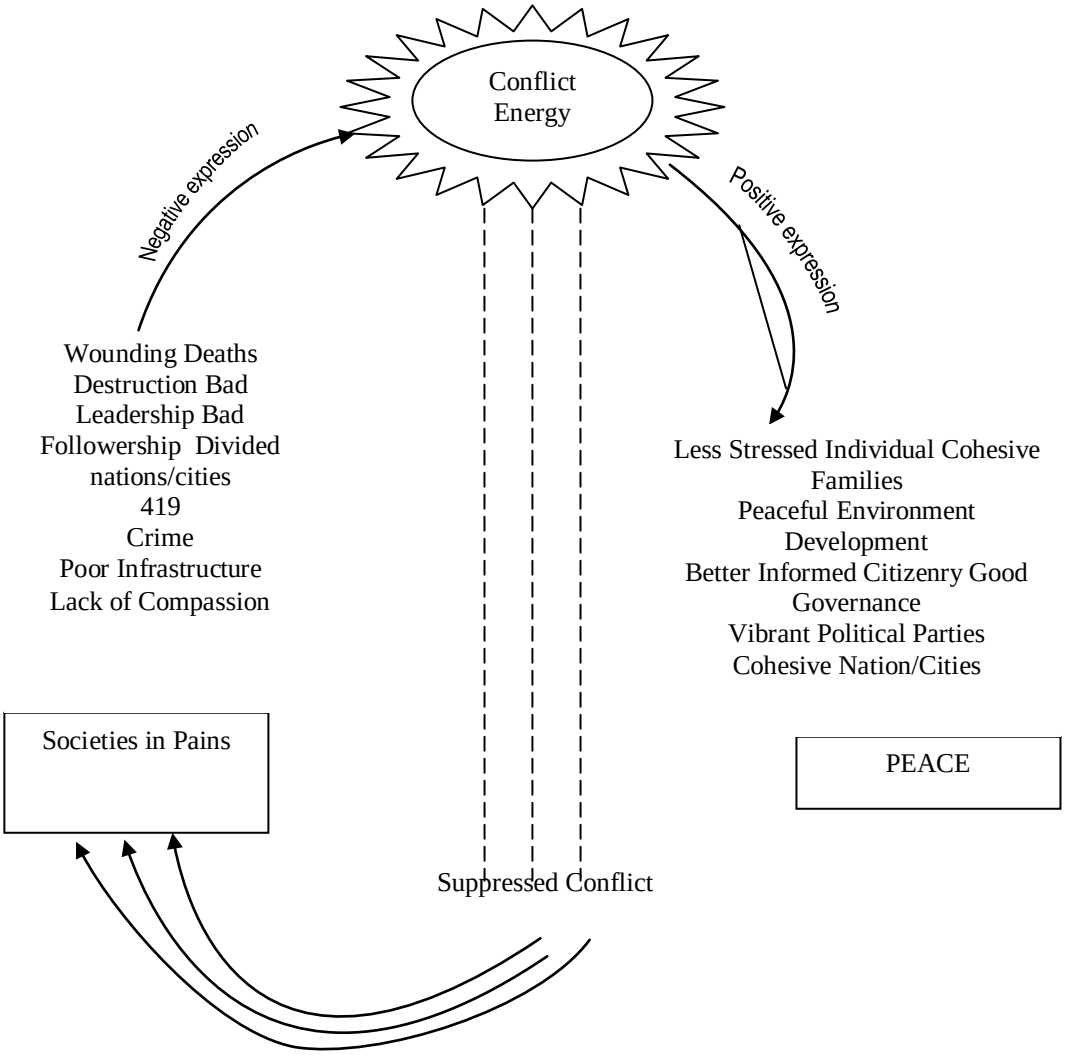
Mitigated stage of any conflict is the period during which the basic causes of conflict remain in place, but the conflict behaviour and attitude has been significantly changed with reduced or less violence and more political mobilization and negotiation. At this stage, the ray of post-conflict recovery can easily be read and felt in the minds of political leaders on opposing sides, while external factors are at the advantage of

gaining new leverage, that is, serving as potential (but not unconditional) provider of aid.

vii. The Resolution Phase

This phase is the most perceived critical stage of all the phases, as success or failure of "post-conflict peace-building will determine whether the conflict will flare up again. For a tangible and enduring or sustainable success to be accomplished, both the underlying causes of the conflict and its immediate consequences must be addressed. This include, reordering of power relationships, bringing some of those responsible for the preceding blood shed to trial and facilitating reconciliation between the opposing sides as a precondition of future coexistence. At this stage, the importance of external actors is very crucial in the following areas such as provision of various forms of assistance and support to the emerging civil society after the resolution of the conflict, and to support programmes for disarmament, demobilization and reintegration of former combatants, including child soldiers.

3.4 Conflict Energy



Conflict Resolution Stakeholders' Network (CRESNET) Training Manual 2001.

3.5 Conflict Handling Styles

3.5.1 Conflict Handling Styles

These are various forms or ways by which individual, groups, societies or nations perceive and respond to conflicts arising from diverse/conflicting views, opinion, and ideas values belief. The behaviours and attitudes of the parties concerned usually determined the success and failure of any conflict which can be described along these two basic dimensions namely:

a. Assertiveness

This describes the extent to which an individual attempts to satisfy his needs and concern.

b. Cooperativeness

It explains the extent to which a person attempt to satisfy his needs and concerns as well as the other person's needs.

These two basic dimensions of behaviour can be applied to define or explain the following five (5) conflict handling styles: dominating/competing; accommodating; avoiding; collaborating and compromising.

i. Dominating/Competing

This takes place when an individual is very assertive and not cooperative. Such a person pursues his own concerns at another person's expense. It is a power-oriented mode. It is a position that states: I have to win. It can also mean: I have to stand up for myself, for my rights. It entails defending a position by argument, by rank, or by economic advantage. You win, the other loses.

ii. Accommodating

You are unassertive and cooperative. It is the opposite of competing. When accommodating, you neglect your own concerns to satisfy the concerns of the other person; there is an element of self-sacrifice in this handling style. It can be selfless, generous; it can be yielding because of weakness or low self-esteem.

iii. Avoiding

You are unassertive and uncooperative. You do not (immediately) pursue your own concerns or those of other person. You do not address the conflict. It can be a diplomatic way of handling conflict, postponing for a better time. It can also be a withdrawal, that could lead to worsening of a relationship.

iv. Collaborating

Under this dimension, you are both assertive and cooperative. It is the opposite of avoiding. You are working with the other person to find a solution that fully satisfies the concerns of both parties. It means dialogue, it means good listening, it means understanding your and the

other person's needs and concerns and creating solutions to meet those concerns. Both win.

v. Compromising

You are partially assertive and partially cooperative. When you compromise you attempt to find an expedient, mutually acceptable solution which partially satisfies both parties. When you compromise, you split the difference, you make concessions, you give up something, to gain something in return. You seek a middle – ground position. You win a little, and you loose a little.

3.5.2 Model Two

This second model grouped conflict handling styles into three major headings or classifications in as much as approaches to conflict vary from individual to individual. The classifications are thus:

1. Avoidance/Denial

This is a common way of handling or dealing with conflict. We may decide to avoid the other party/person or pretend that the conflict does not exist even though we are hurt or angry. We need to observe that this approach or style of handling conflict often leaves us feeling more hurt, frustrated, annoyed, liken to a housewife who keeps sweeping dirt under the carpet: the dirt will surely become heap, which she won't be able to manage one day. This approach creates room for a win/lose option, an option where one person gets what he/she needs and the other person gets nothing. This style does not actually solve the problem but buries it till the time being.

However, this style is useful is some situations, for example, avoidance method can be a stop gap to reflect on what next line of action or step to be taken.

2. Confrontation/Fighting

Is the type of approach in which some people, group, nation or state might decide to slog it out with the other party in conflict situation. They threaten, but attack, yell, insult and tenaciously hold on to their point of view and disagree with the other party's point of view. This approach often leads to violence and it creates lose/lose option, an option where both parties lose.

Neither party gets what he/she needs. In some cases, confrontation might also lead to win/lose where the stronger party with bigger power wins while the weaker party ends up being the loser.

3. Problem Solving

This is an approach whereby the parties in conflict listen with the intent conflict and attack underlying elements in the conflict and attack the issues. The parties adopting this style normally show respect for differences and look for ways to resolve the problem. Furthermore, people using this style or approach are less concerned about who is right or wrong. They view conflict as belonging to both parties which require their mutual collaboration to resolve. This approach creates room for a win/win solution. A situation where both parties come out satisfied with the solution. They are both happy and satisfied because their needs and desires have been met and their relationship has been restored.

4.0 CONCLUSION

Based on the above discussion, it is now crystal clear that it is important to know the stages or phases of conflict progression so as to enable us to ascertain the step to be taken in the prevention of conflict escalation and management approaches to be adopted in managing conflicts that are at different stages or phases of conflict cycle.

5.0 SUMMARY

In this unit, two key propelling variables in conflict escalation are discussed together with the stages of conflict, conflict cycle, conflict energy while various conflict handling style were extensively discussed for the proper understanding and consumption of the students.

6.0 TUTOR-MARKED ASSIGNMENT

1. With particular reference to the key propelling variables in conflict escalation, discuss five stages of conflict of your choice.
2. Define conflict cycle and explain different phases of conflict known to you.
3. With reference to a case study of any past conflict of your choice, discuss the phase or stage of such conflict and the conflict handling style adopted in managing the conflict.

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UNIT 5 CONFLICT ANALYSIS

CONTENTS

1.0 INTRODUCTION

It is an established fact that conflict exist at all levels of human interaction either at interpersonal, intra-group, inter group or at communal, national and international levels. Therefore, it has become imperative for a conflict management practitioner, intervener or a peace studies and conflict resolution student to acquire necessary knowledge and skills required to enable such a person gain an insight into the hidden issues in conflict. The issues ranging from the causes of the conflict, stages/phases of conflict, the stakeholders (parties in conflict), and the conflict analytical tools and techniques necessary for proper understanding of conflict analysis in view of proffering sustainable solution to the conflict. Analysis is usually accompanied by “conflict mapping” and “tracking” both of which are very important at giving the conflict management practitioner a clear picture of what is happening, what is at stake and what could be done to manage the “difficult” situation.

2.0 OBJECTIVES

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

- define concept of conflict analysis
- explain the meaning of stakeholders, categorise stakeholders and itemize criteria for determining
- state pre-intervention conflict analysis
- define conflict mapping and tracking
- identify conventions used in mapping relationships
- enumerate different conflict analytical tools.

3.0 MAIN CONTENT

3.1 Definition of Conflict Analysis

Conflict analysis is a critical review, interpretation and explanation of what is observed and recorded about the conflict situation. Or

A process by which the root causes, dynamics, issues, and – other – fundamentals of conflict are examined, reviewed and unraveled through the use of various mechanisms for proper and better – understanding of the conflict from several perspectives.

Conflict analysis enables peace expert intervening in a conflict the opportunity of gathering necessary data or information that will facilitate easy bringing together of parties in dispute and reveal a dependable, reliable and effective direction on the choice of strategies and action to be adopted for a successful intervention and termination of conflict.

3.2 Definition of Stakeholder

A stakeholder is defined as those men and women, group or parties who are directly or indirectly involved in the conflict and have a significant stake in the outcome.

3.2.1 Categories of Stakeholders

a. Primary Stakeholders

They are those whose goals are, or are perceived by them to be incompatible and who interact directly in pursuit of their respective goals. They are the direct investors in the conflict.

b. Secondary Stakeholders

Are affected directly by the outcome of the conflict but who do not feel themselves to be directly involved. As the conflict progresses, they may become primary and primary may become secondary.

c. Interested Stakeholders

These parties have an interest in the conflict. They stand to benefit from the outcomes whether peaceful or conflictual. The difference between interested and secondary stakeholders is that the interested stakeholders suffer no direct impact of the conflict in the short and medium term.

3.2.2 Criteria for Determining Primary-Stakeholders

Determining where stakeholders should be put is both political and fluid. The following often determines the decisions of interveners in selecting the stakeholders to engage.

i. Functional

This suggests those who directly wage the conflict. Their legitimacy on the negotiating table is their capacity and ability to perpetuate the conflict. They are the embodiment of the conflict. Observers believe they have the power to end the conflict.

ii. Representativity

This is political aspect of stakeholders' categorization. Stakeholders are primary because they represent a large number of people who are directly affected by the conflict. These people also have the means to wage conflict or build peace.

iii. Moral Authority

Primary Stakeholders can also be determined because their moral authority carries the vision of post-conflict society. These include religious leaders, civil society organizations including women's organizations, traditional leaders. Earlier, this category was only confined to the secondary level.

Five (5) Elements Required to Structure Analysis of Stakeholders

Relationship	-	What is the interaction between the stakeholders?
Agenda/Power	-	What are the agendas of key stakeholders for conflict and for peace?
Needs	-	What are the needs of the different stakeholders? Which needs are opposing and overlapping?
Action	-	What actions are the different stakeholders undertaking to promote peace or conflict? What is the cumulative power of actions for peace or conflict?

3.3 Pre-Intervention Conflict Analysis

Entering into conflict situations by a researcher or conflict management practitioner is often an unpredictable task which requires a critical careful conflict analysis. It is not enough for him/her to just note the positions of the stakeholders (parties) in the conflict but s/he must have a thorough understanding of their interests, values and needs as well.

The following model suggests a way for the intervenor to gather data and increase the certainty that his/her entry will be constructive to the disputing parties. It is the responsibility of an intervenor to develop a comprehensive picture of the conflict by identifying its key element. The pre-intervention information gathered usually points the intervenor in a certain direction, suggesting ways to engage the parties to reduce tensions and work together to find solution to the problems that they face on one hand. Additional information or data collected during the course of intervention should also be incorporated into the conflict analysis. This may help you determine why an issue is so hard to resolve or it may suggest an alternative approach to conflict management.

1. History of the Conflict

It is important for a conflict analyst to understand the significant events that has happened in the past between the parties. It reveals the genesis of the conflict and whether they have had previous disputes. History also enables the intervenor to ask the following questions. What has been the pattern of their relationship? Was there a recent change in the relationship? Did the conflict abate at one time before re-escalating? What past efforts have been made to resolve it and why they failed? Preferring answers to these questions might require visiting local, state and native archives for documentary evidence. Oral interviews might also be used to gather necessary information.

2. Context of Conflict

It is also necessary to know how the parties are currently trying to resolve their differences. What is the physical environment of the conflict? That is the social, economics and political environment of the conflict, as well as the dimensions of the external situations (state, sub-regional and global). How do the parties communicate and make decisions?

3. Primary Parties

Identify the parties involved in the conflict, what are the parties positions and underlying interest? What are their values and perceptions of the other parties? Do the parties have settlement authority?

What interest, goals, or needs do the parties share in common?

4. Power Relations

This has to do with the ability to influence or control other events, which could be in form of physical strength, status, control of resources, persuasive ability, support of allies, and so on. There are two major types of power that can be exercised by either of the parties in conflict which are: hard power which is usually associated with violent conflict while the other is soft power that is identified with positive conflict. The following questions are usually being asked under power relation: Is there balance of power between the disputants? What is/are the source(s) of the parties' power? What resources are at the disposal of each party? How often do the parties use their power and what are the consequences of such power? Are there any untapped power bases of the parties? What method of peace process is suitable for the success of the intervention?

5. Other Parties/Stakeholders

Apart from the already mentioned primary parties, under this, we have secondary parties and shadow parties that must be considered and their link or relationships with the primary parties ought to be carefully examined in order to understand the overall underlying problems associated with a conflict. Secondary parties can easily be identified compared to shadow parties because most times. Shadow parties hide their identities but supply primary parties resources required for the prosecution of conflict.

The roles these parties play in the conflict must be ascertained. You should know whether they align with either of the primary parties or neutral. When and how these parties can be involved in the peace agencies or organizations availability and involvement in the process of conflict resolution cannot be underestimated.

6. Issues

a. What are the primary issues as identified by the parties?
b. Are there hidden or secondary issues not stated by the parties that are needed to be identified?

c. What kind of intervention procedures is necessary for the types if issues are identified?
d. Is the conflict genuine in its own right or is it merely a symptom of other unresolved conflict(s).
e. If the latter or former, how much time and efforts must be expended on the conflict in order to reach or arrive at a reasonable and sustainable resolution.

7. The Immediate Situation

What is happening now? (Should the first step be efforts to move towards negotiations, or are short – term violence reduction strategies called for? It is the responsibility of the intervenor to determine the most effective and reliable conflict management strategy to adopt in accordance with the urgency and demand of the conflict situation. For example, if the conflict is at a violent stage, definitely, the intervenor may be compelled to adopt some violence reduction strategies to reduce the rate of likely casualty that may arise.

8 Stages of Conflict

a. We have to ascertain whether the conflict is escalating or stabilizing, and ask why?

b. If the conflict is escalating, what is happening: Are issues moving from specific to general? Is there an increase in issues or resources used to wage the conflict? Has disagreement turned to antagonism? Is there an increase in the level of power being used by either parties? Are the parties polarized? Has extremist leadership arisen? Is communication affected or being distorted? Are parties engaged in propaganda campaigns?

c. If the conflict is stabilizing, what is happening? Are safety-value mechanisms put in place? Is there a fear of escalation? Are there agreements on norms and values? Are there social bonds, friendships, cross-cutting memberships among party members? Are there other third party intervenors or external interference or threat? Are there time constraints or other limitations on the further use of resources?

9. Timing

a. To ascertain the actual and right time of intervention.
b. Determine the most profitable and successful time of the intervention.
c. To know the party that is likely to benefit from immediate intervention.

10. Possible Options of Intervention/Settlement

a. The level of knowledge and understanding of the parties alternatives should be considered.
b. Level of parties awareness of each other's alternatives or option should be considered.
c. Examine the efforts made so far by the conflicting parties in the accomplishment of their options.
d. Evaluate the realistic nature of the parties.

3.4 Definitions of Conflict Mapping and Tracking

Conflict Mapping

Wehr (1979:18) describes conflict mapping or the "first step in intervening to manage a particular conflict".

Conflict mapping can also be defined as graphical representation of the conflict in which the conflicting parties are placed in relation to the situation on ground.

Maps are used for a variety of purposes to understand conflict situation better, to ascertain where power lies, to examine conflict clearly from one viewpoint, to look for openings (way out) or new strategies, to know where our allies or potential allies are placed, to find our own niche, to evaluate what has been done and for many other reasons.

Conflict Tracking

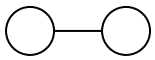
Is the process which involves monitoring, observing and recording the trend of change and continuity in the conflict process. What to keep of could include:

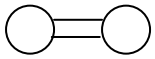
> Conflict parties, including internal leadership struggles, varying prospect for military success and the reading of general population to express support for a settlement; possible ways of re-defining goals and finding alternative means of resolving differences including suggested step towards settlement and eventual transformation; likely constraints on these, and how these might be overcome .
>
> It is very important for the person keeping track of the conflict to pay careful attention to the minutest details about the issue and circumstances around him.

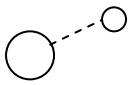
3.4.1 Conventions for Mapping Relationship.

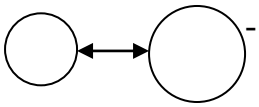
The following are the particular conventions we use in mapping relationships existing between or among the stakeholders (parties) involved in a conflict situation.

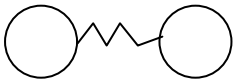
1.  - The circles indicate parties to the situation. The size of the circle indicates power relations of the parties.

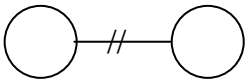
2.  - Straight lines indicate direct relationship between the parties when communication is at its best.

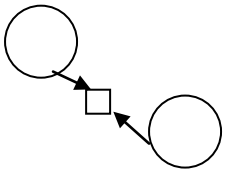
3.  - Double connecting lines indicate an alliance

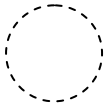
4.  - Dotted lines indicate informal weak or intermittent relationship.

5.  - Arrows indicate the predominant direction of influence or activity.

6.  - Lines like lightening indicate discord or conflict.

7.  - A double line like a wall across lines indicates a broken relationship.

8.  - A square or rectangle indicates an issue, topic or some thing other than people.

9  - Shadows show external parties which have influence but are not directly involved.

Conflict Resolution Stakeholders' Network (CRESNET)
Training Manual 2001.

3.5 Conflict Analytical Tools

Conflict mapping tracking and analysis processes are the essential ingredients required in pre-third party intervention for the collection of essential and comprehensive information/data by a mediator or conflict intervenor to discover purposeful tool(s) and techniques that can be used or adopted to suit their needs.

Through such data, Moore (1996:114) notes, that a mediator would:

- Develop a mediation plan or conflict strategy that meets the requirements of the specific situation and the needs of all parties.

- Avoid entering a dispute with a conflict resolution or management procedure that is appropriate for the stage of development or level of intensity that the dispute has reached.

- Operate from an accurate information base that will prevent unnecessary conflicts due to mis-communication, mis-perception, or misleading data.

- Clarify which issues and interests are most important.

- Identify the key people involved and the dynamics of their relationships.

As mentioned above, some of the techniques or tools may look familiar or may be unfamiliar. However, all have been tried and used repeatedly and successfully by people from many different types of conflict situations. In many cases, groups have adapted them to suit the particular needs they have or based on the perceptions of the people who wok on it.

These are some of the available tools/techniques

A. Timeline

Definition

Timeline is a graph that shows events plotted against a particular time-scale.

Timeline shows different views of history in a conflict: helps to clarify and understand each side's perception of events and also facilitate easy identification of events that are most important to each side. It lists dates

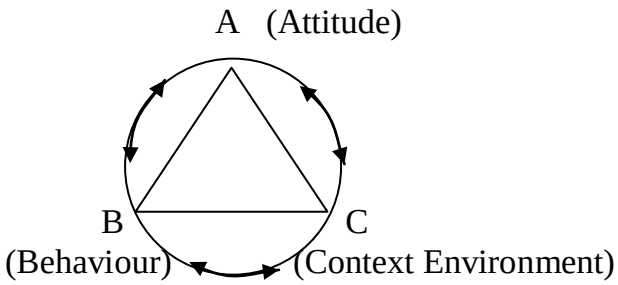
(years, month, or day, depending on the scale) and depicts events in chronological order.

In a conflict situation, groups of people often have completely different experiences and perceptions: they see and understand the conflict in quite distinct ways. They often have different histories. People on opposing sides of the conflict may note or emphasize different events, describe them differently, and attach contrasting emotions to them.

Using the Timeline

Timeline is not a research tool per say as mentioned above, but a way to prompt discussion and learning. In conflict situation, it is usually used early in a process along with either analytical tools or later in the process to help in strategy building. It is also used when people disagree about events or don't know each other's history and as a way of helping people to accept their own perspective as only part of the "truth". Variation in use: it is used by parties themselves and shared with each other; it is followed by a discussion about events that are highlighted by each side and adding a line for peace initiatives during the same time period.

ABC TRIANGLE METHODS OF ANALYSIS



Attitudes (willingness to change, fixed position)

Behaviour (agitation, demand, pleas, violence)

Context (the background)

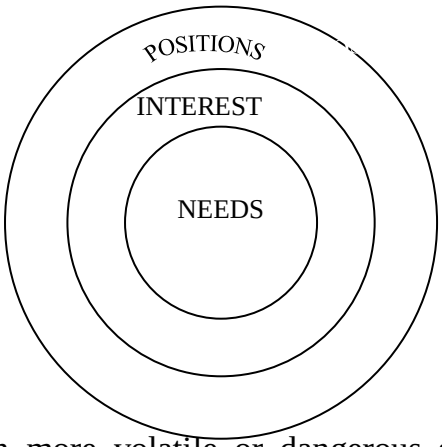
ABC analytical tool sees conflict having three above mentioned elements, which affect one another.

The third party intervenor or peacemaker in a conflict, uses this tool by drawing up a separate ABC Triangle for each of the major stakeholders in the conflict. He lists key issues relating to attitude, behaviour and context from the parties viewpoint, identify the most important need and

fears, and inform each of the parties, his needs and fear as you think, and place these in the middle of the triangle of each of them. You later compare and contrast the perception of the parties for detecting the major object of conflict and then pay attention on the majority. The causes and issues, which are the products of the parties differences, will be addressed, while intervenor will make the parties see reasons on why they should do away with negative perceptions and embrace peace in order to bring about positive and sustainable peace.

The Onion/Doughnut Method of Analysis

This is a graphic tool based upon the analogy of an onion and its layers. The outer layer contains the positions (parties' wants). Underlying these are the interests of the parties in conflict (what parties want to achieve from the situation concerned). The third layer is the core cause at the conflict situation, that is; the most important needs to be satisfied. It is important for intervenor to carry out or do this "onion" analysis for each of the parties involved.



When times are stable, relationships good, and trust high, our actions and strategies may stem from our most basic needs. We may be willing to disclose these needs to others, and discuss them openly, if we trust them, and they may be able, through analysis and empathy, to grasp our needs even before we disclose them.

In more volatile or dangerous situations, and when there is mistrust between people, we may want to keep our basic needs hidden. To let others know our needs would reveal our vulnerability, and perhaps give them extra power to hurt us. If all of us are hidden from each other, they are also less likely to be able to grasp our needs through analysis or empathy because of lack of knowledge and because our mistrust changes our perceptions of each other.

In such a situation of conflict and instability, actions may no longer come directly from needs. People may look at more collective and abstract level of interests, and base their actions on these. When the interests are under attack, they may take up and defend a position, which is still further removed from their original needs.

This type of analysis enables intervenor to understand the dynamic of a conflict situation, and prepare dialogue facilitation between groups in a

conflict. The analysis is most useful in a mediation or negotiation processes when parties involved in either of the processes which to clarify for themselves their own needs, interests and positions. As they plan their strategies for negotiation, they can decide how much of the interior "layers" – interests and needs – they want to reveal to the other parties involved.

Force – Field Analysis

This tool can be used to identify the different, forces influencing a conflict. It is used to analyse both positive and negative forces in a conflict. Whenever action is being taken to bring about change, there will be other forces that are either supporting or hindering what you are trying to achieve. This tool offers a way of identifying these positive and negative forces and trying to assess their strengths and weaknesses. It can also help you to see more clearly what is maintaining the status-quo.

How to use this tool

i. First and foremost, you begin by naming your specific objective that is the action you intend to take or the change you desire to achieve. Write this objective at the top of the page and drawn a line down the centre of the page.

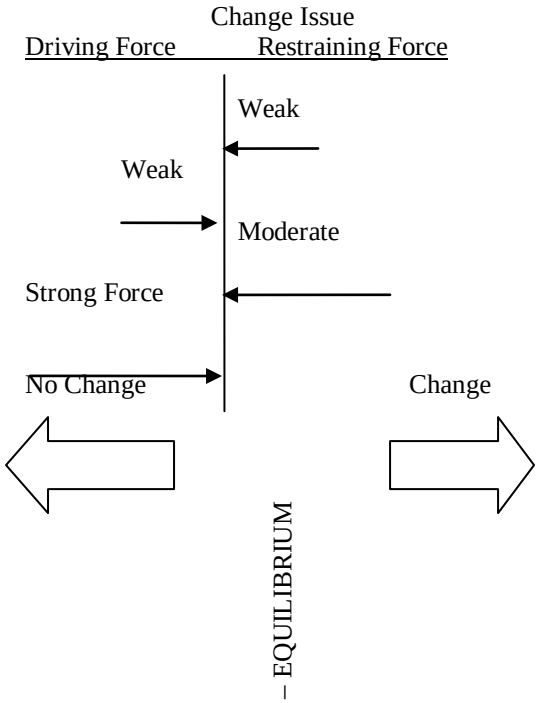
ii. On one side of the line, list all the forces that seem to support and assist the action or change to happen. Next to each one draw an arrow towards the centre, varying the length and/or thickness of each arrow to indicate the relative strength of each force. These are pointing in the direction of the desired change.

iii. On the other side of the line, list all the forces that seem to retrain or hinder the desired action or to minimize in some way the negative force, in order to facilitate increase in the likelihood of the desired change happening.

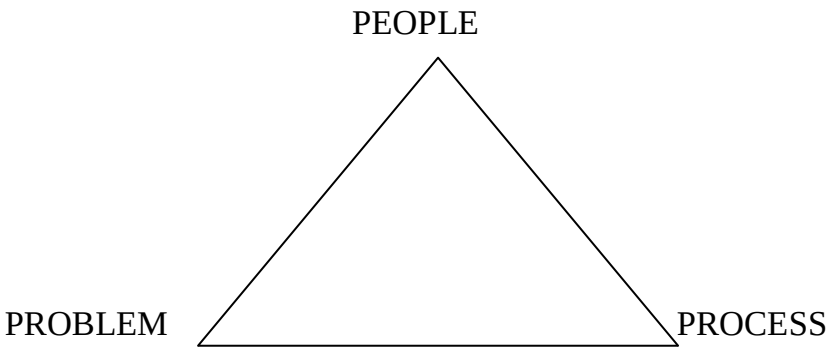
iv. At this stage, you may want to examine your plan of action and make modifications in your strategy if necessary in order to build upon the strengths of the positive forces and then try to reduce or even remove the effects of the negative forces.

The Force Field Analysis was developed by an American Social Psychologist Kurt Lewin (1951) as a useful tool built on the premise that forces are often driven by human habits, customs, and attitudes that can affect the change process.

Force Field Diagram



PPP MODEL



PEOPLE

- Who are the individuals and groups directly involved?
- Who will be affected by or can influence the outcome?
- What leadership and structure does each group have?
- How does each view the situation?
- How is each affected?
- What particular feelings, issues etc characterize each?
- What are the main discrepancies in perception?
- What communication, connections links does each have with the others?

PROCESS

- What have been the sparking issues?
- Is there a historic pattern to their interaction?
- What is the process each would want to follow?
- As the conflict developed, what additional problems or issues emerged?
- What degree of polarization is there between each party?
- What activities of each party have and are intensifying the conflict?
- What role do more moderate individuals and groups have?

PROBLEM

- What are the interests, needs and values of each party?
- What do they propose or pursue to meet them?
- What shared basic needs underlie the conflict? (Security? Self esteem? Food? Rights? Land? etc).
- What are the minimal essential outcomes each party might be satisfied with?
- What are the basic areas of agreement and disagreement?
- What resources are there for dealing with this conflict? (within the parties? others).
- What stage has the conflict reached – is it ripe for resolution/transformation?

This tool can be used to analyse conflict by proffering answers to the several questions put forward above. If reasonable answers were proffered, then the conflict intervenor would be able know the stage of the conflict, the parties involved, their positions, basic needs, values perceptions and differences. Having known all these, you will then be able to decide on the method or process to be adopted in facilitating reconciliation (peace agreement) between the aggrieved parties, so as to bring about enduring/sustainable peace to the previously troubled society.

DPT MODEL

D – Diagnosis: Investigating the history of sickness

P – Progress: Establish the present state of success and where it could be in future.

T – Therapy: The prescription or treatment.

This analytical tool is based on the premise that any individual or society that is in conflict is sick and therefore they need to see a doctor.

This means that there is a direct relationship between conflict and our physical, emotional and spiritual well being. Negative conflict expression reduces our overall capacity to build a healthy society.

Therefore, for a healthy society to be built, it is now the responsibilities of the conflict manager together with concerned authority or parties to bring about drastic reduction or removal of perceived sickness by proffering or prescribing lasting and sustainable treatment for sickness. Having carried out a proper diagnosis/examination of cause and trend at the conflict, appropriate measures/treatment can now be adopted for the removal or eradication of the sickness and its cause.

PILLARS

This is a graphic tool that is built on the premise that some situations are not really stable, but are being "held up" by a range of factors or forces, which are the "pillars". If the pillars can be identified and then find ways of removing them or minimizing them effects on the situation we will be able to topple a negative situation and replace it with a positive one.

How to use this tool

The tool can be made use of by following these bellow trends:

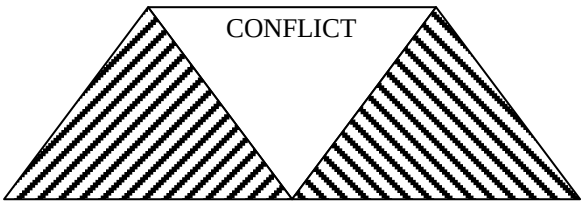
i. Identify the unstable situation (conflict, problem or injustice) and show this as an inverted triangle standing on one point.

ii. Then identify the forces or factors that are likely to be maintaining this situation and show these as the "pillars" on either side of the triangle holding it up.

iii. Put into consideration how each of these pillars might be weakened or removed from the situation. List your strategies briefly for each of the pillar.

iv. Also consider what stable situation could replace this unstable one.

Example of a Pillars Analysis



4.0 CONCLUSION

With all the above discussions, we can now see that before any conflict can be prevented or resolved amicably from degenerating into a violent one it is important for a conflict manager or intervenor to be well equipped and versatile in conflict analysis techniques or tools so as to afford him the opportunity of understanding the conflict situation, and knowing the stakeholders, causes of conflict , the parties views, perceptions, interests, values before embarking on conflict resolution/management process that will bring about positive and sustainable peace.

5.0 SUMMARY

This unit explained/defined conflict analysis, stakeholders, categories of stakeholders, and criteria for determining primary stakeholders. The unit also defined “conflict mapping” and “tracking” and showed conventions used in mapping relationships. Different tools of conflict analysis that can facilitate proper and better understanding of conflict situation and types of relationship existing between/among stakeholders in relation to sustainable conflict resolution were extensively discussed.

6.0 TUTOR-MARKED ASSIGNMENT

1i. What is conflict analysis?
ii. Discuss any four (4) conflict analysis tools.

2i. Define conflict mapping and tracking.
ii. Draw or show different conventions used in mapping of relationship and indicate their meanings.

3i. Who are stakeholders?
ii. Explain different categories of stakeholders.

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MODULE 2 UNDERSTANDING CONFLICT AND WAR

UNIT 1 MEANING/DEFINITION OF WAR, CAUSES OF WAR, WAR AND STATE OF HOSTILITY

CONTENTS

1.0 INTRODUCTION

The ideal situation is for people, nations or states to be at peace with one another. But since the inception of nineteenth century to date, the whole would have been turned into battle field with groups, nations, or state rising against one another, stemming from disagreement over issues, values or beliefs or competition over scarce or limited resources.

However, series of non-violent conflict later degenerated into very violent ones due to ineffective regulatory or conflict management mechanisms adopted in the past. War is not only more prevalent between nineteenth and twenty first century than in earlier centuries, it is more violent and destructive and has continued to drain the energy and manpower resources of countries or states and emasculate governance.

2.0 OBJECTIVES

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

- define and explain what war is
- explain war and state of hostility
- list and explain causes of war or reasons for war
- state relationship between conflict and war.

3.0 MAIN CONTENT

3.1 Meaning/Definition of War

War like any other social phenomena, has various definitions which are often masked by a particular political or philosophical stance paraded by the authors.

The Black's Law Dictionary, taking a cue from Gitlow V Kiely D.C.N.Y., 447. 2d 279,233 define "war" as a hostile contention by means of armed forces, carried on between nations, states, or rulers or between citizens in the same nation or state. 'War' defined by Webster's Dictionary is a state of open and declared hostile armed conflict between states or nations, or a period of such conflict. This captures a particular rationalistic account of war and warfare, that is, war needs to be explicitly declared and to be between states to be a war.

With reference to the above given Webster's definition, J. J. Rousseau arguing this position, opines that "war is constituted by a relation between things, and not by persons…war then is a relation, not between man and man, but between state and state….." (The Social Contract) Cicero defines war broadly as "a contention by force"; Hugo Grotius adds that "war is the state of contenting parties, considered as such"; Thomas Hobbes notes that war is also an attitude: "By war is meant a state of affairs, which may exist even while its operations are not continued"; Denis Diderot comments that war is "a conclusive and violent disease of the body politic"; for Katl Von Clause Witz, "war is a continuation of polities by other means", and so on.

The Oxford Dictionary defines war as "any active hostility or struggle between living beings; a conflict between opposing forces or principles".

The Military Historian, John Keegan offers a useful characterisation of the political – rationalist theory of war in his A History of War. It is assumed to be an orderly affair in which states are involved, in which

there are declared beginnings and expected ends, easily identifiable combatants, and high levels of obedience by subordinates.

As noted above, we can see that there are several schools of thought on war's nature other than the political – rationalist account, and the students of war must be careful, not to incorporate a too narrow or normative account of war. In a nutshell, each definition has its strengths and weaknesses, but often is the culmination of the writer's broad philosophical views or positions.

War can simply be defined as a situation of armed conflict consequent upon hostile relations with the objective of producing the winner and the vanquished in the pursuit of an objective or objectives for which the war is fought.

Prior to the late sixteenth century, there exists a drawn distinction between just and unjust war geared towards satisfying the theological preponderance of issues. St. Augustine who lived between 354 and 430 A.d. writes. "just wars are usually defined as those which avenge injuries, when nations or city against which warlike action is to be directed ahs neglected either to punish wrongs committed by its own citizens or to restore what has been unjustly taken by it. Further, that kind of war is undoubtedly just which God himself ordains."

3.2 War and State of Hostilities/Conflict

It thus becomes imperative or necessary to clarify or point out that states may be involved in hostilities including hostilities involving armed confrontation or conflict and yet not be in a state of war. Hostilities therefore, vary in nature, which can range from minor skirmishes to extensive military actions or operations, yet a state of war be said not to have been brought about. For example, a case study of a situation of hostilities – a non-war armed conflict, was the Sues Canal zone hostilities in October – November 1956. It was in consequence of the non-war state that the British Lord privy seal on 1 November 1956 said:

> "Her Majesty's Government do not regard their present action as constituting war… There is no state of war, but there is a state of conflict".

It important to differentiate between State of War and Conflict or Hostility with regards to the consequences of each one of them which are as follows:

(i) War brings about termination of diplomatic relations and recognition of some treaties between the belligerent states whereas conflict/hostility do not.

(ii) A state of war may have economic consequences. It may therefore create enemy status and trading with the enemy and internment of enemy subjects.

It is therefore no longer fashionable to draw a distinction between just and unjust war or between Legal and Illegal War. It is better to speak in terms of non-promotion and prohibition of war and amicable means of resolving conflicts peacefully at the early stage before it degenerates into violent confrontation and possibly war.

(iii) The extent or dimension of the conflict of it. If it falls short of war, it will amount to hostility or conflict.

(iv) The intention of the contestants – The parties determine whether they regard the position as a war situation or a situation of hostilities or conflict. There may be a problem where one of the disputing states feels that a state of war has not arisen, as in case of India – Pakistan hostilities of September 1965. Ordinarily, a unilateral declaration of war by one of the contesting states is regarded as a notice of a claim of belligerent rights. The expectation is that third states will observe neutrality. A unilateral denial of war works the other way.

(v) The attitude and reaction of non-contestant states should be noted especially where their rights and interests are involved or violated. Where the hostilities are very extensive in nature, belligerency may be recognised or a declaration of neutrality whatever may be the intention of the contesting states.

Belligerent rights may be asserted against the third state by any of the contesting states, as in the case of Israel – Lebanon /Isbolar where Israel usually point accusing finger at Syria, Iran and some other Arab nations while other Arab nations do often accuse United States of America of backing Israel. It should be noted that the right of the contesting states in this regard cannot be challenged.

3.3 Causes of War

It is evident that in a situation where peaceful resolution to a conflict or hostilities is unachievable war or violent confrontation becomes inevitable. In every man, of course, a beast lies hidden – the beast of rage, the beast of lustful heat at the screams of the tortured victim and

the beast of lawlessness let off the chain. That is, man's appetite sometimes or perpetually overwhelms his reasoning capacity, which results in moral and political degeneration and triggers war's causation. Be that as it may, a nation may be engaged in war with another for the following reasons, among others:

(i) Ideological Reason

The Cold War era was marked by antagonistic, ideological, strategic and military rivalry which existed between the proponents of Marxist – Leninist communism, led by the Sino – Soviet block and their opponents who doubled as the proponents of liberal democracy, the West comprising Western Europe and North America, led by the United States of America.

A typical example is the Soviets' planting of missiles in Cuba which was perceived as an attempt for the establishment of a nuclear umbrella for extensive subversive activities and the propagation of communism in Latin America, which to the United States would amount to an assault on her security and the hemispheric exlusivism propounded in the Monroe Doctrine.

The defunct Union of Soviet Socialist Republic (U.S.S.R) now Rossia claimed to have embarked on that major offensive missile threat during the late summer and fall of 1962 by pointing out or stating that their intentions were as defensive as the US missiles surrounding the Soviet Union.

(ii) Religious Factor

Throughout the 1950 – 1996 period, religious conflict was believed to have constituted between 33 and 47 percent of all global conflicts. Religious conflicts were discovered to have escalated dramatically since the onset of the Cold War. However, since the end of Cold War, non-religious conflicts have declined more than religious conflicts.

Religion is increasingly being seen both as an identifiable source of violence around the world and simultaneously so deeply interwoven into other sources of violence – including economic, ideological territorial, and ethnic sources – that is difficult to isolate. The rationale for religiously motivated violence exists in Judaism, Christianity, Hinduism and others. No major religious tradition has been or is a stranger to violence from its extremists. Sociologist Mark Juergensmeyer coined the phrase "Cosmic War" to describe the world view of religious adherents who have resorted to violence in defence of their faith.

Juergensmeyer argues that all religious traditions feature depictions of divine wars in which Good battles Evil, particularly in a religion's scriptures. Divine conflicts are featured prominently in the apocalyptic theology of the three monotheistic religions, Judaism, Christianity and Islam. In Judaism, it is the final judgement and the realisation of God's purpose for creation. In Islam, it is the spiritual Jihad, the struggle in a believer's life to overcome evil and to do good, to live according to Allah's will and defend the community of believers against all infidels. And in Hinduism, a pantheistic religion, it was not merely confined to the fierce physical struggle between Lord Rama and Rawana, the Evil one, but also included a struggle that linked the battlefield of Ayodhya to the daily lives of all Hindus. To investigate this claim of cosmic or divine war, Juergensmeyer interviewed members of religious groups ranging from Aum Shinrikyo to Hamas to the Christianity identity movement in the United States. In all these movements, he found strong echoes of cosmic war.

(iii) Ethnic Reason

Thomson (2000:58) defines an ethnic group as "… a community of people who have the conviction that they have a common fate based on issues of origin, kinship ties, traditions, cultural uniqueness, a shared history and possibly a shared language". Toland (1993:3) shares with Thomson in her conception of an ethnic group, but takes it one step further by adding a sense of belonging on the individual level "….[ethnicity is] the sense of peoplehood held by members of a group sharing a common culture and history within a society. The concept ethnicity is not the problem perse, but the people [elite] using it as tools to achieve or accomplish their personal and selfish agenda o interests. Paul R. Brass argues "ethnicity and nationalism are not 'given but are social and political constructions. They are the creation of elites, who draw upon, distort and sometimes fabricate materials from the culture of the groups they wish to represent in order to protect their well-being or existence or to gain political or economic advantage for their groups as well as for themselves… this process invariably involves competition and conflict for political power, economic benefits, and social status between the political elite class and leadership groups both within and among different ethnic categories" (Kruger 1993:11).

Nigerian Civil War (Biafra), genocide in Sudan, Northern Ireland Conflict, Niger Delta crisis and host of other conflict had ethnic affiliation.

(iv) Pressure of Democratization

Many states in present day Africa, have been saddled with authoritarian, corrupt, self-perpetuating oligarchies and one – person rulerships, which have come under pressures from both domestic social forces and external forces interested in the democratisation (liberalisation) of their structure of governance and replacement of existing systems of authoritarian rule and give way to a more accountable and grassroots – based ones, that it devoid of unnecessary discrimination on the basis of one's ethnicity, race, religion, sex or other social identities, political persecution, and rising abuses of human rights.

(v) Poverty and Neglect of Basic Human Needs by the Authority

Most African states' economies are characterized by agricultural or primary producing activities leading to structural imbalance of most of the economies and the Western World, coupled with heavy borrowing aimed at sustaining both their import and investment needs. The debt – service obligations have been imposing on the generality of African countries a cutbacks in social spending, rising prices of commodities, upsurge of unemployment, collapse of real earnings of individuals, drastic reduction of the purchasing power of national currencies, a great decline in general standards of living and increasing poverty for the majority or (impoverishing the general populace) are therefore the factors fostering social tensions, conflict, crises and war.

(vi) Colonial Legacy

The institutional legacy of the colonial masters' rule, though indirect rule, divide – and – rule tactics and the blocking of any political development, fostered localised disposition and planted a great seed of discord among diverse ethnic/political groups which later prevented the forging of a common national identity (and thus a nation-state) predicated on commercial concession.

(vii) It is not possible to state exhaustively the reasons, why a state may adduce for the purpose of engaging in war with another state.

Be that as it may, the following are among other reasons that may force a nation to engage in war with another.

- For the assertion of her sovereignty;
- For the purpose of protecting her boundaries;
- For the purpose of achieving independence;
- To protect her citizens;

- For the purpose of arms control;
- As a show of strength;
- For the purpose of re-claiming lost territories;
- To serve as deterrence and hosts of other reasons that we could think of.

4.0 CONCLUSION

To bring this unit to an end, it should be understood that whether a war is declared or there is "state of hostilities, the belligerent states should realise that international law frowns at war. Therefore, efforts should be geared towards guiding against creation of an enemy image status and then find just means of ending war or hostilities such that diplomatic relations and recognition of some treaties between belligerent states are kept intact.

5.0 SUMMARY

This unit examined different types of meanings/definitions of war, the relationship between war and hostility and then discussed various causes or reasons of war that are evolving day in day out diving the course of interaction and diplomatic relations between states or within the territorial integrity of a particular state.

6.0 TUTOR-MARKED ASSIGNMENT

1. Define the concept war and differentiate between war and a state of hostilities.
2. Enumerate and explain at least six (6) causes of war.

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UNIT 2 HEORIES OF WAR

CONTENTS

1.0 INTRODUCTION

In this unit, efforts will be geared towards reviewing various theories and philosophies of war propounded by different scholars to establish a broad range and complex intellectual path of study and continual analysis. The analysis of war may be divided into several categories such as philosophical, political, economic, technological, legal, sociological, and psychological approaches because most of the actual theories are mixed and war is an extremely complex social phenomenon that cannot be explained by any single factor or through any single approach. It therefore becomes imperative , for us to periodise and analysis some theories in order to have clear understanding of the concept.

2.0 OBJECTIVES

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

- understand different theories of war.
- explain why wars are fought.

3.0 MAIN CONTENT

3.1. Biological Theories of War

The theories center upon man's innate drives of which the analogies are drawn from animal behaviour. They are developed by ecologist, psychologists and psychoanalyts.

3.1.1 Ethnology Perspectives

The ecologists derived their persuasive argument from the study of anima war fare which they perceived may contribute towards an understanding of war as employed by man. They assert that the behavior monkeys and apes in captivity and of young children, for example, show basic similarities. In both cases it is possible to observe that aggressive behavior usually arises from several drives: rivalry for possession, the intrusion of a stranger, or frustration of an activity. They also opine that the major conflict situations leading to aggression among animals, especially those concerning access of males to females and control of a territory for feeding and breeding, are usually associated with patterns of dominance.

Contrary to the analogies drawn by many ethnologists of animal to human behavior, their several more restrained colleagues as well as by many social scientists questioned the assertion. The term aggression, for example, is imprecisely and inconsistently used, often referring merely to the largely symbolic behavior of animals involving such signals as grimaces.

They further argued that observed animal behaviour can be regarded as a possible important source of inspiration for hypotheses, but these must then be checked through the study of actual human behaviour, which has not been adequately done. The advanced hypotheses are seen to be having little foundation and are merely interesting ideas to be investigated. Further, human behaviour is not fixed to the extent that animal behaviour is, partly because man rapidly evolves different patterns of behaviour in response to environmental factors, such as geography, climate, and contact with other social groups. The variety of these behaviour patterns is such that they can be used on both sides of an argument concerning, for example whether or not men have an innate tendency to be aggressive.

Ethnologists study two particular interesting subjects of which the effects of overcrowding on animals and animal behaviour regarding territory are the first one. The study of overcrowding is perceived incomplete, and the findings that normal behaviour patterns tend to break down in such conditions and that aggressive behaviour often becomes prominent are subject to the qualification that animal and human reactions to overcrowding may be different. Ethnologists have also advanced plausible hypothesis concerning biological means of population control through reduced fertility that occurs when animal population increase beyond the capacity of their environment. Whether such biological control mechanisms operate in human society, however, requires further investigation.

Furthermore, findings that have to do with the "territorial immature" in animals – that is, the demarcate and defence against intrusion of fixed area for feeding and breading – are even more subject to qualification when an analogy is drawn from them to human behaviour. The analogy between an animal territory and a territorial state is obviously extremely tenuous. In nature, the territories of members of species differ in extent but usually seem to be provided with adequate resources, and use of force in their defense is rarely necessary, as the customary menacing signals generally lead to the withdrawal of potential rivals. This scarcely compares with the sometimes-catastrophic defense of the territory of a national.

3.1.2 Psychology Perspective

One school of theorists postulated that the major causes of war can be found in man's psychological nature. Such psychological approaches range from very general, often merely intuitive assertions regarding human nature, to complex analysis utilising the concepts and techniques of modern psychology. The former category includes a wide range of ethical and philosophical teaching and insights, including the work of such figures as St. Augustine and the 17^{th} – century philosopher Spinoza.

Modern writers that believe in psychological approaches emphasize the significance of psychological maladjustments or complexes and of false, stereotyped images held by decision makers of other countries and their leaders. Some psychologists posit an innate aggressiveness in man. Others focus on public opinion and its influence, particularly in times of tension; while others stress the importance of decision makers and the need for their careful selection and training.

Most believe that an improved social adjustment of individuals would decrease frustration, insecurity, and fear and would reduce the likelihood of war. All of them believe in the importance of research and education. Still, the limitation of such approaches derives from their very generality. Also, whether the psychological premises are optimistic or pessimistic about the nature of man, one cannot ignore the impact upon human behaviour of social and political institutions that give man the opportunities to exercise his good or evil propensities and to impose restraints upon him.

3.2 Social Theories of War

Despite the fact that psychological explanations of war contain much that seems to be valid, they are insufficient because man behaves

differently in different social contexts. Hence, many thinkers that subscribe to these context, focuses either on the internal organization of States or on the international system within which these operate.

The theories attributing war to the nature of the state fall into two broad streams namely: Liberal and Socialist.

3.2.1 Liberal Analyses

Three basic elements were distinguished by the early or classical liberals of the 18th and 19th centuries in their analysis – individuals, society, and the state – and regarded the state as the outcome of the interaction of the former two. They assumed that society is self-regulating and that the socioeconomic system is able to run smoothly with little interference from the government. Economy, decentralization, and freedom from governmental control were the classical liberal's main concerns, as shown particularly in the writings of John Stuart Mill. They accepted the necessity of maintaining defense but postulated the existence of a basic harmony of interests among states, which would minimise the incidence of wars. Economic cooperation based upon an international division of labour and upon free trade would be in the interests of everybody – commerce would be the great panacea, the rational substitute for war.

Liberals emphasised a variety of factors in their explanation of war that never be or occur. First, they focused on autocratic governments, which were pressumed to wage war against the wishes of peacefully inclined people. It thus became a major tenet of liberal political philosophy that war could be eliminated by introducing universal suffrage because people would surely vote out of office any belligerently inclined government. From the early American pamphleteer Thomas Paine onward, a major school of liberal supported republicanism and stressed the peaceful impact of public opinion. Although, they could not agree about actual policies, they stressed certain general ideas concerning relations between states, paralleling their laissez – faire ideas of the internal organization of the state with ideas of a minimum amount of international organization, use of force strictly limited to repelling aggression, the importance of public opinion and of democratically elected governments, and rational resolution of conflicts and disputes. Later in the course of the 19th century, however, and especially after Would War 1, Liberals began to accept the conclusion that an unregulated international society did not automatically tend toward peace and advocated international organization as a corrective organ.

3.2.2 Socialist Analyses

Although Liberals see political structures as the primary factor determining the propensity of states to engage in war, socialists turned to the socioeconomic system of states as the primary factor. Early in the 20th century the two streams did, to some extent converge, as evidenced by the fact that the English radical liberal John Hobson explained wars in terms later adopted by Lenin.

3.2.2.1 Marxian Analysis

Marx attributed war not to the behaviour of states but to the structure of society. Marx was of the view that war occurred not as an often voluntary instrument of state policy but as a result of a clash of social forces. He saw state as a merely political superstructure; in which the primary determining factor lies in the capitalist mode of production, which leads to the development of two antagonistic classes: the bourgeoisie and the proletariat. The bourgeoisie controls governmental machinery in its own interests. In its international relations, the capitalist state engages in war because it is driven by the dynamism of its system – the constantly growing need for raw materials, markets, and supplies of cheap labour.

The only way to avoid war is to remove its basic cause, by replacing capitalism with socialism, thus abolishing both class struggle and states. The Marxist doctrine, however, gave no clear guidance about the interim period before the millennium is reached; and the international solidarity of the proletariat proved a myth when war broke out in 1914, facing the European Social Democratic Parties with the problem of adopting an attitude to the outbreak of the war. The Second International of working-class parties had repeatedly passed resolutions urging the working classes to bring pressure upon their respective governments to prevent war, but, once war had broken out, each individual party chose to regard it as defensive for its own state and to participate in the war effort.

This was explained by Lenin as being due to a split in the organization of the proletariat that could be overcome only through the activity of a rigidly organized revolutionary vanguard.

Western Socialists were increasing, although in varying degrees, to revisionist interpretations of Marxism and returned to their attempts to revise socioeconomic structures through evolutionary constitutional processes, seeing this as the only possible means of preventing wars. In the Soviet Union the socialist theory of war changed as the new communist regime responded to change in circumstances. Soviet theoreticians have distinguished three types of war: between capitalist

states, between capitalist and socialist states, and colonial war of liberation. The internecine wars among capitalist states are supposed to arise from capitalist competition and imperialist rivalries, for they weaken the capitalist camp.

A war between capitalist and socialist states is one the clearly expresses the basic principles of class struggle and is, therefore, one of which the socialist states must prepare. Finally, wars of colonial liberation can be expected between subjugated people and their colonial masters. The weakness of the theory is that the two major expected types of war, the intra-capitalist and capitalist – socialist, have not materialised as frequently as Soviet Union and in the socialist camp. Even in communist countries, nationalism seems to have proved more powerful than socialism: "national Liberation movements" have appeared and have had to be forcibly subdued in the Soviet Union, despite its communist regime. Also, war between socialist states is not unthinkable, as the doctrine claims: only the colossal preponderance of Soviet forces prevented a full-scale war in 1956 gainst Hungary and in 1968 against Czechoslovakia; war between the Soviet Union and the People's Republic of China was a serious possibility for two decades after the Sino-Soviet split in 1962; and armed conflict erupted between China and Vietnam after the latter country became the most powerful in Southeast Asia. Finally, the theory does not provide for wars of liberation against socialist states, such as that conducted by the Afghan Mijahideen against the Soviet Union from 1979 to 1989.

3.2.2.2 Nationalist Analysis

Several theories on war claim that war ultimately result from the allegiance of men to nations and from intimate link between the nation and the state. The connection between the nation and the state is firmly established by national self-determination doctrine, which has become major basis of the legitimacy of states from the perception of many scholars and as major factor in their establishment and breakup. It was the principle on which the political boundaries of Eastern Europe and the Balkans were arranged after World War 1 and has been the principal slogan of the anticolonial movement of the 20th Charter of the United Nations in the objective of "self-determination of peoples" as well as in the more specific link between nationalism and statehood that renders them both so dangerous. The rulers of a state are ultimately governed in their behaviour by what is loosely summed up as the "national interest" which occasionally clashes directly with the national interests of other states.

The ideal of the nation – state is never fully achieved as no members of a patetiailar nation gathered with one states boundary. Conversely, many

states contain sizable national minorities. Lack of full correlation has frequently given rise to dangerous tensions that eventually lead to war. A government inspired by nationalism may conduct a policy aiming at the assimilation of national minorities, as well the general tendency of central and eastern European governments in the interwar period; it may also attempt to reunite the members of the nation living outside its boundaries, as done by Adolf Hitler. It is very impossible for national groups that do not have access to state control to feel alienated and dissatisfied with its regime and attempt to claim or pursue self-determination in a separate state, as demonstrated in the attempt/move to carve Biafra out of Nigeria, separation of Bangladesh from Pakistan and several minority states that pulled out of former USSR after the Cold War.

Self-determination principle lack rational basis for deciding or allowing national minority to breakaway while the majority group may violently oppose the breakaway movement because of some benefits that might no longer be available to the majority. In the light of the above, no suitable method has been found for divorcing nationalism from the state and for meeting national demands through adequate social and cultural provisions within a large unit.

Nationalism has been perceived or viewed to be making compromise and acceptance of defeat more difficult and also induces war through the severity of its influence. On the other hand, nationalism has ceased to be a major cause of conflict and war among nations of Western Europe.

Special – Interest Groups Perspective

The state is regarded as an undifferentiated whole by some theories and generalised about its behaviour, while some theorists on the order hand are more sociologically oriented and focus their attention on the roles played within the state by different special – interest groups. These theorists made a distinction between the great mass of people and groups that are directly involved in or influential with government. Some writers postulated continuous conspiracy of the rulers against the ruled that can be traced to prehistoric times, when priests and warriors combined in the first state structures. Some writers, however, seek an answer to the question of why some governments are more prone to engage in war than others and they generally find the answer in the influence of important interest groups that pursue particular and selfish ends.

4.0 CONCLUSION

Based on the above discussion, it has been revealed that it is important to have a clear understanding of some of the factors responsible for war making or leading to state of hostilities between or among two or more states.

5.0 SUMMARY

In this section, we have looked at some of the theories of war. The first theory is on biological causes of war which was discussed under two sub-headings namely ethnology perspective and psychological perspective. The second theory was social theories of war and was also divided into sub-titles.

6.0 TUTOR-MARKED ASSIGNMENT

1. To what extent does a biological theory of war justify man's innate drives for war making?
2. Discuss social theories of war with reference to any recent war of your choice.

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UNIT 3 THEORIES OF JUST WAR

CONTENTS

1.0 INTRODUCTION

The Just War theory is simply a doctrine of military ethics studied by moral theologians, ethicists and international policy makers which holds that or asserts that conflict/war can and ought to meet some conditions or criteria of philosophical, religious or political justice, provided the laid down conditions or criteria are met. In the present day era, warfare has become a legal institution, which organises and disciplines the military, defines the battle space, privileges killing to debate the legitimacy of waging war – down to the tactics of particular battles.

2.0 OBJECTIVES

At the end of this unit and consulting the relevant readings, student should be able to:

- describe what a just war connotes
- explain the argument put forward by different theorist/scholars to justify wagging of war
- appreciate the arguments put up to support or go against war.

3.0 MAIN CONTENT

3.1 Definition of Just War

The term ‘just war’ refers to the set of norms or criteria for assessing whether government recourse to force is morally justified. The just-war tradition is expressed in many forms: in international law in the codes of conduct of national military forces, in moral philosophy and theology, in church teaching.

Just-war theory deals with the justification of how and why wars are fought, which can be either theoretical or historical in nature. The theoretical aspect is concerned with ethnically justifying war and forms of warfare, which the historical aspect, or the "just war tradition" deals with the historical body of rules or agreements applied (or at least existing) in various ways across the ages.

The doctrine of the just war was believed to have been developed by Augustine in Civitas Dei, via the use of a comprehensive framework tagged. The City of God, in reaction to the "barbarian" invasions of the Western Roman Empire in the fourth century. Drawing upon ancient Greek philosophical principles, Augustine developed the theory as a middle way between the absolute pacifist strains of Christian ethics typified by certain Gospel passages which include "Do not resist an evil person. If someone strikes you on the right cheek, turn to him the other also". (Mathew 5:39) and the Roman Imperial imperative to conquer military enemies of the state.

1) The "just war" doctrine can best be understood in the context of the "pacifism vs. just war" debate which continues to divide Christian and other ethnical theorists, although it can profitably be compared to other theories which attempt to justify war, such as Realism (Realpolitik).

The Just War Theory was most recently asserted as authoritative Catholic Church teaching by the United States Catholic Bishops in their pastoral letter. "The Challenge of Peace God's Promise and Our Response", issued in 1983. "Just War Theory" encompasses modern political doctrines which promote the view that a specific war is just given satisfactory conditions.

2) The history of just-war tradition is also perceived to be as old as warfare itself. Early records of collective fighting revealed that some moral considerations were used by warriors. This included consideration of women and children or the fair treatment of prisoners. Some acts in war have always been deemed dishonorable, whilst others have been deemed honourable. Considerations of honourable acts differ with time and place, the very fact of one moral virtue has been sufficient to infuse warfare with moral concerns.

The just war theory also has a long history. Whilst part of the Bible hint at ethnical behaviour in war and concepts of justice cause the most systematic exposition is given by Saint Thomas Aquinas. In the Summa Theologicae Aquinas presents the general outline of what became the just war theory. He discusses not only the justification of war, but also

the kinds of activity that are permissible in war. Aquinas's thoughts become the model for later Scholastics and Jurists to expand. Among the most important or prominent scholars are: Francisco de Vitoria (1486 - 1546), Francisco Suarez (1548 - 1617), Hugo Grotius (1583-1645), Samuel Pufendorf (1637-1704), Christian Worlff (1679-1754), and Emerich de Vattel (1714-1767). The twentieth century just war theorists or scholars of contemporary texts include Michael Walzer's Just and Unjust Wars (1977), Barrie Paskins and Michael Dockrill The Ethic's of War (1979), Richard Norman Ethics, Killing, and War (1995), Brian Orend, War and International Justice (2001) and Michael Walzzer on War and Justice (2001), as well as seminal articles by Thomas Nagel "War and Massacre", Elizabeth Anscombe "War and Murder", and a host of others, commonly found in the journals Ethnics, or The Journal of Philosophy and Public Affairs.

3.2 Criteria of Just War Theory

Just War Theory is made up of two set of criteria in explaining justification of war or conduct of war. The first establishing jus ad bellum, the right to go to war; the second establishing just in bello, right conduct within war.

3.2.1 The Jus Ad Bellem Convention

Just Cause

The principles of the justice of war are commonly believed or held to be having just cause. OR The reason for going to war needs to be just and can therefore be recapturing things taken or punishing people for the wrong done.

Possessing just cause is the first and arguably the most important condition of jus ad bellum. Most theorists are of the view or hold that initiating acts of aggression is unjust and gives a group a just cause to defend itself. This proscription remains open-ended unless 'aggression' is defined. For example, just cause resulting from an act of aggression can ostensibly be responses to a physical injury (e.g, a violation of territory), an insult (an aggression against national honour), a trade embargo (an aggression against economic activity), or even to a neighbor's prosperity (a violation of social justice). The onus therefore lies on the just war theorist to provide a consistent and sound account of what is meant by just cause. Whilst not going into the reasons of why the other explanations do not offer a useful condition of just cause, the consensus is that an initiation of physical force is wrong and may justly be resisted. Self-defence against physical aggression, therefore, is putatively the only sufficient reason for just cause. Nonetheless, the

principle of self-defense can be extrapolated to anticipate probable acts of aggression, as well as in assisting others against an oppressive government or from another external threat (interventionism). Therefore, it is commonly held that aggressive war is only permissible if its purpose is to retaliate against wrong already committed (e.g., to pursue and punish an aggressor), or to pre-empt an anticipated attack.

Comparative Justice

In a situation where there may be rights and wrongs on all sides of a conflict, to override the presumption against the use of force, the injustice suffered by one party must significantly outweigh that suffered by the other. Some theorists such as Brain Orend omit this term, seeing it as fertile ground for exploitation by bellicose regime.

Legitimate Authority

Only duly constituted public authorities may use deadly force or wage war. Most just war theorists are of the view that the notion of proper authority resides in the sovereign power of the state. The concept of sovereignty therefore, raises a plethora of issues, which are as follows. If a government is just, i.e., it is accountable and does not rule arbitrarily, then giving the officers of the state the right to declare war is reasonable. However, the more removed from a proper and just form a government is, the more reasonable it is that its sovereignty disintegrates. A critical example of such happened in 1940 when Nazi Germany invaded France and set up Vichy puppet regime of which the people of France did not have any allegiance under its precepts and rules.

Right Intention

It is generally believed that a nation waging a just war should be doing so for the cause of justice and not for reasons of self-interest or aggrandizement. Putatively, a just war cannot be considered to be just if reasons of national interest are paramount or overwhelm the pretest of fighting aggression. Force may be used only in a truly just cause and solely for that purpose – correcting a suffered wrong is considered a right intention, while material gain or maintaining economies is not.

Probability of Success

The just war theory asserts that there must be a reasonable probability of success. The principle of reasonable success is consequentialist in that the costs and benefits of a campaign must be calculated. Although, arms may not be used in a futile cause or in a case where disproportionate measures are required to achieve success, whilst force may be used only

after all peaceful and viable alternatives have been seriously tried and exhausted.

Proportionality

The final guide of jus ad bellum is that the desired end should be proportional to the means used. That is, the anticipated benefits of waging a war must be proportionate to its expected evils or harms. This principle is also known as the principle of macro-proportionality, so as to distinguish it from the *jus in bello* principle of proportionality.

3.2.2 The Principles of Jus In Bello

In a situation whereby war becomes inevitable and has begun, the just war theory also directs how combatants are to act: (just in bello). The rule of just conduct falls under the two broad principles of discrimination (distinction) and proportionality.

Principle of Discrimination (Distinction)

The principle of discrimination or (distinction) concerns who are legitimate targets in war. It says that the acts of war should be directed towards enemy combatants, and not towards non-combatants caught in circumstances they did not create. The prohibited acts include bombing civilian residential areas that include no military target and committing acts of terrorism or reprisal against civilians. In the course of waging war, it is considered unfair and unjust to attack indiscriminately since non-combatant or innocents are deemed to stand outside the field of war proper.

Although, there is a problem in defining who is a combatant and who is not because combatants usually carry arms openly while guerrillas disguise themselves as civilians. On the other hand, being a civilian does not necessarily mean that one is not a threat and hence not a legitimate target. For example, if an individual or a civilian citizen in a country happen to be the one and only individual that possess the correct combination that will detonate a device or operate a highly technically sophisticated war equipment. This then makes such an individual become not only causally efficacious in the firing of weapon of war, but also morally responsible; reasonably he also becomes a legitimate military target.

His job, skill or technical know-how therefore effectively militarises his status. On the other hand, the role being played by civilians in supporting an unjust war could be considered in order to ascertain to what extent are they morally culpable, and if they are culpable to some

extent, does that mean they may become legitimate targets? This invokes the issue of collective versus individuality responsibility that is in itself a complex topic.

Another typical example was the war between Israeli and Isbolar Terrorists group of Palestine in year 2007, in which the Isbolar guerillas located their war machine in the mist of civilian population and was attacking or firing their missiles/rocket luncher into the Israelis territory. The Isbolar adopted the war strategy based on the assumption that Israelis would obey the international law by not attacking the civilian population. At a deeper, stage, Israel was forced or was left with no option than to attacked Isbolar indiscriminately regardless of consideration for the civilian populace.

Principle of Proportionality

Just war conduct is usually being governed by the principle of proportionality. The principle requires tempering the extent and violence of warfare to minimise destruction and casualties. It seeks to minimise overall suffering, emphasizes that the force used must be proportional to the wrong endured and to the possible good that may come. The more disproportional the more suspect will be the sincerity of belligerent nation's claim to justness of a war it fights.

Military Necessity

Just war conduct should be governed by the principle of minimum force. An attack or action must be intended to help in the military defeat of the enemy, it must be an attack on a military objective, and the harm caused to civilians or civilian property must be proportional and not excessive in relation to the concrete and direct military advantage anticipated. This principle is meant to limit excessive and unnecessary death and destruction.

3.2.3 Jus Post Bellum: Ending a War

Some theorists, such as Gary Bass, Louis Iasiello and Brian Orend have proposed a third category within Just War theory in recent years Jus post bellum has to do with justice after a war, which include peace treaties, reconstruction, war crimes trials, and war reparations.

The following principles were proposed by Orend:

a. Just cause for Termination

A state may terminate a war if there has been a reasonable vindication of the rights that were violated in the first place, and if the aggressor is willing to negotiate the terms of surrender. These terms of surrender include a formal apology, compensations, war crime trials and perhaps rehabilitation.

b. Right Intention

A state must only terminate a war under the conditions agreed upon in the above criteria. Revenge is not permitted. The victor state must also be willing to apply the same level of objectivity and investigation into any war crimes its armed forces may have committed.

c. Public Declaration and Authority

The terms of peace must be made by a legitimate authority, and the terms must be accepted by a legitimate authority.

d. Discrimination

The victor state is to differentiate between political and military leaders, and combatants and civilians. Punitive measures are to be limited to those directly responsible for the conflict.

e. Proportionality

Any terms of surrender must be proportional to the rights that were initially violated. Draconian measures, absolutionist crusades and any attempt at denying the surrendered country the right to participate in the world community are not permitted.

3.3 Alternative Theories of Just War

i. Militarism

Militarism- is the belief that war is not inherently bad but can be a beneficial aspect of society.

ii. Realism

The core proposition of realism is skepticism as to whether moral concepts such as justice can be applied to the conduct of international

affairs. Proponents of realism have the belief that moral concepts should never prescribe, nor circumscribe, a state's behaviour. But rather, a state should place an emphasis on state security and self-interest. One form of realism- - descriptive realism – proposes that states cannot act morally, while another form-prescriptive realism – argues that the motivating factor violate Just War Principles effectively constitute a branch of realism.

iii. Revolution and Civil War

Just War Theory states that a just war must have just authority. To the extent that is interpreted as a legitimate government, this leaves little room for revolutionary war or civil war, in which an illegitimate entity may declare war for reasons that fit the remaining criteria of Just War Theory. This is less of a problem if the "just authority" is widely interpreted as "the will of the people" or similar-Article 3 of the 1949 Geneva Conventions side –stops this issue by stating that if one of the parties to a civil war is a High Contracting Party (in practice, the state recognised by the international community), both parties to the conflict are bound "as a minimum, the following (humanitarian) provisions". Article 4 of the Third Geneva Convention also makes clear that the treatment of prisoners of war is binding on both parties even when captured soldiers have an "allegiance to a government or an authority not recognised by the Detaining Power".

iv. Absolutism

Absolutism holds that there are various ethical rules that are absolute. Breaking such moral rules is never legitimate and therefore is always unjustifiable.

v. Pacifism

Pacifism is the belief that war of any kind is morally unacceptable and/or pragmatically not worth the cost Pacifists extend humanitarian concern not just to enemy civilian but also to combatants, especially conscripts.

4.0 CONCLUSION

In the light of the above discussion, we can see that the just war theory comprises both a moral abhorrence towards war with a readiness to accept that war may sometimes be necessary. The justification of any way is relativistic in nature and it depends on circumstances leading to the war and how the war contradicts the universal philosophical traditions.

5.0 SUMMARY

In this unit, we looked at the principal criteria or instruments of the Just War Theory. The first criteria is Jus ad bellum, which is the right to go to war, the second establishing jus in bello, right conduct within war, while the third criteria explains the process of ending a war, that is jus post bellum.

6.0 TUTOR-MARKED ASSIGNMENT

Identify any war waged in the past and then put up a defense to justify such a war or otherwise.

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UNIT 4 WAR IN TRADITIONAL AFRICAN SOCIETY

CONTENTS

1.0 INTRODUCTION

In the present day Africa, there are arrays of peculiar problems associated with the values, principles and dynamic of conflict/war prevention, management and resolution. But in pre-colonial African societies, citizens were usually given education and training that equipped them with relevant knowledge, skills as well as rules and regulation associated with the above mentioned problems. Prior to the coming of the white man, most African societies regulated not only the periods of war making, but also the weapons of war, protected persons, asylum, combatants, conduct of war, fate of losers and so on. Colonialism has eroded all these laudable and cherished principles from Africans out of ignorance and they have now imbibed European principles, values and methods of war-making, peace-making and conflict resolution to kill, maim and destroy one another.

2.0 OBJECTIVES

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

- examine and understand the values, principles and dynamics of war making, peace making and conflict resolution in pre-colonial African societies.
- identity and explain the peculiar problems facing Africans today in the areas of war making, peace making and conflict resolution.
- compare and contrast pre-colonial African societies and the present day African societies with regards to war making, peace making and conflict resolution.

3.0 MAIN CONTENT

3.1 Causes of War and Conflict in Pre-Colonial Africa

Although, conflict is an intrinsic and inevitable part of human existence stemming from the pursuit of incompatible interests and goals by different groups, people, society and even individuals. Man resort to armed conflict or war in his pursuit of incompatible and particular interests and goals after every available peaceful means of conflict resolution have been exhausted or out of inordinate ambition of the winner takes all.

According to Diallo summation, based on the series of studies he carried out on several African traditional societies, he summarises or asserts that the main causes of war in these societies were characterised by disputes over property, power and honour. In areas now falling under present day Senegalese territory for example, land, livestock (discord between nomads and settlers), slave trade (exchange difficulties) and power (opposition to rulers) were the main causes of war. In Upper Volta regions now Cote d'Ivoire, the Mossis who were reputed to be mongers fought mainly over succession (civil war) or for territorial expansion, food (after epidemic), and slaves from neighbours. Sex, honour (struggle over order of precedence) and possession were the factor that, the factors that generated war in Mali Diallo also opines that, these were more of isolated raids than pitched battle or military expeditions. In Niger area, war took the form of raids by Tuaregs to obtain food from the Sonhrals, while pasture and watering points caused conflicts between nomads and settlers of Peullis and Djermans (Mandigos now in Guinea). The citizens also fought to defend the states when attacked and for honour (prestige).

In the case of Ashanti of Kumasi now in Ghana, war was for territorial conquest essentially hence the Ashanti had a vast empire far larger than present day Ghana. In the areas that are now within the geographical location of South West Nigeria, the ancient Old Empire which enjoyed several successes of the expansionist agenda and very strong political and economic power collapsed and led to the Yoruba civil wars of the 18^{th} and 19^{th} centuries caused by the desire of other states or communities to have autonomy or share political, economic, power and influence. Ijoma says that in Igbo land, wars were caused mainly by land or territorial disputes, the need to obtain restitution for an injury suffered by a citizen in another community and sex. Furthermore, in typical traditional African societies, there were no pitched battles and expeditions over religious or ethnic differences, no agenda to overthrown rulers of other state, to impose one's ideology over another community e.t.c.

3.2 Conflict Prevention and Management in Pre-Colonial African Society

In traditional African societies, real war was not easily entered into neither did Africans celebrate war. War was therefore not encouraged because of the high value attached to life, and the known destructive tendencies of war not only to human lives and properties but also to human and societal relations within and across communities and societies. Africans always did everything possible using all available means, strategies and slow painstaking diplomacy to guide against (resort to) war. Diallo in his studies of several pre-colonial African societies discovered that "the parties negotiated for a long time to seek a peaceful solution" through various means or processes of negotiation from one society to another, which are as follows:

The management of intra and inter state conflicts were usually carried out by the family heads, clan lineage , village heads, council of Elders, General Assembly of Citizens, Chiefs, Obas and other institutions like Association of Fighters, Masqurade Associations, Association of Hunters, Secrete Societies like Ogboni (in Yoruba land), Obong (in Efik areas), Ekpe (in Calabar areas), kpo (in Ibibio areas), Oforo (in Sieria Leone) and so on were used.

Neighbouring states and communities or their relevant organs were also contacted to assist in conflict management.

According to Professor Alagon, he asserts that there were principles and values that governed conflict management in pre-colonial African societies which are thus:

1) Impartiality and Neutrality

These factors are necessary in order to inspire confidence in the parties in conflict or in the dock.

2) Fairness and Justice

The two factors are needed to achieve lasting or sustainable peace. Truth is an essential tool in conflict management that is expected to be displayed by parties in conflict during the process of resolution while the third party is also required to exhibit the spirit of fairness by not taking side with either parties in conflict in order to be able to accomplish a desirable resolution and enduring peace.

3) Accommodation, Tolerance, Compromise and Genuine reconciliation, which avoids a winner take all syndrome is essential for a sustainable peace.

4) Reciprocity

The spirit of give and take and vice-visa should be encouraged in order to promote peaceful co-existence in our immediate environment.

5) Moderation and measured action and response, which informed deliberate limitations of level of violence in African conflict.

6) Separation in the face of obvious incompatibility or the irreconcilable differences. Separation of the conflicting parties took the form of migration by the offending party to atone for the irreparable damages against the victim party.

3.2.1 War Making (Laws Guiding War Making)

As earlier mentioned that traditional African societies neither celebrated nor encouraged war, but in a situation when war became inevitable, it was fought. But most times, it was ought with great caution and there were rules and regulations governing war conduct. These laws or ethics were imparted to the warriors (mostly men) from childhood. For example, a warrior was never to kill an enemy on the ground as that position meant admittance of inferiority in Senegal. In Mali, a disarmed enemy was not to be killed, but to be captured. Also, an enemy (especially an unarmed and wounded one) who finds his way to a man's house cannot be killed under the host's roof in East and Southern African areas, while an enemy was never attacked or struck from behind all over Africa.

In addition, during the war process only the combatants were targets, while other categories of people were protected especially women, children, old people and strangers. These categories of people were regarded or classified as nonbelligerent. In the whole, African women never fought wars except in Dahomey (now Benin Republic) where the (Female) Amazos fought wars. Women's role during war was mainly to sing in encouragement of the fighters, to supply materials like water and take adequate care of the children and aged people.

The battle field or theater of war was often far away from villages or towns of settlement in order to protect or prevent assault or attack on the non-belligerents. In areas now within Niger, women and children were protected in villages by a group of warriors detailed for such purpose, while any form of attack on a village where there are mainly women and

children was regarded as theft and not war. In upper Volta, the killing of non-combatants especially workers in the field (mainly slaves), defenceless or weaker people were never attacked against the rule of honour and morality, as such attack could lead to death or public opprobrium or banishment. Periods of wars were also regulated in several African societies so as to avoid famine, epidemic and other natural disaster. Fighting usually took place during the dry season and never during planting or harvesting periods.

3.3 Tactics and Implement of War

Wars cannot be fought without pre-war readiness. Preparations include being well equipped with sufficient and efficient number of competent and capable militias who have been trained and are in good possession of fighting implements, both physical and metaphysical weapons as obtained in traditional African societies. Before embarking on war, the militias were brought together as the view is strongly held in various quarters that success in war depends more on superior organization and morale than on superior weapons. A state going to war must have an overall plan or a strategy for winning the war. This becomes imperative because a war could be fought in several battles taking place under various conditions and in different locations. As no two battles are ever the same, preparations for each battle differ. Such preparations will take into account the estimated strength of the enemy, the resources available to meet such an adversary and a careful considerration of the deployment of such resources to the ground where the battle is likely to be fought. Victory at a military engagement or battle therefore will depend on the skill with which a commander displays and directs all the military resources at its disposal. It is this skill that is required to be displayed that is regarded as Tactics. For example, in 1726, the Oyo cavalry armed with lances defeated Dahomean forces armed with muskets. Apart from the noise of the Dahomean guns which frightened Oyo horses initially, new and superior as they were to Yoruba warfare, the guns did not appear to have helped the Dahomensa avert defeat

3.4 Implements of War

In traditional African societies, weapons of war were also regulated. Alagoa notes that in some areas of Africa, especially Nigeria:

> The level of violence or the type of weapons used in the prosecution of conflicts sometimes depended on the closeness or distance of the parties in terms of blood relationship. Close kin were not expected to use weapons, definitely not lethal weapons, the idea of total war was hardly present in the history of the peoples of the south-

south zone. Hostility was often limited to the goal of deterrence or to the making of a point.

Most of the weapons used in traditional African societies by their armies or warriors were made locally by skilled craftsmen. These craftsmen organised themselves into guilds or associations, most practiced their profession in the various family compounds under the protection of town chiefs. The blacksmiths were regarded as a very important group as far as warfare was concerned. They worked on iron, producing iron points for arrows, lance head, swords, knives and cutlasses. The blacksmiths worked in close co-operation with the armies, replacing exhausted stock of arrows, mending damaged spears and swords, fabricating iron bullets from pieces of waste iron and repairing guns.

The prominent implements or weapons of war were the following:

i. Club.
ii. Slug and Catapult.
iii. Bow and Arrow.
iv. Swords – It was the major infantry weapon before gun was introduced.
v. Dagger and Throwing Knives – Shorter than swords.
vi. Spear – Consisted of a long staff with a fixed sharp head.
vii. Firearms – It was introduced by the Portuguese to the West Coast of Africa in the mid – 15^{th} century.
viii. War Charms.
ix. Drums.
x. Music/War Songs.
xi. War Vehicles/Transportation (Horses).
xii. War Canoes.

3.4.1 War Termination and Conflict Resolution

Each and every war in pre-colonial Africa ended by either the defeat of one party or by peacemaking through negotiations. Those who negotiated peace differed from one geographical location (area) to another which could be those who announced the war for example, native doctors, notables or unarmed warrior. The products of marriage of both parties were used in some other areas, while in Senega, a negotiator was often a third party ethnic group not from the fighting group e.g. a slave. Negotiators had full immunity and respect, and all agreements were respected as binding in good faith.

Negotiation took place either on a neutral ground (at the third party's place) or at the boundary of the warring or disputing communities. During the course of negotiation, all the necessary issues at stake were

usually discussed extensively, such that a reasonable agreement was reached for the propagation of a sustainable peace. In some if not most areas of traditional African societies, goat or cow was killed and jointly eaten along side local drinks as evidence of end of hostilities, and seal of agreement (covenant). Most often, gods and the deities of both parties were invited as witnesses and guarantors against unilateral violation.

An enduring or sustainable peace requires justice and truth. Therefore, truth had to be established in all relevant aspects of the conflict causation and execution. Justice was executed through compensation or restitution for damages done and public apologies or confessions where necessary for the restoration of broken relationships and promotion of cordial relations and social harmony between parties in conflict. All the above mentioned steps were necessary then to remove fear and restore mutual respect, understanding and confidence.

In addition, in traditional Africa, conflict resolution entailed removing the root causes of the conflict, transforming relations between the parties in restorative and socially harmonizing patterns, and bringing about justice and of airiness in the interests of the parties. Peace making on the other hand, was made to be an honourable affair such that negotiations were channeled towards achieving honourable and fair peace. In peace making process, the fate of losers was therefore made less burdensome, so that it does not later generate anther conflict.

Prisoners of war (most especially royal people captured) in the fight were returned dead or alive for some ransom of land, beasts, slaves and so on as they could not be allowed to go into captivity. The dead and wounded were returned on both sides because: “After death, there is no hate”, according to the belief of Senegalese. Only in few areas like the Gulf of Benin were losers humiliated, their huts burnt, and their people largely massacred.

3.4.2 Culture of Peace

In traditional African societies, there was nothing like genocide or ethnic cleansing. The social leaders and elders not only vigorously and seriously promoted peace in their societies but also socialised and educated the children and youth on how to live in peace with other, how to manage conflict, and how to resolve conflict, all in the spirit of promoting the ‘culture of peace’ in the societies. The youth in turn through their various age grades and associations promoted the culture of peace and shun promotion of violence or ‘culture of violence’.

4.0 CONCLUSION

With reference to the above discussion, it can easily be observed that the traditional African societies in the areas of conflict prevention, management and resolution, as well as in war making and peace making, do not differ much from what is obtainable in this present day era as adopted in the Genera Conventions.

5.0 SUMMARY

In this unit, causes of war in pre-colonial societies, conflict prevention and management, implements/tactics of war and war termination and conflict reduction were extensively discussed in order to enable the student compare and contrast the traditional ways of war making and conflict resolution to that of modern day era.

6.0 TUTOR-MARKED ASSIGNMENT

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UNIT 5 APPRAISAL OF CONTEMPORARY AND TRADITIONAL AFRICA WAR MAKING AND CONFLICT RESOLUTION

CONTENTS

1.0 INTRODUCTION

Unlike in the Pre-colonial African societies in which the periods of war making, weapons of war, protected persons, asylum, combatants, conduct of war, fate of losers etc were regulated, but reverse is the case in the contemporary African societies and the world at large. In the present day era, all forms of man's inhumanity to man, ethnic cleansing, genocide, terrorism, indiscriminate bombing, use of weapon of mass destruction and host of others dehumanising acts are the order of the day.

Diallo, provides an insight into what went wrong:

> It was only after the introduction of slavery and the inroads of colonialism into Africa… That traditional societies began to disintegrate, causing the code of honour to fall into disuse in war.

2.0 OBJECTIVES

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

- state cause (s) of war in contemporary African societies and the world at large
- identify strategies of modern war
- describe different forms of war making in the contemporary world
- explain the effects of war on humanity

- appreciate and account for the differences between pre-colonial and contemporary war making.

3.0 MAIN CONTENT

3.1 War Making in Contemporary African Society

3.1.1 The Causes of War

In contemporary African Societies, the new causes of war emerged from colonialism and state formation during the colonial era and immediately after the independence of most African states. The causes of war include: unclear national boundaries, foreign instigation of state against state from former colonial masters, natural mineral resources discoveries near borders and within territorial integrity of states, Cold War Era stemming from ideological differences (capitalism vs communism), opposition to dictatorship, military rule or intervention (via coup de-tat), racism/inter-ethnic power struggles, amalgamation of several nations with different cultural, ethnic and religious background by their colonial masters to form a state and host of others.

One or some of the above mentioned causes of war, had thrown several African states into theatre or laboratory of great destructive wars, leading to large human and material losses that are beyond human imagination, expectation and comprehension.

3.1.2 Strategies of War

a. The War Plan

It is evidently clear that all-modern war making involves serious debates among the principal's actors. That it is the duty of the military to advance the best possible military solution that will reflect political, military and resource constraints. The level of forces required (air, sea and land), the timing of major movement of troops and equipment, the size of conventional ground forces to be involved, aerial survey and the ability to rely on force elements like air power and special forces versus "traditional" elements of military power like heavy armour.

b. Innovation and Initiative

It is very important to take into consideration that forces will only be able to operate effectively when they are very sure and confident of the fact that they are under protective mode against chemical and biological

weapons and are given far better training and equipped with sophisticated arms and ammunition for urban warfare.

c. Morale and Motivation

Apart from training acquisition and readiness of the armed forces, high morale and strong motivation as well as high professional capability is required for successful war making. It is also important to note that politics and propaganda generally have a more limited impact in shaping morale and motivation than do unit cohesion and loyalty and the extent to which military service is seen as a profession and as one that rewards those who serve. Those who lay more emphasis on technology and efficiency sometimes lose sight of this point. Morale and motivational level therefore, will determine the willingness to sustain unequaled sortie and maneuver rates to deal with problems like weather and unexpected resistance of opposing forces.

d. Competence, Adaptiveness and Flexibility in War Planning

The professionalism and adaptability in warfare planning is highly required in this modern era because it will greatly aid major advances in joint warfare capability and its computarisation and integration at every level. In addition, the most important skills in modern arms is not how to agree on a war plan, but how to change one when reality intervenes and if necessary – abandon key elements with sufficient adaptiveness to win. The “war plan” should be flexible enough such that armed forces could rapidly adjust and fashion out remedy or solution to unforeseen challenges.

e. Situational Awareness, Intelligence, Command and Communication.

The value of intelligence and the need for effective command and communications are fundamentals to modern day war. Also, modern day war comprises combination of imagery, electronic intelligence, signals intelligence human intelligence and improved communications and command and intelligence fusion at every level day and night for effective and most current situational awareness. This becomes very important because modern day wars could be likened to a good wine that tends to get better with age.

f. Psychological Warfare

The importance and immense benefits derivable from psychological warfare cannot be under estimated in the present day conventional warfare. Researches and reports from experiences of previous wars have

shown that psychological warfare such as dropping leaflets, periodic broadcast hours on radio and television had helped cause in-action among the opposing military forces and helped to expedite surrenders. Although, before the leaflets dropped could achieved the desired goals and objective, it should be timed to go to enemy combat troops at the most critical moment. The evidence to date gathered from recent wars indicates that these missions helped considerably to persuade enemy forces either not to fight or to defect, desert, or surrender.

3.1.3 Weapons of War

Unlike in the African traditional war making where several unsophisticated, less destructive arms and ammunitions were used, modern day wars are wagged with highly deadly, destructive, effective and efficient arms and ammunitions. Wars are taught today in most African troubled spots and several parts of the world with weapons of mass destruction such as nuclear, biological and chemical weapons highly destructive bombs fired by warplanes long-range missiles and hosts of others resulting to heavy casualties (loss of life). Incessant exodus of refugees, increasing population of Internally Displaced Persons, destruction of infrastructures, political system, economy and social structure of the society.

Other deadly and highly destructive automated machine includes fighter – bombers, surveillance and electronic warfare aircraft, tanker aircraft, airlift aircraft, for the airforce.

Naval force or sea power comprises carrier taskforce, amphibious taskforce, surface ships, submarine, sea based cruise missiles, aircraft Carrier HMS Ocean, nuclear – powered submarine while land force make use of armoured tanker, AK–47 Riffle and highly trained joint military personnel comprising army, naval and air forces respectively.

3.2 Comparism of War Making, Peacemaking and Conflict Resolution in Contemporary and Traditional African Societies

First and foremost, in traditional Africa, the use of truth to establish justice and restore social harmony between parties was used for the purpose of dispute settlement in which the victim or offended gained compensation or restitution or both. But today, reverse is the case. The purpose (and machinery) of dispute settlement or war making is more of winning the case, and not establishing truth and justice.

Secondly, the aftermath effect of colonialism elongated military rule have eroded the patience and virtue of sitting down and talk over problems, challenges and differences. We rather fight as individuals leading to quick group hostility. In the past, Africans see themselves as their brother's keepers such that large numbers of days were used to seek peace, and even give up certain rights and forgive wrongs in order to allow peace to prevail and reign.

Thirdly, the military have been professionalised and monopolised such that the instruments of violence and coercion is solely at the disposal of the military thereby exposing the civilians to danger if the military becomes a tool of a section of the country or of a despot. Unlike in the traditional African societies where military skills were democratised.

Fourthly, African traditional education and socialisation process impacted knowledge, wisdom of our ancestors, vocation or skills for earning one's/wing, how to live a virtuous life as well as peace education, and skills for peacemaking, conflict prevention, management and resolution. Today western education is geared towards acquisition of knowledge and skills required to earn a living or targeted towards awarding a certificate that serves as just a meal ticket.

Furthermore, in pre-colonial Africa, conflict prevention management and resolution was the duty of local authorities (as there were no central governments) what applied traditional institutions, customs, values, traditions, procedures and sanctions. In the post-colonial contemporary period, there is a state, acting as central authority vested with primary responsibility of maintaining peace, order and security via the courts, police and military. Though the local authorities still exists, but the confidence to manage and resolve conflicts is no longer there.

In addition, the introduction of western education and foreign religions have eroded the African rich cultural heritage and made a caricature of it such that most Africans have lost sight of our traditional models of securing the villages and towns and models of conflict prevention, management and resolution, peace making, confidence-building and peace building training for the youths and adults. Despite the introduction and acceptance of the conventional western models, they are neither producing sustainable peace nor providing the much needed and desired security. The continent of Africa is still being ravaged by conflicts and wars resulting in large figure of refugees and displaced persons, thereby creating humanitarian crisis.

Nevertheless, in contemporary African wars, while importance is attached to human life, such that life has become the cheapest commodity that can be terminated at any time of little provocation,

unlike in traditional African societies. Diallo found out in his study of several pre-colonial African societies that "the parties negotiated for a long time to seek a peaceful solution". This is not far fetched from the fact that high value was attached to human life and property but also to human and societal relations within across communities and societies.

4.0 CONCLUSION

With the discussion on contemporary war making and appraisal of the traditional and modern war making, peace making and conflict resolution, we can now ascertain that establishment and empowerment of necessary institutions and structures at local, state, national and continental levels now become inevitable. In achieving these desired goals and objectives we need to study our past methods, values, principles and models in the areas of peace education, conflict prevention, management and resolution, compare them with the contemporary models and introduce necessary reforms and adopt useful ones in order to have a sustainable peace and move the society forward.

5.0 SUMMARY

In this unit, war making in the contemporary African societies was examined, while a critical review of African traditional methods of war making, peace making and conflict resolution and that of modern models were dissected in order to discover their strength and weaknesses and then come up with a model that brings a lasting peace to the society.

6.0 TUTOR-MARKED ASSIGNMENT

1. Traditional African models of war making, peace making and conflict resolution are far better off than the contemporary model. Discuss.
2. Eradication of war in African societies is a huge task, but can be accomplished. Discuss.

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MODULE 3 INTERNATIONAL LAW WAR AND CONFLICT

UNIT 1 ORIGIN AND NATURE OF LAW OF NATIONS

CONTENTS

1.0 INTRODUCTION

This unit seeks to introduce you to the meaning of International Law, Origin of International Law and the Dynamic Nature of International Law. This is important because it will enable you to know the genesis or the developmental stages of International Law and how the continuing changes in International Law give the subject a unique fluidity.

2.0 OBJECTIVES

At the end of this unit and further relevant readings, student should be able to:

- explain the meaning of International Law
- describe the distinguishing features of historical background or origin of International Law
- appreciate the broad changes in International Law since the nineteenth century

- account for the differences between International Law and Domestic Law
- discuss different sources of International Law.

3.0 MAIN CONTENT

3.1 Meaning/Definition of International Law

International Law

Is the body laws which is composed for its greater part of the principles and rules of conduct which states feel themselves bound to observe, and do commonly observe in their relations with each other. It comprises:

i. The rules of law relating to the functioning of international institutions or organizations, their relations with each other, and their relation with states and individuals.

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

The great development of international law witnessed between the 18th/19th century was a by product of growing interdependence of states and invention that overcome the difficulties of space, time and intellectual communication.

International Law may also be described as ‘consisting of a body of laws, rules and legal principles (sometime not easy to isolate or identify as one or the other) that are based on custom, treaties or legislation and define, control, constrain or affect the rights and duties of states in their relations with each other’.

Despite the above given definitions, it should be borne in mind that there is no agreed definition of international law and it is easier to describe the role of international law and the tasks it performs than to rely on a dictionary definition.

It was traditionally thought that because international law governed the relations between states it did not affect their domestic arrangements. Because each state was said to be sovereign, this suggested that internally a state could behave as it wished. Although this is not true in practice, because states are still central to the international law regime and there is no doubt that for some purposes at least, some international organizations such as United Nations, the International Labour Organization and the World Bank are now subjects of human rights law

places obligations upon state governments to conform to international norms in their domestic governance.

3.2 The Origin of Law of Nations/International Law

There are many assertions about the real origin of international law or how international law emerged or came into being. Some schools of thought are of the view that the modern system of international or law of nations is a product of about four hundred year ago. It is argued that even in the period of antiquity; the rules of conduct to regulate the relations between independent communities were formulated and obeyed. To corroborate this, treaties, the immunities of ambassadors being in existence many centuries before the emergence of Christianity most especially in places like ancient Egypt and India.

In ancient Greek city states, there were small states but independent of one another, showing evidence of an embryonic, although regionally limited form of international law in one authority could be found. Professor Vinogradoff described this as international law, which consists of customary rules, which had crystalised into law from long-standing usage followed by these cities such as the rules as to the inviolability of heralds in battle, the need for a prior declaration of war, and the enslavement of prisoners of war. These rules were applied not only in the relations inter se of these sovereign Greek cities, but as between them and neighbouring states.

According to Midgley, in ancient Greece, the natural law conception of self-defence was used interchangeably with private vengeance, in the expression amynes nomon, thus, implying the legitimacy of the killing of an attacker where this is absolutely necessary for self-defence. Hence, Grotius viewed and maintained that:

> If, for example, your life is imperiled in the wilderness as the result of an attack from some individual, under circumstances of time and place that do not permit of recourse to a judge, you will rightly defend yourself… for … not even the … law which forbids you to injure another, will be an obstacle to such righteous self-defence.

Apriori, Gentili insisted that self-defence was always and everywhere absolutely favoured, for it is in accordance with the law of nature, provided the protection of the public law is not sufficient, or is too tardy. This natural law right of self-defence surpassed every other consideration, for even in ancient Rome according to Gentili, although while they made war, they did not consider it lawful to engage in battle on certain days, but as long as it concerned meeting a declaration of war,

that is, a war of self-defence, there was no day which prevent them from defending their safety or their honour, for the right of self-defence is just against all and owes no respect to a patron.

In actual fact, it is believed that the conditions favourable for the emergence and growth of a modern law of nations did not come into being until fifteenth century when a number of independent civilised states began to evolve in Europe. Ever before this period, Europe was reported to have passed through various stages in which either condition were so chaotic as to make impossible any ordered rules of conduct between nations, or the political circumstances were such that there was no necessity for a code of International Law. Indeed it could be said that at a time when the authority of the Roman Empire extended over the whole-civilised world, there was no independent states in any sense and therefore a law of nations was not called for. Two issues were identified as factors that militated against the evolution of a modern system, of the law of Nations namely: The first identified issue could be said to be the temporal and spiritual unity of the greater part of Europe under the Holy Roman Empire, although it could be said that the unity was merely notional and the feudal structure of Western Europe, hinging on a hierarchy of authority which not only clogged the emergence of independent states but also prevented the powers of the time from acquiring the unitary character and authority of modern sovereign states.

The fifteenth and sixteenth centuries witnessed a drastic changed position with the discovery of the New World, the renaissance of learning and the reformation as a religious revolution disrupted the façade of the political and spiritual unity of Europe and shook the foundations of medieval Christendom. The works of Bodin, a Frenchman and Machiavelli, an Italian and later in the seventeenth century, Hobbes an Englishman led to evolvement of theories required to meet the new conditions.

The growth of a number independent states initiated in early Greece, the process of formation of customary rules of international law from the usages and forectices followed by such states in their mutual relations. This in Italy, with its multitude of small independent states, maintaining diplomatic relations with each other and with the outside world there developed a number of customary rules relating to diplomatic envoys, for example, rules relating to their appointment, reception and inviolability.

History or record also revealed the fact that by the fifteenth and sixteenth centuries, jurists had begun to consider the evolution of a community of independent sovereign states and to think and write about different challenges or problems facing the law of nations, realising the

necessity for some body of rules to regulate certain aspects of the relations between such state. Where there were no established customary rules, these jurist were obliged to devise and fashion out working principles of Roman Law, (which had become the subject of revived study in Europe as from the end of the element century). But they had recourse also to the precedents of ancient history, to theology, to the canon law, and to the semi-theological concept of the "law of nature" – a concept which has really influenced the development of inter national law.

International Law further expanded in the nineteenth century, as a result of a number of factors which fell more properly within the scope of historical studies. For example the emergence of powerful new states both within and outside Europe, the spread of European civilisation overseas, the technological advancement of world transport, the greater destructive nature or tendency of modern warfare, and the influence of new inventions. All these factors necessitated the urgent coming together of international society of states to acquire a system of rules which would regulate in an ordered manner the conduct of international affairs. The century experienced or had a remarkable development in the law of war and neutrality, and the great increase in adjudications by International Arbitral Tribunals following the ALABA CLAIMS AWARDS of 1872 which provided an important new source of rules and principles.

State later commenced to acquire the habit of negotiating general treaties in order to regulate affairs of mutual concern. Writers also contributed to Further development of international law by concentrating on existing practice and to discard the concept of the "law of nature" although not abandoning recourse to reason and justice where in the absence of custom or treaty rules, the were called upon to speculate as to what should be the law. Other developments included the establishment of Permanent Court of Arbitration by the Hague conferences of 1899 and 1907, while the Permanent Court of International Justice was set up in 1927 as an authoritative international judicial tribunal.

After several attempts have been made in the effort to codify international law. The work which led to the International Law Commission began in Resolution of the Assembly of the League of Nations of 22 September 1924. The United Nations adopted many concepts of the League's resolution in Article 13, Paragraph 1 of the Charter of the United Nations, "1. The General Assembly shall initiate studies and make recommendations for the purpose of: a.… encouraging the progressive development of the international law and its codification". The commission is consist of 34 members elected by the

General Assembly. Members act as individuals and not as officials representing their respective states.

The International Law Commission was established by the United Nation General Assembly in 1947 for the "promotion of the progressive development of international law and its codification".(1) It holds an annual session at the United Nations Office at Geneva.

3.3 Members of Commission

Article 2, paragraph 1, of the statute provides that the members of the Commission "shall be persons of recognised competence in international law". The members of the Commission are persons who possess recognised competence and qualifications in both doctrinal and practical aspects of international law. Member are drawn from the various segments of the international legal community, such as academia, the diplomatic corps, government ministries and international organisations, (2) Since the members are often persons working in the academic and diplomatic fields with outside professional responsibilities, the commission is able to proceed with its work not in an ivory tower but in close touch with the realities of international life. No two members of the Commission may be nationals of the same state (article 2, paragraph 2) (6). In case of dual nationality, a person is deemed to be a national of the state in which s/he ordinarily exercises civil and political rights (article 2, paragraph 3).

Achievements of the Commission

The International Law Commission's work has led to the creation of a number of treaties and other works of international law that are key to the present international legal order. The examples of the achievements made so far are thus:

- The Vienna Convention on the Law of Treaties.
- The Vienna Convention of Succession of states in respect of Treaties.
- The Vienna Convention on Diplomatic Relations.
- The Draft Articles on the Responsibility of States for International Criminal Court, First proposed in 1949 at the request of the United Nations General Assembly.

3.4 The Sources of International Law

The two major sources creating legally binding rules of international law are TREATY and CUSTOM. Although, there is no agreed statement

about what does constitute a source of international law. The above mentioned sources and other sources will be considered or discussed briefly.

International Treaties

Treaty is the first major contemporary of source of international law. Treaties may be bilateral (between two states) or multilateral (where there are more than two states). Generally speaking, treaties will be binding only upon the state parties to any particular treaty and the nature of the obligation will be defined within the treaty. The word 'treaty' covers a multitude of international agreements and contracts between states. As well as those describing themselves as treaties the term may include conventions, pacts, declarations, charters, protocols and covenants. At the very heart of international law lies the binding nature of treaties that is derived from the *pacta sunt servanda* priciple, which roughly translates as 'promises must be kept', or, more precisely with regard to treaties, as 'every treaty in force is binding upon the parties to it and must be performed by them in good faith'.

For further understanding of the generic term 'treaty' Article 53, 64, 20, 38, 2(1) should be consulted.

Customary International Law

It is not easy to understand the concept of international customary law. But according to (Article 38), two elements are said to be required. The first is the custom itself, but only custom, which evidences a general practice accepted as law. The second element, commonly entitled *opinio juris sive necessitatis* (opinion as to law or necessity), means that only where a state complies with custom in the belief that it is legally required to do so will law be evidenced.

The concept of customary international law originates from the period when international law was overwhelmingly the law of (and between) nations. In the nineteenth century international law was very much more concerned with **describing** the actual conduct of states in their relationships with each other, rather than with **prescribing**, which means that it was concerned to encompass what nations in fact did, rather than what they ought to do, or ought to have done.

Other Sources of International Law

Although, international law is overwhelmingly concerned with treaty and custom, while other international 'law-making processes' are very much subsidiary to them. The other sources are:

- 'the general principles of law recognised by civilised nations, and

- 'judicial decisions and the teachings of the most highly qualified publicists of the various nations'.

(A) The phrase 'general principles of law' refers to legal principles, which exist in almost all-domestic legal systems. These principles will be applied (if their existence can be proven) where neither treaty nor customary international law seems applicable to a particular event. Because international law regime is not totally comprehensive (that is, it does not have ready international law for every unique event), general principles are sometimes necessary.

Examples of such principles used in international law include:

- recognition of the principle that violation of an obligation leading to injury or damage should lead to reparation.

- the right of parties to a dispute to be heard before judgement is given.

- The concept of limited liability.

The general principles also include probably principles of equity, in the sense of legal fairness rather than the rather refined area of law of a particular state.

Dixon opines that even if such 'principles' do not qualify as binding law, it is clear that they may have a profound impact on the development of international law, either as furnishing a reason why specific norms **should** be adopted or as catalyst for state practice leading to creation of customary and treaty law.

(B) The second subsidiary sources is said to be judicial decisions and the teachings of the most highly qualified publicists of the various nations. Debate as to the meaning of this has been lengthy and intense. It is stated in Article 38 as being only a subsidiary means **for the determination of rules of law** – that is, it is not the rules themselves. What does this mean? The first point you should understand here is that international law makes no use of the common law system of *stare decisis*. In international law, no court binds itself or any other court by its decisions and it is explicitly stated in the statute of the International Court of Justice that decisions have no binding

quality beyond the parties to a particular case. Also, in international law judicial decisions and the writings of the highly qualified publicist are used as, in the common law system, decisions from different jurisdictions and the writings of legal academics are used. That is, they may be more or less persuasive not because of their status but because of the logic in their reasoning and argument.

(C) Finally, there are some resources recognised as potential sources of international law which do not appear in Article 38. The most important of these are Resolutions of International Organziations which may carry weight of their own in addition to evidencing state practice.

4.0 CONCLUSION

In as much as international law is a way of regulating the relations between nations, which is distinctively legal. The general principles of law lies in their ability to identify the inadequacies of both custom and treaty in international law and the problems associated with seeking to identify international law.

5.0 SUMMARY

This unit has considered the meaning, origin of international law and sources of international law. Various meanings or definition of international law were examined and it was established that there is no singular or particular definition of international law. Different sources and origin of international law were also discussed so as to facilitate proper understanding of the concept.

6.0 TUTOR-MARKED ASSIGNMENT

1. ‘International conventions or treaties are the only way states can consciously create international law’. Justify the statement.
2. Identify and discuss the problems inherent in the concept of customary international law.
3. State and discuss the nature and quality of sources of international law aside custom and treaty.

7.0 REFERENCES/FURTHER READINGS

American Journal of International Law, 41 (1947)http://www.icrc.org/

Cassese, Chapter 1: 'The main feature of International Community', pp. 3 – 17.

Dixon, Chapter 1: 'The nature of International Law and the International System', pp. 1 – 20.

International Law Commission ://www.un.org/lawlilc/introfra.htm

Kaczorowska, Chapter 1: 'History and Nature of International Law', pp. 1 – 11.

Cassese, Chapter 8: 'International Law-Creation Custom', pp. 153 – 69; 170 – 82.

Dixon, Chapter 2: 'The Sources of International Law' pp. 21 – 48.

Kaczorowska, Charter 2: 'Sources of Multinational Law', pp. 12 – 36.

Online Journal of International Law, http://internationallawdomain. blogspot.com/

United Nations General Assembly Resolution A-RES-174(II), ://www.undemocracy.com/ A-RES-174 on 21 November 1947.

UNIT 2 CRITICISMS ABOUT WHY INTERNATIONAL LAW SHOULD BE REGARDED AS LAW

CONTENTS

1.0 INTRODUCTION

This unit seeks to examine various forms of arguments or criticisms put up by different scholars, international lawyers and politicians to justify or oppose whether international law is really law. This is important because it will reveal to you the unique fluidity of international law (the dynamic nature) meaning that international law is not a static object of study.

After the fall of the Berlin Wall, in 1989, the world has witnessed many important changes which has affected and are affecting the way international law is conceived and operates. Several global conflicts ravaging the whole world has brought twentieth-century notions of sovereignty and independence of nations into doubt due to the use of international military forces (both Unipolar and Allied Military Forces) by the technologically advanced nations on developing nations. We shall also consider how international law can stand up to this challenge(s)

2.0 OBJECTIVES

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

- describe the distinguishing features of the international law
- appreciate the broad changes in international law
- explain why international law is law
- appreciate that international law will always have a political aspect or influence

3.0 MAIN CONTENT

3.1 Why International Law Should be Defined as Law

There abounds claims and counter-claims by international lawyers, scholars and even politicians as to whether international law is really law or what distinguishes international law from international relations and brings it within the definition of law. Many international lawyers claim that it is the 'distinctive mode discourse' – that is, the legal ways of discussing international issues is distinctive because of the rules, procedure and process which it brings to bear upon questions.

Indeed even the formulation of the questions in a dispute will be affected by the input of international law – knowledge. Also, every state does accept the existence of international law as something distinct from ordinary international intercourse. The acceptance of the reality of international law by states is important in the refutation of those who suggest that international law is not really law.

The fact that laws are broken and wrongdoers often escape punishment is of only marginal importance to the existence of law. Much more significant is that most citizens have actually internalised the values of criminal law even if they do not agree with them. Local law violators/breakers rarely attempt to deny the existence and authenticity of the law, rather they try to justify their transgression. The same or similar argument or defence is usually put up by state(s) to justify any act or action that is against the international law.

With the trend of global events and in the face of multifarious manifestations of the in-effectiveness of the law in dealing, to a tee, with enforcement problems on the international plane. For example, when United States invaded Grenada in 1983, it too, albeit, belatedly and a little half-heartedly, attempted to justify the invasion legally. The fact that 'justification' withstood little scrutiny is less important for our argument than the fact that the United States felt bound to make it.

Also, when multi-dinors combat aircraft, belonging to a particular state, successfully carry out an aerial raid on the cities of another state, as the United States bombers did to Libya cities of Tripoli and Benghazi on April 15, 1986. Very much the same was true of the U.S. invasion of Panama to capture General Noriega. Similar to these, was when Saddam Hussein ordered the invasion of Kuwait in 1990, he did not announce that he intended to flout or, worse still, ignore international law. Rather he attempted, perhaps not terribly convincingly, to defend his actions as being consistent with international law. He did not only suggest that the invasion was a legitimate self-defence, but also referred to Kuwait. Even

the claim by China that both Tibet and Taiwan are integral components of the Chinese territory is couched in terms calculated to appeal to international law. The more recent intervention by NATO in the domestic affairs of the former Republic of Yugoslavia was defended as being consistent with international law; while Israel in collaboration with the United States argued that Israel's activities in Palestine are not necessarily a breach. Most recently of course has been the bitter legal debate concerning the intervention of the U.S led 'coalition' in Iraq. Quite remarkably the debate over the legality of the intervention has been absolutely central to the debate over intervention itself.

How can the attacked states, victims of such attacks, have redress without problems?

This question, along with many others persistently raise doubts, in the minds of teachers of international law, observers of international affairs, international lawyers and politicians, as concerns the efficacy of the tenets of international law.

Brierly (an eminent U.K authority on international law) writes in 1944:

> *The best evidence for the existence of international law is that every actual state recognises that it does exist and that it is itself under obligation to observe it.*
>
> *States may often violate international law, just as individuals often violate municipal law, but no more than individuals do states defend their violations by claiming that they are above the law.*

With reference to the first point, the directiveness of international law derives in part from its sources and origin. International law and laws essentially came into existence either through treaties (which obviously require the consent of those who are to be bound by them) or through customs, and usually, but not always, custom which has been long established.

Although not all custom is held to be international law, rather only that which has been regarded by states as legally binding custom. Thus custom become international law only when the states observing the custom do so in the belief that the custom is indeed a part of international law. The fact still remains that there is no law creating legislature really, but only reflects the reality of sovereignty.

According to Shabtai Rosenne's observation in a book published in 1984, 'International Law is a law of co-ordination, not, as in the case of

most internal law, a law of subordination. By law of coordination we mean to say that it is created and applied by its own subjects, primarily the independent state (directly or indirectly), for their own common purposes'.

A particular theory which has reigned is that international law is nothing but a code of rules of conduct of moral force only. For example, Austin, great positivist, stating his theory, usually referred to as the Austinian theory, says that law should relate to commands issuing from a determinate sovereign authority.

Thus if the rules concerned do not emanate from a sovereign authority, which be politically superior, or if there are no sovereign authority, then the rules could not be legal rules, but rules of moral or ethnical validity only. If international law is critically examined, it would be seen that there is no visible authority with legislative powers or indeed with any determinate power over the society of states. He then concluded that international law is nothing but 'positive international morality' only analogous to the rules binding a club or society or 'opinions or sentiments current among nations generally'.

Without doubt, international law cannot compare favourably with rules of municipal law which effortlessly apply within each state. However, in spite of the apparent merits of municipal law which actually out-number those of international law, modern day developments demonstrate that international law is law **per-excellence.**

Some schools of thought are of the wrong view that in the absence of supra-national system of sanctions capable of being enforced against law breakers, states have little incentive to obey international law, the truth is that only violations of international law are reported or complained about, obedience to it, which is common place, is taken for granted. In view of the above statement, laymen rarely know or consider that people who obtain international passports and visas before traveling abroad, are for instance obeying international law, while the immunity being enjoyed by the foreign nationnels, diplomats (ambassadors) and the sovereignty of a foreign embassy in the country or state of domicile is also in conformity with the dictates of international law.

On the other hand, if or because international law is breached or violated from time to time, it does not mean that all the rules of the law will always be broken, in the absence of sanctions to underpin them.

Furthermore, the argument that the legal way of dealing with international law issues is a distinct way (that is to say that legal discourse is distinguishable from the language of general international

relations). It can be argued that what distinguishes most clearly the legal way from the social way of resolving disputes in domestic/municipal terms is that law always requires a **translation** of social facts into legal facts.

Although, this is no less true of international law, the argument still suggests that translation is both law greatest strength and paradoxically it's greatest weakness. It is seen as strength in the sence that when a dispute is put in legal terms with legal issues, it becomes legally resolvable in that there will be (almost invariably) a legal solution to be legal problem. It may also be a weakness because the resolution, while it will resolve the legal issues, may not resolve the social (untranslated) problem. The law way of resolving disputes works 'best' when all the parties to the dispute accept the legislation of the dispute.

Very much the same applies in international law, which is a central factor in explaining the reasons why only a minority of state accepts the compulsory jurisdiction of the International Court of Justice. There is little point in having a dispute legally resolved if underlying political problems remain. Unless the parties to the dispute, together with the constituencies they represent, accept that the legal outcome **resolves** the problem, the resolution itself may in fact simply lead to further disputes.

In addition, the existence of international disputes does not always mean or suggest that there is breakdown of international law as international disputes are caused by multifarious factors. Though there may be genuine uncertainty about the international law, which is exemplified by the Gulf War or the Incessant Israel/Palestine War.

Therefore, in the case of Gulf War, Iraq believed that it was proper to lay claim to her historical title to the Kuwait territory (Kuwait was part of Iraq before the onset of the colonisation of that geographical location). While the multinational forces (Allied Forces) of the United Nations thought that the Iraqi invasion and annexation of Kuwait principally violated Article 2(4) of the United Nations which provides that member of states are to refrain from the threat or use of force against the territorial integrity or political independence of any state or in any other manner inconsistent with the purposes of the United Nations.

Akehurst in his summation says that the problem of the enforcement of sanctions is somewhat intractable under international law because of the peculiar characteristics of the latter. It is said that in contradistinction to municipal law, under international law, there is no legislative authority; neither are there provisions for obligatory judicial settlement, there is absence, equally, of any centralised executive authority to enforce

judgement. It should be made known however that the recent occurrence or developments have created a great mass of 'international legislation' through series of international conferences, law-making treaties and conventions. Although, there is no determinate sovereign legislative authority in the international field, the procedure for formulating these rules of 'internal legislation' by means of international conferences or through existing international organs is settled. For example, the charter creating the U.N. drawn up in San Francisco in 1945 is based on the legality of international law. Article 38 of the U.N. Charter gives the International Court of Justice (ICT) the power to "decide in accordance with international law such disputes as are submitted to it".

Also, Article 51 of the U.N under the remedy for self help authorises the use of self-defence against armed attacks. For example, during the Gulf war in 1991, the unprovoked Iraqi missile attack against Israel could validly attack the Israeli response in self-defence against Iraq if Israel had wanted to be involved in the war immediately. The Iraqi attack on Israel could be said to have had both political and strategic undertone such that Iraqi leader (Late Saddam Hussein) would have assumed that if Israel could be brought/lured into the war, against her, many Arab states if not all would/might rise against Israel in support of Iraq. The total condemnation of the Iraqi action by United States of America and her allies coupled with the rapid deployment of American made "Patriot missile" to destroy or neutralise the potency of Iraqi "said missile" really saved the war from degenerating into something else. Nevertheless, habit, conscience, morality, affection and tolerance are the ingredients necessitating or responsible for much obedience of international law in the committee of nations. Specifically, certain factors make states obey international law. For instance, treaties create laws unto themselves, since **Pacta Sunt Servanda** (agreement must be kept). It is not in the interest of states to break the law so created because international law facilitates international co-operation.

The U. N Resolution 678 of 1990

The United Nations acting under chapter vii of its charter which provides that in the event of a threat to the peace, breach of the peace, or act of aggression, the U.N. may institute enforcement action against a particular state to maintain or restore international peace and security and to the extent that the state concerned is in breach of international law.

On the 29th of November, 1990, the U.N. passed Resolution 678 which recalled and re-affirmed resolution 600-667 and states that:

> *Nothing that despise all efforts by the United Nations, Iraq refuses to comply with its obligation to implement resolution 660 (1990) and the above subsequent relevant resolutions in flagrant contempt of the council, mindful of its duties and responsibilities under the charter of the United Nations for the maintenance and preservation of international peace and security. Determined to secure full compliance with its decisions.*

The United Nations……

1. Demands that Iraq comply fully with resolution 660 (1990) and all subsequent relevant resolutions and decides, while maintaining all its decisions to allow Iraq one final opportunity as a pause of goodwill to do so;

2. Authorises member-states cooperating with Government of Kuwait, unless Iraq on or before 15th January 1991 fully implements as set forth in paragraph 1 above, the foregoing resolutions to use all necessary means to uphold and implement security council resolution 660 (1990) and all subsequent relevant resolutions and to restore international peace and security in the area;

3. Requests all states to provide appropriate support for the actions undertaken in pursuant of paragraph 2 of this resolution.

4. Requests the states concerned to keep the council regularly informed on the progress of actions undertaken pursuant to paragraphs 2 and 3 of this resolution.

5. Decides to remain seized on the matter.

However, international law is also criticised for the lack of sanctions it is able to apply in the event of non-compliance or breach of obligation against some powerful states while reverse is the case whenever a developing state contravenes the international law, which is corroborating the saying that all animals are equal, but some are more equal than others.

4.0 CONCLUSION

Despite all the arguments put up above it could therefore be asserted that devoid of academic verbal juggle, international lawyers and politicians debate or argue, international law is law and it plays a very vital role in

the elimination and prevention of problems of international dimension and it promotes international intercourse and co-existence.

5.0 SUMMARY

This section has considered criticisms or debates about whether international law is really law or not. International law is also seen as a way of regulating the relations between nations, which is within preview legal interpretation. The application or lack of sanction for non-compliance or breach with reference to some cases, which have come before and are still existing, does not erode or destroy the legal quality of the international law.

6.0 TUTOR-MARKED ASSIGNMENT

1. Can international law be regarded as law or not? Discuss.

2. What distinguishes international law from international relations?

3a. Define international law

(b) Compare and contrast the relationship between domestic law and international law.

3. Why are some states sanctioned and others left untouched for non-compliance or breach of international law?

7.0 REFERENCES/FURTHER READING

Dixon, Chapter 1: 'The nature of International Law and the International System', pp. 1 – 20.

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UNIT 3 INTERNATIONAL HUMANITARIAN LAW AND WAR CRIMES

CONTENTS

1.0 INTRODUCTION

In this unit, we will examine the meaning of International Humanitarian Law with respect to the limits set within the use of force during the prosecution of war or hostilities. War crimes will also be discussed in accordance with the dictates and concern of international human rights.

2.0 OBJECTIVES

By the end of this unit and relevant readings, students should be able to:

- define or explain the basic sources of humanitarian law
- describe the nature of war crimes and explain different types of war crimes.

3.0 MAIN CONTENT

3.1 International Humanitarian Law

Definition

Is a set of international rules, established by treaty or custom, which are specifically intended to solve humanitarian problems directly arising from international and non- international armed conflicts. It protects persons and property that are, or may be, affected by an armed conflict and limit the rights of the parties to a conflict to use methods and means of warfare of their choice. The International Humanitarian Law Treaty sources applicable in international armed conflict are four Geneva Conventions of 1949 and their Additional Protocol I of 1977. The main treaty sources applicable in non- international armed conflicts are

Article 3 common to the Geneva Conventions and Additional Protocol II of 1977.

(International Committee of the Red Cross [ICRC]). The reason for IHL is that except some limits are prescribed, the brutality and barbarism of war and hostilities may know no bounds. The need to state bounds of methods to be used in the prosecution of war and hostility was dated and recognised right from the Middle Ages when Christianity and the Spirit of Chivalry made it possible to restrict the excesses of belligerents. Professor L. C. Green noted that:

> It has often been assumed that the campaign for the trial and punishment of war criminals is a modern innovation, based on feelings of revenge and political ideology rather than on legal considerations. In fact it can be traced back to the code of Chivalry that prevailed in the Middle Ages among the orders of Knighthood, while in the early part of the sixteenth century Victoria was asserting that 'a prince who has on hand a just war is *ipso jure* the judge of his enemies and can inflict a legal punishment on them, according to the scale of wrongdoing.

It should be stated that many of the international humanitarian laws are now embedded in the various laws of war. Indeed, it is usually assumed that the term 'Laws of war' should be regarded as synonymous with "international humanitarian law". Thus, humanitarian law, or the laws of war, is the body of rules and principles stemming from the Geneva and Hague Conventions that relate to the treatment of combatants and non-combatants in times of conflict.

3.1.1 The Geneva Conventions

The four Geneva Conventions of 1949 and their two Additional Protocols of 1977 are the principal instruments of humanitarian law, which are as follows:

A. First Convention

The Wounded and the Sick in Armed Forces in the field.

This First Convention is for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (Geneva, 12 August 1949). Article 2 of the First Convention states that it applies both in peacetime and to all cases of declared war or other armed conflict, that may arise between two or more of the signatories or contracting parties.

A state of war exists even if this is not recognised by one of the parties to the conflict. Such a provision is necessary because the recognition of the outbreak of war is a symbolic event. To recognise that a nation is at war is to allow it is at war with another nation. It may be the case that a nation does not want to think of the 'enemy' as nation as this would imply recognition of a political claim to nationhood.

The first convention is based on the fact that war takes place between sovereign nations, and states certain minimum standards that apply to both military personnel and civilians in the event of a conflict. These are detailed in Article 3. Those who take 'no active part in the hostilities' (and this can include members of armed forces who have surrendered or are wounded) must 'in all circumstances be treated humanely'. The following acts are prohibited:

a. violence of life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
b. taking of hostages;
c. outrages upon personal dignity, in particular humiliating and degrading treatment;
d. the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognised as indispensable by civilised peoples.

B. Second Convention

Wounded, sick and shipwrecked members of the armed forces at sea.

The Second Convention is for the Amelioration of the condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Geneva, 12 August 1949).

Article 12 defines the requirement that those wounded or shipwrecked, at sea should be treated humanely:

> *Member of the armed forces and other persons mentioned in the following Article, who are at sea and who are wounded, sick or shipwrecked, shall be respected and protected in all circumstances, it is being understood that the term 'shipwreck' means shipwreck from any cause and includes forced landings at sea by or from aircraft.*
>
> *Such persons shall be treated humanely and cared for by the parties to the conflict in whose power they may be, without any adverse distinction founded on sex, race,*

> *nationality, religion, political opinions, or any other similar criteria. Any attempts upon their lives, or violence to their persons, shall be strictly prohibited; in particular, they shall not be murdered or exterminated, subjected to torture or to biological experiments; they shall not willfully be left without medical assistance and care, nor shall conditions exposing them to contagion or infection be created.*

Only urgent medical reasons will authorise priority in the order of treatment to be administered.

Women shall be treated with all consideration due to their sex.

More precisely the principles underlying the second convention have been describe as follows:

i. suffering has the effect of peremptorily conferring equality. No distinction, apart from that based on strictly medical criteria, may be admitted…

ii. the protection due to wounded, sick and shipwrecked is extended generally to the persons caring for them and to the property necessary to do so.

iii. The rights of the wounded sick and shipwrecked persons are inalienable, as are those of medical and religious personnel.

iv. At the outbreak of a given-armed conflict, any state that is a party to (the convention) becomes responsible for the protection provided by the law.

Rezek makes an interesting distinction between reason and 'the feeling of humanity' while describing the underlying principles of the Second Convention. He asserts that although reason would 'accord respect' to those who are incapable of doing harm, the 'feeling of humanity' underlies the more active duties of protection that are listed in Article 12.

C. Third Convention

Prisoners-of-War

The Third Convention relates to the treatment of prisoners-of-war (Geneva, 12 August 1949). Prisoners-of-War (POWs) are defined by Article 4 as falling into specific categories:

(1) Members of the armed forces of a party to the conflict, as well as members of militias or volunteer corps forming part of such armed forces.

(2) Members of other militias and members of other volunteer corps, including those of organised resistance movements, belonging to a party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organised resistance movements, fulfil the following conditions:

(a) that of being commanded by a person responsible for his subordinates

(b) that of having a fixed distinctive sign reconisable at a distance

(c) that of carrying arms openly

(d) that of conducting their operations in accordance with the laws and customs of war.

(3) Members of regular armed forces who profess allegiance to a government or an authority not recognised by the Detaining Power.

(4) Persons who accompany the armed forces without actually being members of military aircraft crews, war correspondents, supply contractors, members of labour units or of services responsible for the welfare of the armed forces, provided that they have received authorisation, from the armed forces which they accompany, who shall provide them for that purpose with an identity card similar to the annexed model.

(5) Members of the crews, including masters, pilots and apprentices, of the merchant marine and the crews of civil aircraft of the parties to the conflict who do not benefit by more favourable treatment under any other provisions of international law.

(6) Inhabitants of a non-occupied territory, who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war.

Article 13 goes on to specify the standard of treatment for Pows:

Article 13 says thus:

Prisoners of war must at all times be humanely treated. Any unlawful act or omission by the Detaining Power causing death or seriously endangering the health of a prisoner of war in its custody is prohibited, and will be regarded as a serious breach of the present convention.

In particular, no prisoner of war may be subjected to physical mutilation or to medical or scientific experiments of any kind which are not justified by the medical, dental or hospital treatment of the prisoner concerned and carried out in his interest.

Also, prisoners of war must at all times be protected, particularly against acts of violence or intimidation and against insults and public curiosity.

D. Fourth Convention

Civilian Persons in Time of War

The Fourth Convention has to do with the protection of civilian persons in time of war (Geneva, 12 August 1949). The Geneva Convention seeks to protect civilian populations against the consequences of war. Parties to a conflict can establish ‘safety zone’ (Article 14) and ‘neutralised zones’ (Article 15) (both part II). Safety zones protect the ‘wounded, sick and aged persons, children under fifteen, expectant mothers and mothers of children under seven’.

Neutralised zones, on the other hand, protect:

(a) wounded and sick combatants or non-combatants;

(b) civilian person who take no part in hostilities and who while they reside in the zones, perform no work of a military character.

There exist a special provision in Article 16 which stresses that ‘the wounded and sick, as well as the infirm, and expectant mothers, shall be the object of particular protection and respect’. Articles 17, 18, 19, 21 also cover everything pertaining to civilian persons in time of war.

3.1.2 The Hague Conventions

(a) The First Hague Peace Conference was convened in 1899 with the objective of revising the laws and customs of war that had been elaborated at the earlier conference of Brussels, but had not

been ratified. Certain rules that came into force on 4 September 1900 were agreed upon or accepted at the conference.

Some of the provisions and the principles that underlie the conference are thus:

The Conference agreed a Convention (Hague II) with respect to the laws and customs of war. For example, section II, chapter I deals with the 'means of injuring the Enemy, Sieges and Bombardments'.

Article 22 states the Fundamental Principle: 'The right of belligerents to adopt 'means of injuring the enemy is not unlimited'. Certain declarations were also made. The contracting parties agreed to abstain from the use of bullets that expand or flatten easily in the human body and cause unnecessary suffering. The contracting powers also agreed to abstain from the use of asphyxiating or deleterious gases. A further Protocol for the Prohibition of the use of Asphyxiating, Poisonous or other Gases and of Bacteriological Methods of Warfare came into force in 1928.

Section III of Hague II, Article 43, 46, 50, 53 and 56 can also be studied for further and proper understanding.

(b) The Second Peace Conference at The Hague continued the development of these laws of war. Varieties of subjects were agreed upon by the Conventions, and came into force on 26 January 1910. For example, a closely look at Article 1 of convention IV shows that it is concerned with the 'qualification of belligerent':

The laws, rights, and duties of war apply not only to armies, but also to militia and volunteer corps fulfilling the following conditions:

1. To be commanded by a person responsible for his subordinates;

2. To have a fixed distinctive emblem recognisable at a distance;

3. To carry arms openly; and

4. To conduct their operations in accordance with the laws and customs of war.

In countries where militia or volunteer corps constitute the arm, or form part of it, they are included under the denomination 'army'.

This article states that the laws of war apply not just to armies, but also to less formally organised groups of combatants, provided that they satisfy the conditions enumerated.

3.2 War Crimes

War crimes can be defined or explained as violations by a country, its civilians, or its military personnel of the international laws of war. OR War Crimes relate in the main to breaches or serious breaches of the laws of war.

It should be remembered that the nature of criminal law requires that rules of law be certain and easily ascertainable. The principles of legality calls for this. Therefore, war crimes can be determined from the violation of the various rules of law contained in the various treaties and conventions. War crimes are divided into two broad categories namely:

(a) Crime against peace and

(b) Crimes against humanity.

a. Crime Against Peace

Crime against peace includes the planning, preparation, or initiation of a war of aggression. In other wards, one country cannot make aggressive war against another country, nor can a country settle a dispute by war; it must always, and in good faith, negotiate a settlement.

The prohibition of crimes against peace is embodied in the charter of the United Nations, the Nuremberg charter, which is the law under which the Nazis were tried, and a treaty called the Kellogg – Briand pact. Nuremberg charter therefore defines:

(a) Crimes against peace

i. Planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances;

ii. Participation in a common plan on conspiracy for the accomplishment of any of the acts mentioned (I).

Article 2131 of the UN charter requires that international disputes be settled by peaceful means so that international peace, security, and justice are not endangered; Article 2141 requires that force shall not be used in any manner that is inconsistent with the purposes of the UN

which Article 33 requires that parties to a dispute shall first all seek a solution by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies, or other peaceful means. Not until all such means are exhausted can then force be applied or used.

b. Crime Against Humanity

These are violations of the rules as to the means and manner by which war is to be conducted once begun. These include the following prohibitions: killing of civilians, indiscriminate bombing, the use of certain types of weapons, killing of defenseless soldiers, ill treatment of prisoners of wars and attacks on non-military targets.

There are eleven international texts defining crimes against humanity, but they all differ slightly as their definition of that crime and its legal elements. However, what all of these definitions have in common is:

(1) They refer to specific act(s) of violence against persons irrespective of whether the person is a national or non-national and irrespective of whether these acts are committed in time of war or time of peace, and

(2) These acts must be the product of persecution against an identifiable group of persons irrespective of the make-up of that group or the purpose of the persecution. Such a policy can also be manifested by the 'widespread or systematic' conduct of the perpetrators, which results in the commission of the specific crimes contained in the definition. The list of the specific crimes contained within the meaning or crimes against humanity has been expanded since Article 6(c) of the International Military Tribunal to include rape and torture as modified by the Four-Power Protocol of October 6, 1954, which defines crimes against humanity thus:

> Murder, extermination, enslavement, deportation, and other inhumane acts committed against any civil population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.

These laws are embodied in various treaties, including most importantly the Hague Convention of 1907, the Geneva Conventions of 1949, and Protocol I Additional to the Geneva Conventions. They all reflect a similar set of rules, violation of which are war crimes. Lastly, no one is

immune from prosecution for such crimes, even a head of state or president.

4.0 CONCLUSION

Our discussion reveals that many of the international humanitarian laws are now embedded in the various laws of war or that many of the laws made for the regulation of wars can be said to have humanism as their objectives.

5.0 SUMMARY

The Hague Convention of 1900 that represent an important fou8ndation for the laws, laid down new standards in relation to the laws and customs of war and also prohibited the use of certain weapons. It also created rules that relate to military authority over occupied territory. The Hague Convention 1910 is relevant to the definition of belligerents, and The Hague Convention of 1965 relates to the Protection of Cultural Property in the Event of Armed Conflict. The Geneva Conventions on the other hand of 1949 and their two Additional Protocols of 1977 are major instruments of humanitarian law.

6.0 TUTOR-MARKED ASSIGNMENT

1. Compare and contrast the similarities and differences between International Humanitarian Law and international Law of human rights.
2. Mention and explain the six categories of detainees who can be regarded as prisoners of wars.
3. What are the sources of International Humanitarian Law.
4. State the main provisions of the First Convention for the Amelioration of the condition of the Wounded and Sick in Armed Forces in the Field.

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UNIT 4 THE INTERNATIONAL CRIMINAL TRIBUNAL/COURT

CONTENTS

1.0 INTRODUCTION

In this unit, we will examine various violations of the rules as to the means and manner by which war is to be conducted once begun. These include the following prohibitions: killing of innocent and defenseless civilians, indiscriminate bombing, the use of certain types of weapons, killing of defenseless soldiers, ill treatment of POWs, attacks on non-military targets and genocide. We also focus on crime against humanity and genocide, and we will see that these offences are very different and have essential concern with human rights.

2.0 OBJECTIVES

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

- describe the nature of war crimes, the crime of genocide and crime against humanity
- explain and account for the role of the *ad hoc* tribunals for the former Yugoslavia and Rwanda
- describe the trial of Saddam Hussein and that of former Liberia President Charles Taylor

3.0 MAIN CONTENT

3.1 UN Article II and III on Genocide

With reference to our earlier discussion on war crimes: such as crimes against humanity and crimes against the peace in the last unit. We will focus on crimes against humanity, genocide and rape, and we shall see the differences in these offences.

Genocide

The word genocide is a compound word or a hybrid consisting of the Greek genes meaning race, nation or tribe; and the Latin *cide* meaning killing. The concept (word) came into being in Europe in the year 1933 – 1945 in the quest for the formulation of a legal concept of destruction of human groups. The Nazis in their course of inordinate ambition embarked upon a gigantic plan to permanently change the population balance in occupied Europe in their favour. They intended to wipe out entirely so that Germany might win a permanent victory, whether directly through military subjugation or indirectly through such biological destruction that even in the case of Germany's defeat the neighbours would be weakened that Germany would be able to recover her strength in later year.

The crime of genocide involves a wide range of actions, including not only deprivation of life but also the prevention of life (abortion, sterilisations) and devices considerably endangering life and health (artificial death in specific camps, deliberate separation of families for depopulation purposes and so forth). All these actions are subordinated to the criminal intent to destroy or to cripple permanently a human group. The acts are directed against, as such and individuals are selected for destruction only because they belong to these groups. The concepts has different definitions, but the above extracts contextualises the genesis of the crime.

The United Nations General Assembly adopted the Convention on the Prevention and Punishment of the Crime of Genocide in 1948. The definition of the crime of genocide is found in Articles II and III. Article II states that genocide has two elements:

1. the mental element, meaning the 'intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such; and

2. the physical element which includes five acts described in sections a, b, c, d and e. a crime must include both elements to be called 'genocide'.

Article II

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial and religious group, as such:

a. Killing members of the group.
b. Causing serious broadly or mental arm to members of the groups.
c. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or part.
d. Imposing measures intended to prevent births within the group.
e. Forcibly transferring children of the group to another group.

Article II

The following acts shall be punishable:

a. Genocide
b. Conspiracy to commit genocide
c. Direct and public indictment to commit genocide
d. Attempt to commit genocide
e. Complicity in genocide.

As revealed above, we can observe that the convention clarifies the elements of the crime. As obtainable in all criminal offences, it has both a mental and physical element. The mental element is defined by the "intent to destroy" and the physical by the list in Article II.

Article II then expands the definition by detailing the various acts that can be punished as genocide.

A legal definition is clearly essential to the prosecution of genocide, but one has to be conscious of the fact that genocide is not just a legal phenomenon, but we need to examine various definitions of genocide as thus:

1. the events (of the Holocaust) obeyed no law and no law can be derived from them;

2. complete understanding would require identification with all the victims all executioners, which is impossible;

3. no language is sufficient to communicate the Holocaust experience;

4. the language of science in particular, fails before the suffering of the victims.

(Freeman,1991, p.185).

Freeman's arguments that law is unable to understand genocide. This is an important point to keep in mind. It thus become imperative for us to view the phenomenon from various other disciplines' perspectives in order to obtain a fuller comprehensive understanding of the nature of genocide.

The development of the jurisprudence of International Criminal Law as it relates to genocide, war crimes and crime against humanity takes us to the foundation of two ad hoc UN tribunals: the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal tribunal for Rwanda (ICTR).

3.2.1 The International Criminal Tribunal for the former Yugoslavia (ICTY)

The International Criminal Tribunal for the former Yugoslavia (ICTY) was established by the Security Council in 1993. The tribunal was vested with the responsibility of dealing with the violations of international humanitarian law perpetrated during the fighting and 'ethnic cleansing' caused by the break-up of the territories that comprised the former Yugoslavia. The International community opined that the tribunal would assist in the process of reconciliation and reconstruction after the hostility (war).

In the course of bringing humanitarian law violator(s) or offender to book, Serbia, one of the republics that made up the Federal Republic of Yugoslavia, cooperated and handed over to the court Slobodan Mulosevic, the former president of the Federal Republic of Yugoslavia and other major figures. The death of Milosevic in custody in 2006, coupled with his failure to cooperate with the court posed a lot of difficulties to the tribunal which eventually led to problems of legitimacy of the entire process.

Although, the ICTY's founding status gave it jurisdiction over war crimes, genocide and crime against humanity. A critical examination of the ways and manners by which the Tribunal conducted the indictment and hearings against Milosevic will reveal the transparency and adherence to fundamental human rights nature of the trial.

On May 24, 1999, the tribunal indicted Milosevic, along with four other senior officials and officers, for war crimes and crimes against humanity committed by Yugoslavia and Serbia troops under their command in

Kosovo in early 1999. The crimes include the slaughter of hundreds of ethnic Albanians, forcible deportation of hundreds of thousands of people, and persecution based on racial, religious, and political identification.

The tribunal indicted Milosevic a second time on October 29, 2001, for crimes he allegedly committed in Croatia. The indictment charges Milosevic with multiple counts of murder, detention, deportation and other atrocities committed during the attempted ethnic cleansing of Croatia from 1991 to 1992. On December 11, 2001, the ICTY issued a third indictment against Milosevic for crimes in Bosnia.

The indictment includes one count of genocide, and an additional twenty-seven counts of war crimes and crimes against humanity arising from the conflict in Bosnia – Herzegovina between 1992 and 1995. The new charges cover the shelling of Sarajevo; the mass murder of thousands of Muslim men and boys at Srebrenica, both UN-proclaim 'safe area' and for the Omarska detention camp (Amnesty International).

The Tribunal suffered a lot of criticisms because it was suggested that there is no competence under chapter VII of the UN charter to establish a court to 'maintain or restore international peace and security' also the establishment of the Tribunal was also assorted as having a political undertone of the political supremacy of great powers over small states, because the mechanism of *ad hoc* tribunal being set up is usually targeted against less powerful states while great powers that have perpetrated the same or similar crimes in the past have gone scot-free even unchallenged by the same United Nations Security Council.

However:

> It is not obvious that the Security Council in fact had the legal right to set up the Tribunal under chapter VII of the charter…. A subsidiary body could not have competence falling outside the competence of its principal, and it is questionable whether the General Assembly is competent to administer justice. The Security Council, it could be argued, is similarly incompetent to administer justice, but it is competent to handle matters relating to peace and security. Perhaps more importantly, the General Assembly is unable to make binding decisions, to make it mandatory for states to cooperate with the Tribunal, for example – whereas Article 24 (1) of the UN Charter obliges all member states to accept and carry out the decisions of the Security Council.
>
> (Hirsch, 2003.74)

The argument that the ICTY has been imposed by the 'supremacy of the great powers is difficult to refute. Thus is a variation of the criticisms that the Nuremberg Tribunal dispensed 'victor's justice' and to some extent, will always be attendant on tribunals that are the result of conflict situations. Supporters of ICTY have seen its work as a vital contribution to the development of international criminal law.

Perhaps, the most rounded conclusion of the work of the Tribunal to date is that of Richard Dicker, the director of Human Rights Watch's International Justice Programme:

> This trial is a great step forward for justice, but equally notable are those indicted war criminals missing from the dock. Too many of the most senior Serb indictees remain at large. The blame lies with Balkan governments that have failed to cooperate with the tribunal and with NATO, which has for six years operated in Bosnia without rounding up Milosevic's co-conspirators.

Steiner and Alston pp 1143 – 1173 provide a variety of materials that relate to the ICTY that can be used to elaborate the theme described in this section.

3.2.2 The International Criminal Tribunal for Rwanda (ICTR)

The International Criminal Tribunal for Rwanda (ICTR) was created by the Security Council under the authority of chapter VII of the UN Charter. The ICTR was set up to try those members of the majority Hutu ethnic grouping who had committed genocide and other serious crimes against the minority Tutsi since its establishment, the ICTR had indicted over 70 suspects, and has achieved 12 successful convictions. Among those convicted are former ministers of the Rwanda government, senior military figures and Jean Kambanda, who was the Prime Minister of the Rwanda government during the genocide. Kambanda is the first head of government to be convicted for genocide.

The impact of the ICTR is also significant because of the opportunity it presents to develop international criminal law:

> Those decisions are forging a substantial body of case law (jurisprudence) which is already being used by the International Criminal Tribunal for the former Yugoslavia and by national courts all over the world. It will provide a

> sound foundation for the work of the International Criminal Court (ICC) when that institution starts it work.

Perhaps most important of all, the tribunal will aid the process of reconciliation in Rwanda and internationally, it is hoped, it will encourage a shift in the culture of international law. In Africa, as commentators have pointed out, weak central institutions have given rise to a 'culture of impunity' for warlords and dictators:

> Above all the Rwanda Tribunal, through its work, has made and continues to make a substantial contribution to the replacement of a culture of impunity by a culture of accountability. As noted above a new climate of opinion regarding the effectiveness of international humanitarian law has emerged as a result of the visible, practical success of the two ad hoc Tribunals. Further evidence of this is the fact that the creation of such Tribunal is now automatically called for in conflict situations as far apart as Sierra Leone, Cambodia, and East Timor. Indeed it has been mooted that those responsible for other conflicts in Africa should be prosecuted before the Arusha Tribunal. A provision to that effect was included in the Lusaka agreement intended to bring an end to the conflicts in Democratic Republic of Congo.

3.4 The Trial of Saddam Hussein

In 2003, the Coalition Provisional Authority, prior to the handover of sovereignty to the Iraqi government, established a special Tribunal to begin the trial process of Saddam Hussein, the late former president of Iraq and other senior members of his regime. In August 2005, the Iraqi Transitional National Assembly approved the creation of a war crimes tribunal.

Saddam's trial began on 19 October 2005. This represents a significant period of time since his arrest in December 2003. This delay is partly explicable by the unusual circumstances in which the War Crimes Tribunal trying Saddam and other members of the former regime is operating. On November 5, 2006, Saddam Hussein was convicted of crimes against humanity by a Baghdad court and sentenced to death by hanging. He was found guilty over his role in the killing of 148 people in the mainly Shia town of Dujail in 1982.

His brother Barjan al-Tikriti was also sentenced to death, as was Iraq's former chief judge Awad Hamed al-Dander. Former Vice-President Taha Yassin Ramadan got life jail and three others received 15 years

prison terms while another co-defendant, Baath party official Mohammed Azawi Ali, was acquitted.

3.4.1 Criticisms about Saddam Hussein's Trial

A lot of criticisms and canter-criticisms were raised by Human Rights Groups, Nations and International Personalities in the field of politics and international Law about how the crimes of the past would be prosecuted immediately Saddam was apprehended. A very important question that confronted Iraq, the occupying power in Iraq and the international community was what kind of court should prosecute Saddam Hussein and others. The three (3) basic options were:

- A national court with Iraqi prosecutors and judges.
- An international court formally established by the United Nations Security Council.
- A mixed domestic – international court.

The new International Criminal Court was regarded as not an option in part because it cannot prosecute crimes committed before July 1, 2002.

Most of the serious crimes in Iraq's past were committed before then. But it is important to note that the International Criminal Court (ICC) was created precisely for situations like this one.

A National Court with Iraqi Prosecutors and Judges

This option was generally perceived as the best option provided the national authorities can hold fair and effective trials, make the trial more accessible to the victims and their families, National judges and prosecutors help create a feeling of "ownership" of the important process of accountability.

But past traditional records revealed that criminal trials in Iraq have been very brief proceedings lasting only a few hours, or at most a few days. Even, sometimes people accused of committing crimes were thrown into prison without any trials at all, or a time executed on the spot.

In the light of the above, Iraqi jurist (judges, prosecutors, lawyers, and others in the judicial system) do not have the experience needed or required to conduct a trial that is as complicated as the trial of Saddam Hussein, and others accused of serious human rights crimes, is likely to be.

An International Court Formally Established by the United Nations Security Council

The United Nations Security Council passed resolutions establishing the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) as a result of the genocides in Bosnia and Rwanda. These courts are staffed primarily by international judges, prosecutors and court personnel. The tribunals were located outside the countries where the crimes occurred for political and security reasons – the ICTY is in The Hague and the ICTR is in Arusha, Tanzania. That has made that proceedings less accessible to victims, their families, and those in whose names the crimes were committed. Though, the tribunals generally performed capably, but were very expensive and the trials progressed slowly.

A Mixed Domestic – International Court

The main example of this type of tribunal was the Special Court for Sierra Leone (SCSL). The SCSL was ran by both international and Sierra Leonean judges, prosecutors and staff. The examined various serious violations of international humanitarian law, or laws of war, committed after November 1996 in Sierra Leone's horrific civil war.

4.0 CONCLUSION

In the light of the above discussion, it was revealed that International Community (that is, the great powers) displayed double standards in the course of bringing war crime offenders to book by allowing transparency, fair hearing and adherence to fundamental human rights to prevail in some trials while reverse as the case in other.

5.0 SUMMARY

In this unit, some trials of perpetrators of human rights abuses, as well as war crimes, crime against humanity and genocide were discussed. Also, various criticisms were put up for and against the ways and manners by which the trials were conducted.

6.0 TUTOR-MARKED ASSIGNMENT

1. Was the trial of Saddam Hussein in conformity with the dictates of international law or not? Discuss.
2. What arguments can be made for the proposition that International Criminal Tribunal was imposed by the supremacy of great power? Respond with relevant examples.

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UNIT 5 THE IMPACT OF CONFLICT / WAR AND POST-CONFLICT RECONSTRUCTION AND PEACEBUILDING

CONTENTS

1.0 INTRODUCTION

Past records have revealed that violent conflict or war almost invariably leads to, and often encourages, torture, rape, and other extreme human rights abuses. Victims of war are often expected to be vengeful because of their "traumatisation" or "brutalization" and to promote new "cycles of violence".

The felt need for revenge in people who have been grievously wronged are necessarily bad things and such an emotional reactions of people are perceived as harmful to themselves, dangerous to others and destructive to the society at large. Therefore, efforts should be geared towards positive modification, education, conscientisation and training programmes; exploring all three phases of violence and war- pre-violence, violence, post-violence and what can be done: to transform unresolved conflicts, from war to peace transitions, to empower communities, organizations and individuals for conflict transformation and peacebuilding, to design and implement effective ceasefire and peace processes, and to develop effective transformation and post – war reconstruction, rehabilitation, reconciliation and healing.

2.0 OBJECTIVES

By the end of this unit and relevant readings, learner should be able to:

- Identify the impacts of violent conflict or war on the victims
- Explain various structures and dynamics of skills, tools and approaches useful for peacebuilding, conflict transformation, reconciliation and healing.

3.0 MAIN CONTENT

3.2 Impact of Violent Conflicts and War on the Victims

(I) Loss of lives:- First and foremost, war usually brings about or creates orphans, widow or widower and bereaved family members because of the human cost of contemporary violent conflicts.

Approximately, 28 million people may have been killed in more than 150 major armed conflicts since 1945. only 5 percent of the casualties in the First World War were civilians while by the Second World War the figure had risen to 50 percent, and as the new pattern of conflict emerged in the early 1990s, the civilian share increased to about 80 percent most of them being women and children.

(II) Increasing Flows of Refugees and Forced Population Displacement

A contemporary African society is known for its huge refugee flows and Internally Displaced Persons, posing for both the continent and international community a crisis of humanitarian assistance of enormous magnitude. According to the data from the office of the United Nations High Commission for Refugees (UNHCR) and the United States Committee for Refugee (USCR), reveal that at 1 January 1995, there were 6.7 million refugees on the continent, representing some 46.2 percent of the world's refugee population. An estimated 2 million persons had been internally displaced within the borders of their own countries (37 percent of the world's total of 5.4 million). In several African countries (Angola, Eritrea, Liberia, Mozambique, Rwanda, Somalia, and Sudan), at least half of the total population have been forced to flee at some point. This is further complicated by the length of time that some classes of conflicts last.

(III) Problems of Illegal Surplus Arms

Other problems associated with violent conflict or post-war period are the problems of illegal surplus arms and their widespread distribution and sales, as well as their various cross-border and regional linkages. The problem is global in nature, rather than confined to post-conflict states. The phenomenon of tens and possibly hundreds of thousands of organized men and women previously trained to arms, subsequently demobilized, and let loose upon society, but without undergoing a proper reintegration and rehabilitation programme, including being assisted with the necessary means of socio-economic reinsertion, will

pose serious problems for any state, at any time and anywhere. The issue of illegal surplus weapons serves only to remind one that programme of demobilization and reintegration of ex-combatants and victims of war, however successful, are rarely accompanied by effective disarmament. Past events and records have revealed that the objectives of demobilization, disarmament and reintegration cannot be finally realized or accomplished until and unless the fundamental problems of poverty and underdevelopment are addressed. One important finding is that, a typical soldier tends to possesses at least four to five guns at the point of demobilization; and when disarmed, he tends to turn in one gun, while hiding the remaining other some where. Although, there may not be need to resort to the use of these illegal stocked 'surplus weapons' if the ex-soldier or victim of war is properly reintegrated and has sustainable means of livelihood and the society faces no prospect of 'return to war'.

(IV) Deprivation of Citizens of their Rights

War usually robs people of what is rightfully theirs by taking or maintaining control of land, resources, possessions, political systems. For examples: The protracted Israeli war/crisis against Palestine, the ongoing Chinese suppression of Tibet, the 1991 war and subsequent sanctions and occasional bombings against Iraq.

(V) Environmental Pollution/Health Problem

War and preparation for one are said to be "likely" the single largest source of pollution on the planet. Chemical toxins dropped during the United State of America war against Vietnam, for instance, killed or injured about 400,000 people, and resulted in following two decades in the word's highest rate of spontaneous abortion. Testing of war arms and weapon of mass destruction can harm anyone, including innocent people and those involved in the testing. Nuclear weapon testing provides the best known example of this, with devastating effects to whole populations due to resulting radioactivity. Nuclear and other testing has displaced entire peoples, such as from Vieques Island in Puerto Rico. And some other forms of testing have also done much arm. For instance, there is strong evidence, though it has not been officially admitted, that a stray missile being deliberately tested in a populated area struck a civilian airliner Long Island in 1996 killing all 212 passengers and 18 new members.

(VI) Brain Drain/Emigration of Professionals and Highly Skilled Persons

The burden of debt, terms of trade and terms of loan repayment and servicing entered into by several Africa countries with World Bank and

International Monetary Fund (IMF) hindered and is hindering development and seriously affected the values of their currencies (purchasing power). Since the late 1980s increasing numbers of Nigeria's and other African countries professionals and highly skilled persons, ranging from top rate academics, scientists, medical doctors, paramedicals professionals and host of others hither to gainfully employed in their various institutions and establishment; are known to have emigrated to the West, Canada, United State of America, pastors and safety of their lives.

- War diverts the energy of many who might otherwise work constructively to make our world a more secure and just place.
- War is often used as an excuse to avoid governmental problems or to take governmental measures that would otherwise meet to much resistance.
- War creates fear, suspicion, intolerance, hate and enemy image syndrome.
- War ultimately weakens the social bonds that are the basis of civilized society.
- War robs nations or states of resources that could and should be used in constructive ways.
- War breeds more war and other forms of terrorism and repression in a cycle that is extremely difficult to break.
- War means loss of civil liberties among civilian population. Past records of war revealed that several people were arrested for no more reason than having associated with people suspected of having no trust or antagonizing the leaders style of governance or government policies of oppression despite the fact that they are known to be strictly non violent.

3.2 Post Conflict Peacebuilding and Reconstruction

The concept peacebuilding emerged in the international lexicon in 1992 when the then United Nations Secretary General Boutros – Ghali defined it in An Agenda for Peace as post – conflict "action to identify and support structures which tend to strengthen and solidify peace to avoid a relapse into conflict". Ever since, peacebuilding has become a catchall concept, encompassing multiple (and at time contradictory) perspectives and agendas. It is indiscriminately used to refer to preventive development, conflict prevention, conflict resolution and post – conflict reconstruction.

An Agenda for peace supplement of 1995 noted the linkages between conflict prevention and peacebuilding: "Demilitarization, the control of small arms, institutional reform, improved police and judicial systems, the monitoring of human rights, electoral reform and social and

economic development can be as valuable in preventing conflict as in healing the wounds after conflict has occurred."

Stages of Peacebuilding and Reconstruction

Cessation of Hostilities: – it consists of ceasefire between conflict/war stakeholders followed by peace agreement, separation of forces and ending of hostilities / war.

Military Reorganization: - This entails demobilization, disarmament, de-mining, reintegration of ex-combatants and creation of a new and unified armed forces.

Reconciliation Versus Justice: - Research studies and action programmes on post-conflict peacebuilding emphasize the need to anchor the peace process on conception of justice as one of the prerequisites for sustaining post – conflict stability and democratic consolidation. In order to achieve this goal, reform of the judiciary, building of a new national police and strengthening of both are the path-way to enforcing the rule of law and justice.

Political Transition Programme: - It comprises formation and registration of political parties, conduct of elections, formation of government of National Unity, re-establishment of basic organs of state power, democratization of structures of rules and programmes of reconciliation between former warring parties and establishment of power sharing structures that accommodates rival factions and interests.

Reconstruction and Renovation of Infrastructures or Social Amenities:- Damaged abandoned and decapitated structures and facilities such as government buildings, schools, health centers, roads, bridges, electricity, pipe-borne water and host of other should be given urgent and adequate attention required for the alleviation and betterment of the generality of the populace.

Socio and Economic Reconstruction:- These are various forms of activities geared towards repairing, renovating and reconstructing the physical and psycho-social damage of war resuscitation of national infrastructures such as schools, roads, hospitals, electricity, pipe-borne water and other properties belonging to the government that are meant for socio-economic well being of the citizens and programmes of economic recovery, reform and growth as well as social development.

4.0 CONCLUSION

The incessant intra – state and intra – states civil conflicts, crisis and wars in different parts of the world (especially in Africa), the breakdown of peace processes coupled with the relapse of a number countries into violent conflict call for post – conflict peacebuilding with the assistance of the United Nations and other external actors involved in the forefront of post-conflict peacebuilding.

5.0 SUMMARY

In this unit, we discussed the impacts of violent conflicts and wars on the victims such as women, children and the aged people. Also, various approaches required for effective and sustainable post-conflict peacebuilding, transformation, reconciliation and reconstruction were also examined.

6.0 TUTOR-MARKED ASSIGNMENT

1. Identify challenges confronting post – conflict peacebuilding and suggest the way forward.
2. Of what importance are peacebuilding activities to post – conflict environment?

7.0 REFERENCES/FURTHER READING

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MODULE 4 THE SETTLEMENT OF DISPUTES

UNIT 1 THE PEACEFUL OR AMICABLE SETTLEMENT OF DISPUTES IN INTERNATIONAL LAW I

CONTENTS

1.0 INTRODUCTION

Legal Method and International Dispute Resolution

The United Nations places considerable emphasis upon the needs for nations to exist for the pursuit of global peace and to avoid conflict and to settle disputes through peaceful means. Article 1[1] states that it is a purpose or duty of the United Nations to:

> Bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment

or settlement of international disputes or situations which might lead to breach of the peace

In line with above desire, Article 1 of the United Nations charter provides the following purposes of the United Nations, which are thus:

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

2 To develop friendly relations among nations based on respect for the principle of equal rights and self –determination of peoples, and to take over appropriate measure to strengthen universal peace;

3 To achieve international cooperation in solving international problems of economic, social, cultural, or humanitarian character and in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion; and

4 To be a center for harmonising the actions of nations in the attainment of these common ends.

While Article 2(2) places an obligation upon members to: settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

Every member of the United Nations is of course a party to this charter and is bound by it. Other Articles dealing with maintenance of peace include Articles 11, 12 and chapter VI and VII of the UN charter.

It therefore, become necessary to refer to Article 33 of the UN charter for a better appraisal of the issues relating to peaceful or amicable methods of settlement of disputes

Article 33 of the UN charter provides thus:

1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall first of all, seek a solution by negotiation, arbitration,

judicial settlement, and resort to regional agencies or arrangements, or other peaceful means of their own choice.

2. The security council shall when it deems necessary, call upon the parties to settle their dispute by such means". "negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their choice".

2.0 OBJECTIVES

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

- recognise the importance placed by the international community upon the amicable or peaceful settlement of dispute
- explain the means enumerated in Article 33 of the UN Charter for the peaceful settlement of disputes
- understand the advantages and disadvantages of peaceful means of dispute settlement
- appreciate some dispute settlement concepts.

3.0 MAIN CONTENT

3.1 Conflict Resolution

Miller (2003:8) views conflict resolution as "a variety of approaches aimed at terminating conflicts through the constructive solving of problems, distinct from management or transformation of conflict". Miall et al (2001:21) indicates that by conflict resolution, it is expected that the deep rooted sources of conflict are addressed and resolved, and behaviour is no longer violent, nor are attitudes hostile any longer, while the structure of the conflict has been changed. Mitchell and Banks (1996) see conflict resolution to refer to:

i. an outcome in which the issues in an existing conflict are satisfactorily dealt with through a solution that is mutually acceptable to the parties, self-sustaining in the long run and productive of a new, positive relationship between parties that were previously hostile adversaries; and

ii. any process or procedure by which such an outcome is achieved.

Conflict or dispute is resolved when the basic needs of parties involved in conflict have been met with required or desired satisfiers, and their fears have been allayed. Some conflicts, especially those over resources,

psychological needs and inadequate information are permanently resolvable while others like those over values, may be-non-resolvable and can at best be transformed, regulated or managed for the sake of peace.

3.2 Conflict Management

Is the process or an act geared towards reducing the negative and destructive capacity of conflict through various means or measures and by working with and through the stakeholder (parties) involved in a conflict. It entails the entire areas of handling conflicts positively at different stages, such as those proactive efforts made to prevent conflicts, including conflict limitation, containment and litigation. This term is sometimes used synonymously with "conflict regulation". John Burton (1990) refers to it as "conflict prevention" which he sees as containment of conflict through steps introduced to promote conditions in which collaborative and valued relationships control the behaviour of conflict parties. The concept "conflict management" agrees to the fact that conflict is inevitable, but that not all conflicts can always be resolved; therefore what can be done in this type of situation is to manage and regulate the conflict.

3.3 Conflict Transformation

The term was postulated by John Paul Lederach (1995) in which he sees conflict transformation as change. It can be seen descriptively in the changes created by social conflict, and prescriptively in the deliberate intervention by third parties to create change. Conflict transformation takes place at different levels and has a number of dimensions. At the personal levels it involves emotional, perceptual and spiritual aspects of change desired for the individual.

It also affects relationships touching on communication between parties that needs to change to positively affect poorly functioning communication change also needs to affect structures that generate conflict through deprivation, exclusion and other forms of injustice. It also seeks to understand cultural patterns and values of parties. In summary, conflict transformation recognises the dialectical element of conflict about the inevitability of change. Secondly, it recognises the neutrality of conflict as such, and that conflict can be either negative or positive, but can transform it into positive to maximise opportunities.

Finally, there is the continuity element, meaning that parties and interveners continue to work on problem areas to achieve continuous change.

3.4 Conflict Suppression

Is a conflict situation which portray the unwillingness or lukewarm attitude of more power parties, or stronger interveners who pass the ability to transform or manage a conflict situation, to take necessary measures leading to the management or resolution of the conflict Instead, they use instruments of power or force to push away the issues under the carpet or to impose a solution that is not sustainable and with which the parties are not satisfied. This usually takes place in unequal relationships. A typical example is a situation whereby the state or government uses its coercive apparatus to suppress opponents or conflicts which cannot be sustained because conflict can still resurface at any time or with little provocation.

3.5 Negotiation

The term negotiation consists of several definitions depending on the angles or perspectives at which different scholars view it. Therefore, negotiation can be defined as a peaceful way of ending a conflict or a situation that may lead to conflict. It is also an exercise geared towards influencing somebody or something.

Fisher et al (2000:115) defines negotiation as "… a structured process of dialogue between conflicting parties about issues in which their opinions differ". The University for Peace sees negotiation as: "communication, usually governed by pre-established procedures, between representatives of parties involved in a conflict or dispute (Miller, 2003:25). Miall, Ramsbotham and Woodhouse (1999:21) define it as "the process whereby the parties within the conflict seek to settle or resolve their conflicts". Jeong (2000:168, views that the goal of negotiation is "…to reach agreement through joint decision making between parties".

It can be deduced from the above definitions that communication is critical to the process. It can therefore take place in a situation where there is communication between parties. Negotiation can only be achieved when there is communication between parties either before the escalation or at the de-escalation point when communication has been restored.

When negotiating, we are trying to persuade each other to see things/issues our own way. The main goal of negotiation is to meet certain interests or needs in a collaborative or peaceful manner.

Types of Negotiation Strategies

There are two types of negotiation namely:

1) Positional Negotiation/Bargaining

Is the type of negotiation in which parties assert a "claim" or right to the object of contention, or the type based on the aggressive pursuit of interest by parties which is usually adversarial and competitive in nature. Demands that do not consider the interests and needs of others are typically being pursued parties involved in conflict and this makes it difficult for these interests to be met and needs to be gotten.

Positional Bargaining can produce unwise agreement, can be inefficient, endanger on-going relationships, entangle people's egos with the positions, and is least successful. These are so because instead of pursuing a mutually beneficial outcome, parties therefore desire to win at the detriment of the others. Positional bargaining relies on positions that often mask the (hidden) interests, with one side seems to dominate the negotiation by adhering stubbornly to their positions which eventually break down the negotiation easily.

2) Principled/Collaborative or Constructive Negotiation

A method of negotiation that is based on interests and needs. It is designed to produce wise agreement in an efficient, effective and mutually amicable manner. OR Is a process where parties try to educate each other about their needs and concerns, and both search for the best ways to solve their problems in ways that the interests and fears of both or all parties are met. The process aimed at building a sustainable relationship which is anchored on a collaborative principle geared towards a mutual understanding and feeling of parties. Principled negotiation relies on the following four (4) basic elements:

People

Separate the people from the problem before working on the substantive problem, the people should be disentangled and addressed separately.

Interests

Focus on interests (needs, desires, and expectations), not position. This is designed to overcome the drawback of focusing on stated positions when the objective is to satisfy underlying interests.

Options

Generate a variety of possible solutions before making a decision. Set aside time for joint brainstorming, to invent options for mutual gain.

Criteria/Legitimacy

Insist that the result or process be based on some objective standard; e.g. custom, law, practice…. As kind of criteria measures.

Negotiation seems to have universal or global application as a principle of conflict management based on dialogue. A good agreement is reached if at the end of the negotiation the following conditions are met:

a. it meets the legitimate interests of the parties to the extent possible;
b. it resolves conflicting interests fairly;
c. it is durable and preserves ongoing relationships.

3.6 Enquiry

An enquiry as the name suggests is an examination of issues in order to establish facts that may be in dispute. In a situation where the facts are properly ascertained and laid down, it would not be difficult to arrive at a reasonable agreement or reach a settlement, which would be favourable and acceptable to both parties.

This may necessitate necessary adjustment in accordance with the negotiation between the parties. It requires give and take on the part of both parties. This method may be of significance with respect to issues that can easily be solved through a calm analysis and consideration of historical facts. This method may be utilised with respect to boundary dispute between states. For example, the United Nations General Assembly by a Resolution adopted on 18 December 1967 upheld the utility of the method of impartial fact finding as a method of peaceful settlement of issues. Member states were advised to adopt this method. The UN General Assembly further asked the Secretary – General to prepare a list of experts in this regard whose services could be used by agreement with respect to a dispute.

In pursuance of the above, a hortatory Resolution on Peaceful Settlement of International dispute was adopted by the General Assembly of the United Nations on 12 December 1974. The General Assembly Later approved the Manila Declaration on the Peaceful Settlement of International Disputes in 1982. It has the effect of superseding the Resolution made on 12 December 1974. The basic

issues contained in the Manila Deelaration as put by Starke are as follows:

(a) That states should bear in mind that direct negotiations are a flexible and effective means of peaceful settlement of disputes, and if they choose to resort to direct negotiation, they should negotiate meaningfully;

(b) That states are enjoined to consider making greater use of the fact–finding capacity of the Security Council in accordance with the United Nations Charter;

(c) That recourse to judicial settlement of legal disputes, particularly by way of referral to the international court of Justice, should not be considered as an unfriendly act between states;

(d) That the Secretary – General of the United Nations should make full use of the provisions of the Charter containing his special responsibilities, for example, bringing to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security.

3.7 Good Office

This is a method by which an individual, a state or an international organ, acting as a third party, may assist in ensuring an amicable settlement of a dispute. The use of good offices has the effect of bringing the disputing parties together and also ensures settlement in general terms. It does not involve actual participation in the negotiation or the conduct of an inquiry that takes care of everything that is involved in the dispute. Thus, what is required in good offices is the possibility of working out a solution with respect to the dispute.

4.0 CONCLUSION

In as much as conflict is inevitable in the life of an individual, groups, nations or states, it therefore becomes imperative to adopt or adhere strictly to the dictates of Article 33 of the UN charter in resolving disputes or conflict through a peaceful or amicable means in order not endanger international peace and security.

5.0 SUMMARY

Arguably the scope of International disputes resolution is unlimited and efforts must be geared towards resolving disputes through an internationally acceptable peaceful means of conflict resolution. This is

because judicial resolution or use of force will seldom resolve especially political issues.

6.0 TUTOR-MARKED ASSIGNMENT

1. Discuss the mean enumerated in Article 33 of the UN charter for the peaceful settlement of dispute.
2. Explain the term negotiation.

7.0 REFERENCES/FURTHER READING

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UNIT 2 THE PEACEFUL OR AMICABLE SETTLEMENT OF DISPUTES IN INTERNATIONAL LAW II

CONTENTS

1.0 INTRODUCTION

In this unit, other means of peaceful settlement of disputes recognised by International Law, as stipulated in Article 33 of the UN Charter which places considerable emphasis upon the obligation of member states to avoid conflict and to settle disputes through peaceful means will further be discussed.

It should also be noticed that the means suggested for resolving disputes, are all obviously Lawful, but are not all, strictly speaking, legal means as explained in the previous unit.

2.0 OBJECTIVES

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

- discuss other means of peaceful settlement of disputes
- explain why some means of settlement can be categorised as legal methods and some not
- appreciate the possibilities and limitations of arbitration in international dispute resolution
- explain the role and scope of the International Court of Justice
- understand the possibilities and limitations of regional agencies in dispute resolution.

3.0 MAIN CONTENT

3.1 Conciliation

The concept conciliation was defined by the International Law Institute in 1961 as:

> a method for the settlement of international disputes of any nature according to which a commission set up by the parties, either on a permanent basis or an ad hoc basis to deal with a dispute, proceeds to the impartial examination of the dispute and attempts to define the terms of settlement susceptible of being accepted by them or of according to the parties, with a view to its settlement, such aid as they may have requested.

Judge Manly O. Hudson in 1944 defines 'conciliation' thus:

> "Conciliation…is a process of formulating proposals of settlement after an investigation of the facts and an effort to reconcile opposing contentions, the parties to the dispute being left free to accept or reject the proposals formulated".

The University of Peace sees conciliation this way:

The voluntary referral of a conflict to a neutral external party (in the form of an unofficial commission) which either suggests a non-binding settlement or conduct explorations to facilitate more structures or techniques of conflict resolution. The latter can include confidential discussions with the disputants or assistance during a pre-negotiation phase [Miller, 2003:6-7].

Although conciliation can be linked to arbitration, but close to mediation, results of conciliation are not binding on the parties as in arbitration. In conciliation, disputes are settled amicably with the use of other states or impartial bodies of enquiry/advisory committees or third party activity, which covers intermediary efforts aimed at persuading the parties to a conflict to work towards a peaceful solution.

With respect to conciliation between states, it is usual to appoint the third parties on the basis of their official function and not just on their own initiative. Heads of state or secretary General of the United Nations may be appointed. Essentially, the parties to the dispute normally nominate one or two of their nationals and agree on the number of

impartial and independent nationals of other states in order to provide a neutral majority.

The conciliator, who is appointed by the agreement of the parties investigates the facts in dispute and suggests the way(s) out of it. The conciliator's terms of settlement are usually referred to as recommendations, which are not binding on the parties unlike the case of arbitration where awards are made.

3.2 Mediation

Mediation involves the use of or bringing a third party to intervene with respect to a conflict. It can also be referred to as a facilitated negotiation.

Miller (2002:23) sees mediation as:

> The voluntary, informal, non-binding process undertaken by an external party that fosters the settlement of differences or demands between directly invested parties.

Miall, Ramsbotham and Woodhouse (1999:22) define mediation as "the intervention of a third party: it is a voluntary process in which the parties retain control over the outcome (pure mediation), although it may include positive and negative inducements (mediation with muscle)".

Beer and Stief (1997:3) define mediation as: "any process for resolving disputes in which another person helps the parties negotiate a settlement".

Moore (1996:15) considers it to be:

> The intervention in a negotiation or conflict of an acceptable third-party who has limited or no authoritative decision-making power but who assists the involved parties in voluntarily reaching a mutually acceptable settlement of issues in dispute.

Mediation is an assistance rendered by a neutral third party (mediator) in helping the disputants or parties in conflict reach a negotiated settlement of their problems unrestrained by evidential rules and having admitted that they have a problem which they are both committed to solving, but in which the mediator manages a negotiation process, but does not impose a solution on the parties.

Professor Christopher Moore notes some primary responsibility of a mediator which are thus:

1. Helping to address the substantive issues in a conflict.
2. Establishing or strengthening relationships of trust and respect between the parties, and
3. Terminating relationships in a manner that minimizes costs and psychological harm.

The role of the mediator is to create the enabling environment for the parties to carry out dialogue sessions leading to the resolution of an existing or protracted conflict. He facilitates effective communication between parties with the aim of working on common themes and drawing to attention to neglected points and is a confidant to the parties, as well as a reconciler.

The mediator also helps parties to identify and arrive at common grounds with a view to overcoming their fears and satisfying their real needs. For a mediator to be able to enjoy the trust and confidence of the parties to any conflict, he or she must be objective, neutral, balanced, supportive, non-judgmental and astute in questioning, and try to drive the parties towards win-win as opposed to win-loose outcomes.

3.3 Arbitration

Arbitration is another type of third party intervention in the conflict management, which entails settlement of disputes through the use of arbitrators.

Arbitration can simply be defined as the use and assistance of a neutral third party in conflict, who listens to evidence, put forward by parties in conflict, and later takes a decision which is expected to be binding on the parties. The decision taken by an arbitrator is usually referred to as an award.

International arbitration is defined by the international law commission as a procedure for the settlement of disputes between states by a binding award on the basis of law and as a result of an undertaking voluntarily accepted; you will observe that definition of arbitration in international law is significantly narrower than the common meaning of arbitration. Arbitration is similar to mediation, and close to adjustment, but different from both. The crucial difference between judicial settlement and arbitration is that, arbitration allows the parties to select the tribunal, whereas parties have no control over the composition of a judicial body. In addition, in arbitration the parties may decide the law to be applied.

Historically, arbitration began with procedures established in 1794 under the Jay Treaty between the United State and United Kingdom for the

settlement of bilateral disputes. It provided for the establishment of three joint mixed commissions to which each state nominated an equal number of members to settle some differences, which could not be settled in the course of negotiating the treaty. In 1871 in an innovatory move, arbitration took place concerned to determine breaches of neutrality by Britain during the American civil war.

The Hague Conference of 1899 on the pacific settlement of International Disputes led to the creation of an institution known as the Permanent Court of Arbitration. Arbitration has the advantages of speed, flexibility, confidentiality and better understanding than conventional adjudication.

3.4 Judicial Settlement or Legal Method of Dispute Resolution (Litigation)

Judicial or Legal Settlement of dispute is usually carried out by the court duly established and assigned in this manner both at the state (local) level and international level. At the International Level, it is usually referred to as International Court of Justice (ICI). It is also called "the World Court". It sits at The Peace Palace, at The Hague.

(i) Local or Internal Judicial Settlement

(ii) International Legal Dispute Resolution

The International Court of Justice is the judicial organ of the six principal organs of the United Nations. It was first established and called Permanent Course of International Justice (PCIJ) after the first World War in 1921. The Court was dissolved the same time the League of Nations was dissolved at the end of the second Would War in 1946.

The PCIJ, though not an organ of the League of Nations, 'aimed essentially to do no more than establish peace in order to preserve the status quo', the ICJ was an integral part of the United Nations with the framers of the UN Charter directing their efforts towards the establishment of an entirely new international society – a society consistently moving towards progress; a society more just, more egalitarian, more wont to show solidarity, more universal; a society all of whose members were to engage in an active and collective endeavour to usher in a full and lasting peace.

All members of the United Nations are parties to the statute of the International Court of Justice. Article 93(2) of the charter allows non-member parties to appear before it or join. The duties of this court are:

i. To settle legal disputes which are submitted by states in line with international law and;
ii. To give advisory opinions of legal questions referred to it by international organs or agencies, which are duly authorised to do so.

The court is usually made up to 15 judges (Article 3). Five of the judges are elected every three years to hold office for nine years (Article 13). They are elected by majority votes of both the Security Council and the General Assembly sitting independently of each other. Usually, not more than one judge of any nationality sits in the court. Members of the bench represent the main forms of civilization and the principal legal systems of the world. In practice,, 4 judges of the court are usually from Western Europe, 1 from the USA, 2 from south America, 2 from Eastern Europe and 6 from Africa and Asia. The first permanent members of the Security Council are always represented by a judge in the court.

Qualification for appointment is based on the highest requirements for the highest judicial office in the relevant country. The judges are required to be knowledgeable or competent in international law and through appointment by their home governments, they are required to be independent.

In the event of a state appearing before the court without its national on the bench of the International Court, such a state (country) may appoint an ad hoc judge for the case as in the Nigeria / Cameroon Boundary dispute before the International Court of Justice. These *ad hoc* judges have the nature of arbitrators. It also lends credence to the idea that each of the judges of the court represents his country. Article 36 (8), Article 38 and Article 39 (3) of the statute of the ICJ also attest to these claims.

3.5 Regional Agencies Arrangement

Many scholars and analysts believe that regional mechanisms for dispute resolution may be more effective than broad global measures, which tend to be of a general and voluntary nature.

Article 52 of the UN Charter provides thus:

1. Nothing in the present charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided that such arrangements or agencies and their activities are consistent with the Purpose and Principles of the United Nations.

2. The members of the United Nations entering into such arrangements or constituting such agencies shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council.

3. The Security Council shall encourage the development of pacific settlement of local disputes through such regional arrangements of by such regional agencies on the initiative of the states concerned or by reference from the Security Council.

4. The Article in no way impairs the application of Articles 34 and 35.

Article 55 of the charter further provides thus:

1. The Security Council shall, where appropriate utilize such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council, with the exception of measures against any enemy state as defined in paragraph 2 of this Article, provided for pursuant of Article 107 or in regional arrangements directed against renewal of aggressive policy on the part of any such state, until such time as the organization may, on request of the Governments concerned, be charged with the responsibility or preventing further aggression by such state.

2. The term enemy state as used in paragraph 1 of this Article applies to any state which during the Second World War has been an enemy of any signatory of the present Charter

The Security Council shall at all times be kept fully informed of activities undertaken or in contemplation under regional arrangement or by regional agencies for the maintenance of international peace and security.

Some regional organizations of agencies have put some measures in place or established mechanism for the prevention and management of conflict. For example, the African Union (AU) and Economic Community of West African States (ECOWAS) have established some agencies vested with the responsibility of making, keeping or enforcing peace and monitoring and preventing outbreak of conflict in some countries like Liberia, Sierra Leone, and Sudan and so on. Also the 1948 American Treaty on Pacific Settlement (Bogota Pact), the 1957 European Convention for the peaceful settlement of Dispute, Conflict

Prevention, Management and Resolution provide general agreements on dispute settlement. Many bilateral and multilateral treaties are made in this regard.

Before this type of dispute settlement could work, states having regard to this arrangement, may play low their sovereignty and submit to such regional arrangements. They are therefore, generally weak and have failed in practice, because the issue of sovereignty may work against this arrangement. Also, a considerable number of states in the region may not ratify many of the treaties while some may deliberately fail to contribute troops, financial and logistic support of or the arrangement.

4.0 CONCLUSION

In the light of the above discussions, it was observed that international law is a phenomenon without compulsory jurisdiction in the event of disagreement or dispute. There is an enormous amount of peaceful and non-violent settlement of disputes taking place at various levels and in many communities all over the world. They are all obviously lawful, but are not all, strictly speaking, legal means. The success of any non-legal means will be determine by the desire or willingness of the parties to end or resolve their differences amicably as the decision or agreement reached is not binding on either parties, while the legal means outcome is binding on both parties involved in the dispute.

5.0 SUMMARY

In this unit, we discussed various types or means of peaceful settlement of disputes, which are in conformity with the principles of justice and international law. Both the strengths and weakness of each and every means were also examined in order to be able to ascertain the means suitable and applicable to different disputes.

6.0 TUTOR-MARKED ASSIGNMENT

1. Define and explain any three means contemplated for the peaceful settlement of disputes under Article 33.
2. Explain how judges for ICJ are chosen and discuss how you think they should be chosen.

7.0 REFERENCE/FURTHER READING

Burton, John (1990). *Conflict Resolution and Prevention.* London: Macmillan.

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UNIT 3 THE COERCIVE OR FORCIBLE MEANS OF DISPUTE RESOLUTION/SETTLEMENT IN INTERNATIONAL LAW

CONTENTS

1.0 INTRODUCTION

The ideal means of resolving or settling dispute in any and all areas of human activities is through or by peaceful means as earlier discussed in the previous two units of this module. However, in this present modern world, no topic is more important than the control of this use of force by states in international law. Despite the global clamour for peaceful settlement of dispute, there is rarely any period in a year when force or coersion is not being used to end a dispute or when nations will not be at war with each other or indeed when nations will not be allies in combat against a particular nation in the pursuit of global, or regional peace.

International law requires the conscent and co-operation of states in its attempts to curb and constrain violence with an international dimension.

Before this topic is further discussed, it is necessary to discuss section 2(4) of the U.N Charter. It states that:

> All members shall retrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the proposes of the United Nation.

It this unit, we shall discuss a brief analysis of the (restricted) role of international law before the creation of the United Nations, the Charter of the United Nations and self-defence in international law.

2.0 OBJECTIVES

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

- understand the meaning of the concept of force and the use of force
- describe the forms of use of force before the creation of the United Nations
- explain the literal meaning of Article 51 and its constraints upon the inherent right of self-defence.

3.0 MAIN CONTENT

3.1 The Concept of Force and the Use of Force

3.1.1 The Concept of Force

The concept of force has several meanings or definitions depending on the perspective or angle at which it is being viewed and the purpose of advancement.

Force in Mechanics, a branch of physics, is any action that tends to maintain or alter the position of a body. Social force means psychic pressure of daily facts which seem beyond the power of men or nations to modify or reverse constraints operating only in the region of motives. The force in the context of our discussion can be defined as offensive actions made by an individual, group, nations or states to prompt another nation to change their ways or behaviour. Force may be applied or employed to deter military aggression or to force an aggressor to withdraw its armed forces from a disputed territory. The breaking of some international code or gross violation of human rights may also lead to the application of force.

3.1.2 The Concept of the Use of Force

Under international law, the use of force by states is conceived primarily as the sending of the troops of one state across the borders of the other. Sorensen says that there is use of armed forces by a state when the later acts against another state through military force under its command. According to international law, the use of armed force is conceived as a situation where there is a physical application of regular or even irregular armed forces with the consequent of the state from where the application of the force originates.

The use of force is also conceivable where such a force is deployed against the territorial integrity of a state under a lawful occupation by another state. A typical example of this is the conflict between Britain and Argentina over the Falkland or Malvinas Island. Argentina claimed sovereignty over the Falkland Island on the ground that she succeeded to rights claimed Spain in the eighteenth century discovery which the British's claim to title over the Island derived from early settlement, reinforced by formal claims in the name of the crown in the eighteenth century and completed by effective possession, occupation and administration for nearly 150 years. On April 2, 1982 Argentina invaded and occupied the Falkland Islands despite all the British Government efforts towards a peaceful settlement. When the British efforts proved abortive, she severed diplomatic relations with Argentina and froze all Argentine financial assets held in Britain, banned import from Argentina, suspended new export and credit cover. She also banned the export to Argentina of all arms and other military equipment, and urged her allies and friends to adopt similar measures.

However, having taken all the above measures, Britain went further to dispatch a naval task force to the South Atlantic, established a maritime exclusive zone around Falkland Island in order to deny the Argentine forces means of reinforcement and re-supply from the mainland.

On April 25, 1982, despite Britain's warning to Argentina to stay clear of the exclusion zone, the Argentine cruiser, General Belgrano, escorted by two destroyers, was detected just outside the zone by a British submarine on May 2. The submarine torpedoed the cruiser, which later sank-with about 1,100 crew on board, while only 800 crew were however, rescued as a result of belated assistance offered the cruiser by the two accompanying destroyers.

The hostility later degenerated into final breakdown of negotiation leading to massive use of armed force and sophisticated weapons. British forces eventually took over the control of southern Thule on June 20 and a party of military personnel at an Argentine navy research station surrendered, which then marked the final stage of the operation to free the Falkland Islands and dependencies.

Legal Defence under International Law

Argentina argued that her claim that the Malvinas (Falklands) were part of her territory and her eventual use of force to recover the Islands was in self-defence while Britain also defended her actions along the same Line. This shows that both Britain and Argentine butressed their explanations with the right of self-defence under Article 51 of the United Nations Charter.

Article 51 States that

> Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take any time such action as it deems necessary in order to maintain or restore international peace and security.

3.2 The Use of Force before the Creation of the United Nations

Prior to the emergence of the United Nations Charter, most states applied force during disputes mainly for self-help or self-preservation with its justification found in the natural law concept of self-preservation or self-help are used interchangeably and are fundamentally "inherent" in natural law rights available to states.

Wars were an enduring feature of the seventeenth, eighteenth and nineteenth centuries in different parts of the world (Africa, Europe, Asia etc), waged both within and without the continents. Conquest was the means by which territory was acquired and colonies won. But the ferocity of battle came to be greatly enhanced by the development of ever more fearful weaponry and the beginning of the 'weapon of mass destruction: The ability to kill and main enemies and civilians alike progressed in a remarkable way. The revulsion at the result of this 'progress' led to the founding of the International Red Cross in 1863. As Oppenheim observes, in the Middle Ages 'war was a contention between the whole populations of the belligerent states…(and) in time of war every subject of one belligerent, whether an armed and fighting individual or not, whether man or woman, adult or infant, could be killed or enslaved by the other belligerent at will, by the twentieth century war had become almost invariably 'a contention of states through their armed forces: This led to an increase in awareness that private subjects of belligerent states, not involved in the ' contention', could reasonably expect some protection.

Efforts of the League of Nations

A lot of serious attempts were made to control the form of warfare before the First World War, but attempts to control recourse to war

received serious consideration only after the war. Initially this was through the creation of the League of Nations and then with the negotiation and adoption of the General Treaty for the Renunciation of War, in 1928, also known as the Kellogg – Briand Pact, and also the Pact of Paris.

The Convenant of the League of Nations of 1919 did not purport to abolish war but it did attempt firstly to provide a permanent forum where states could negotiate and discuss differences rather than resorting to war; and secondly it placed limitations upon the use of force. Member states agreed that where they had serious dispute to arbitration or judicial settlement or inquiry by the Council of the League. There was to be no resort to war until three month after the completion of such a process. Thus the League's aim was to provide time for reflection before recourse to war – a cooling off period for the disagreeing states. Members also undertook not to go to war with another member who complied with an arbitral award, a judicial decision or an unanimous report from the council.

They finally agreed to 'respect and preserve as against external aggression, the territorial integrity and political independence of all Members of the League'.

Article 16 is another innovation of the Convenant which is not unrelated to the development of the later Chapter VII of the United Nations Charter. Article 16 gives room for collective security for League members and the first paragraph states thus:

> Should any member of the League resort to war in disregard of its convenants under Articles 12, 13 or 15, it shall ipso facto be deemed to have committed an act of war against all other members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the convenant-breaking state, and the prevention of all financial, commercial or personal intercourse between the nationals of the convenant-breaking state and the national of any other state, whether a Member of the League or not.

Although, the League's attempts even to limit recourse to war were scarcely successful, because members of the League were unwilling to sanction a state acting in defiance of the convenant. Article 16 in its other paragraphs had empowered the League to take such decisions and also to use military sanctions. Despite all the provisions stipulated in the

Article, none was ever effective and economic sanctions were irregularly applied, with the Assembly of the League voting in 1921 to make such economic sanctions optional for each member rather than compulsory.

3.3 The Charter of the United Nations

The end of the Second World War gave rise to a renewed determination to use international law to prevent war, and where it had begun, to terminate it. The emergence of the UN Charter came into being out of the determination 'to save succeeding generations from the scourge of war' and the first purpose is contained in Article 1(1) which states thus:

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

While Article 2(3) commits UN member states to settle their international disputes by peaceful means in order to ensure that international peace, and security, and justices, are not endangered. Article 2(4) commits members to refrain in their international relations from the threat or use of force 'against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations. All of these provisions need to be read together with General Assembly Resolution and Declarations that have sought to interpret them.

The 1970 General Assembly Resolution 2625 – Declaration of Principle of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations is important in the interpretation of Article 2(4). Though it is of course only a Resolution but never regarded as expressing the consensus of member states with regard to the way in which article 2(4) is to be interpreted. This Resolution therefore identifies the following duties:

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

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

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

- Every state has the duty to refrain from the threat or use of force to violate the existing international boundaries of another state or as a means of solving international disputes, including territorial disputes and problems concerning frontiers of states.

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

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

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

- Every state has the duty to refrain from organising or encouraging the organisation of irregular forces or armed bands, including mercenaries, for incursion into the territory of another state.

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

In the light of the above, it is obvious that Article 2 (4) goes beyond proscribing war or guiding against the use of force or threat. The word ‘force’ however is relative in nature depending on the angle or perspective at which it is being viewed by different individuals, school

of thought or state. Both political force and economic force could be interpreted clearly as coming within Article 2(4). It has always been a controversial issue between those states with the capability of exercising economic or political force (or coercion, to use one possible interpretation of 'Force') by resisting such an interpretation, and while those lacking such capability (primarily smaller and developing states) did not want 'Force' confined or limited to 'armed forces'. The generally held view (and one consistent with the interests of the powerful) is that Article 2(4) cannot encompass situations beyond armed forces.

4.0 CONCLUSION

In as much as the world is not organised as if it was a single state, and that every state does not accept or perceive the interpretation of international law the same way, therefore, it can be argued that international law is universally applicable, but not universally enforceable or even sometimes – appropriate.

5.0 SUMMARY

Though, treaties are voluntary (subject to some qualifications) agreement between two or more states generally binding only upon the parties. The most important theme of the United Nations Charter therefore, lies in the preservation of peace and the proscription of war.

6.0 TUTOR-MARKED ASSIGNMENT

1. Discuss the reasons for the ineffectiveness of the League of Nations in the maintenance of peace.
2. Of what significance is the UN Charter in restricting the use of force in international law?

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UNIT 4 THE COERCIVE OR FORCIBLE MEANS OF DISPUTE RESOLUTION

CONTENTS

1.0 INTRODUCTION

In default of the resolution of dispute by peaceful means under Article 2, paragraph 4, of the UN charter which prohibits the use of force by states, Article 51 of the United Nations charter says that states reserved the right to use force when there is *periculum in mora*, that is when they believe their very lives and vital interests is endangered beyond the possibility of redress if immediate action is not taken, when there is necessity for action which is " instant, overwhelming, and leaving no choice of means and no moment for deliberation," as formulated by Webster's in the Caroline case. States may well resort to force in the light of the above justification

2.0 OBJECTIVES

By the end of this unit and the relevant further readings, you should be able to:

- recognize the exceptions to the proscription of the use of force in international law.
- differentiate between war and Non-war Armed Actions.
- understand the meaning of reprisal and retortion.
- explain pacific blockade.
- discuss what intervention means.

3.0 MAIN CONTENT

3.1 War

States usually wage war against each other for the purpose of achieving a desired goal or objective. It is normally resorted to when no peaceful method of resolving the dispute can be accomplished. It is usually a "show of strength" or "an act of violence" between two or more states through their armed forces, with the intention or purpose of compelling their opponents to dance to their tune or to impose conditions of peace as the victor pleases. Therefore, it is a case of the champion and the vanquished.

3.2 Reprisals

The word or concept reprisals was known as " *andidepsia*" among the Greeks; and was called "*reprisaglia*" among the Roman. Reprisals relate to coercive actions or measures taken by one state against another in the resolution of dispute between the states. The use of reprisals in mediaeval Greece and Rome hinged it's justification on the principle of communal or collective responsibility between the citizenry and sovereigns, in which "all were deemed severely liable for the default of the individual, a fact attributed to the oneness of interest deemed to have existed between a sovereign and his subjects. Thus, "an individual, who had suffered injustice abroad and had been unable to obtain redress in the state concerned, would obtain his own sovereign's authority to take reprisals against the nationals of the foreign sovereign."

Among the Greeks, for instance, "that custom permitted the relatives of an Athenian murdered by a foreigner, if satisfaction were refused, to seize three fellow countrymen of the murderer and hold them for judicial condemnation, as a compensation, or even to death penalty.

Unlike retortion which takes a legal form as a state has the right when she so desires or feels to withdraw her presence in another country through the withdrawal of her Ambassador. A reprisal is not legal. Reprisal therefore, is made up of acts relating to seizure of goods or persons. In this present day dispensation, it may take any form ranging from bombardment, placement of embargo on goods or boycott of the goods being produced by a particular state. A reprisal may also take the form of expulsion of citizens of the enemy country.

A typical example is the dispute between America and Libya in which the former justified her bombardment of Libya on violent activities directed at America for a considerable period of time. This was the basis

for the justification by the American government of the aerial bombing of targets around the borders of Libya on 15 April 1986.

A reprisal action may also be contemplated in the case of belligerent states. According to Kalshoven, belligerent reprisals consist in "an international infringement of the Law of armed conflict, with a view to making the opposing party abandon an unlawful practice of warfare… Using inhumanity as a means of enforcing the law of armed conflict…, in the interests of humanity". Belligerent reprisals are not constrained by the considerations of humanity but are accepted with fatalism according to Kalshoven.

With regard to the objections of the U.N., it is doubtful if a reprisal action can be justified without first exhausting all amicable methods of settling a conflict.

For example, Article 2 in paragraphs 3 and 4 (earlier stated) of the U.N. Charter provides that:

> 3 All members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

Despite the U.N Charter's proscription of the use of force, in resolving dispute, the main exception is concerned with self-defence and can be found in Article 51.

Article 51 states that:

> Noting in the present charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.
>
> Measures taken by members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

The most unfortunate thing is that Article 51 fails either to define 'armed attack' or to specify whether the attack must be upon the

territory of the state under attack or the nationals of a state who are being attacked beyond its borders.

There arose a situation in 1976 when an Air France aircraft with 251 passengers on board was hijacked by pro-Palestinians and taken to Entebbe in Uganda. The hijackers released the majority of the passengers but continued to hold some 60, most of whom were Israeli citizens. The Uganda Government (under Idi Amin) did little to bring the hijacking to an end and shortly before a deadline set by the hijackers an Israeli commando raid took place.

The (Israeli) commandos arrived Entebbe unannounced and stormed the hijacked craft, released the passengers and eliminated the hijackers (and some 45 Ugandan Soldiers) before returning with the passengers to Israel.

Although, it cannot be established whether international law permit such a rescue operation or frown at it. But, Israel in defence of justification of her action claimed that Article 51 permitted her to use force in such a circumstance in order to protect its citizens abroad if the state in which they found themselves was either unable or unwilling to protect them. This act led to division in international opinion (less along the lines of international law than of individual states attitude of Israel) but ever since, it has become at least implicitly accepted that in such circumstances, if a state has sufficient power to rescue its citizens, then if the intervention does not exceed what is a proportionate response it will not be regarded as inconsistent with Article 51.

But it is very clear that the ability to exercise such a right belongs only to powerful states. It is equally clear that claims of such a right are obviously open to abuse (as for instance when the United States invaded Granada in 1983 supposedly to rescue its nationals, or when it intervened in Panama in 1989 – certainly in neither case was the primary objective of the US actions the rescue of nationals).

It is probably correct to conclude that intervention to rescue nationals will not be contrary to Article 2(4) provided the following conditions are met:

- the threat to nationals is real and imminent
- the state where they are being held is unwilling or unable to protect them
- the sole purpose of the intervention is rescue
- the response is proportionate in the sense that more lives may be expected to be saved than lost

3.3 Retorsion

Retorsion is another coercive or forcible legal means of conflict resolution by which a nation may show its disapproval by way of retaliation for the discourteous act of another state. It relates to an unfriendly but legitimate act of the nation that has been slighted. Retorsion in international law is a phrase used to describe retaliatory action taken by one foreign government against another for the stringent or harsh regulation or treatment of its citizens who are within the geographical boundaries of the foreign country. OR rare retaliatory actions taken by a state whose citizens have been mistreated by a foreign power by treating the subjects of that power similarly.

It can also be defined as mistreatment by one country of the citizens or subjects of another country in retaliation for similar mistreatment received.

Although, Article 2(3) of the U.N. Charter provides that:

> All members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

A state that has been slighted may decide to take a legitimate action that is within its power to register its protest or displeasure against another state. Such a state can take different actions for the purpose of pursuing this course. Such actions include termination or severing of diplomatic relations with the state that has thus offended the slighted state, withdrawal of commercial concession that might have been granted the state, the purpose being to show disapproval of such unfriendly conduct.

Case Study I

The Russia and United State of America case of Friday, March 23, 2001, in which Russia declared four (4) staff members from the U.S embassy in Moscow "*persona non grata*" and demanded they leave Russia in the next few days, as a retaliative measure against Thursday, March 22, 2001 similar to U.S move against Russia. The U.S. diplomats were expelled on the ground of embarking on "activities incompatible of their status".

The U.S State Department on the other hand on Thursday a day preceding Russian expulsion of U.S diplomats, formally announced expulsion of Russian diplopmats accused of direct involvement with a former FBI agent spying for Moscow, and said that additional 46 Russian embassy staffers will also have to leave by July, 2001.

Moscow in return strongly protested against Washington's decision and said that it will take an adequate action in response.
Such "spymania scandal" marked the most serious spy row between Russia and United States since the end of Cold War.

Case Study II

Israel used this justification when invading the Lebanon in 1982, arguing that the invasion was an act of self-defence in response to terrorist attacks, and again when attacking PLO headquarters in Tunisia and Killing 60 people in 1985 after the murder of three Israeli citizens on a yacht in Larnaca harbour in Cyprus supposedly by a Palestinian task force.

Case Study III

In 1986 a terrorist bomb exploded in a West Berlin nightclub frequented by U.S service people. Two Americans lost their lives and several sustained injuries. Ten days later the United States bombed Tripoli in Libya, claiming to have information that Libya was the source of the Berlin terrorist act in which fifteen people were killed. The then U.S Secretary of State, George Shultz asserted that this action was within Article 51 but there was little international support for his argument.

Both Israel and the US have insisted that this right of self-defence even covers attacks upon states not directly involved in the terror, as for instance Tunisia in 1985.

3.4 Economic Sanctions / Pacific Blockade

Economic Sanctions / Pacific Blockade may be employed to deter military aggression or to force an aggressor to withdraw its armed forces from a disputed territory. Economic sanctions may also be used to curb weapons proliferation.

Article 42 of the U.N. Charter provides that:

> Should the Security Council consider that measures provided for in Article 41 would be inadequate, it may take such action by air, sea or land forces as may be necessary to maintain or restore international peace and security, such action may include demonstrations, blockade, and other separations by air, sea or land forces of members of the United Nations.

Article 41 to which Article 42 makes allusion provides thus:

> The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decision, and it may call upon the members of the United Nation to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio and other means of communication, and severance of diplomatic relations.

Article 39 of the United Nations Charter provides thus:

> The Security Council shall determine the existence of any treat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Article 41 and 42 to maintain or restore international peace and security.

It needs be emphasised that international law frowns at war but throws its weight behind self-defence. It states that in a situation of self-defence by an invaded state or by the United Nations in pursuit of global peace, Article 39, 41 and 42 apply to both situations of war and hostilities.

The tenor of the provisions of Article 39, 41 and 42 seems to be that complete or partial interruption either for economic or other reason. The Articles therefore gives the Security Council the power to implement "partial interruption of economic relations" to counteract "threats to peace, breaches to the peace, and acts of aggression". The Charter implies that sanctions should only be used to enforce international peace and security.

As former Secretary General Boutros Ghali said, "The purpose of sanctions is to modify the behaviour of a party that is threatening international peace and security and not to punish or otherwise exact retribution".

Additionally, the Security Council has the power to make economic sanctions mandatory for member states.

Studies have shown that both the pacific blockade and economic sanctions in practical terms are usually being used by the stronger countries against the weaker ones in order to protect their selfish interests.

Although, the stronger countries do hide under the pretence of trying to ensure compliance with some measures like prevention of war, execution of treaties and so on.

Example I

For example, the 200 – mile Total Exclusion Zone declared by the United Kingdom Government around the Falkland Islands which was further extended on 7 May 1982 to 12 miles from the coast of Argentina in pursuit of Article 51 of the United Nations Charter which deals with self-defence. It ran thus:

> … the exclusion zone will apply not only to Argentina warships and naval auxiliaries, but also to any other ship, whether naval or merchant vessel, which is operating in support of the illegal occupation of the Falkland Island by Argentine forces. The Zone will also apply to any aircraft, whether military or civil, which is operating in support of the Argentine occupation. Any ship and any aircraft, whether military or civil, which is found within this zone without authority from the Ministry of Defence in London will be regarded as operating in support of the Illegal occupation and will therefore be regarded as hostile and will be liable to be attacked by British Forces.

Example II

Although, both multilateral and unilateral sections are legal according to international law, but unilateral sanction can often cause problem because some countries tend to see unilateral sanctions passed by other states as commercial opportunities, a chance to grab markets from state passing the sanction. For example, while U.S. has maintained a weapons embargo against China, European and Japanese countries sold $15 billion worth of nuclear power technology to China during the period EU and Japan lifted their embargo against China in 1990.

Example III

Economic sanctions was also imposed on Iraq at the conclusion of the Gulf War in order to prevent Iraq from using the revenue from its oil to re-arm and particularly to prevent Iraq from building weapons of mass destruction. The sanction was multilateral in nature because the United Nations Security Council with U.S. and Britain championing the course with other allied nations imposed.

In addition, the civil wars in Yugoslavia sparked an outcry of international concern and the need for prompt response or action. The United Nations Security Council was forced to impose sanctions which prohibited any commercial activities with Yugoslavia.

There was to be no trade, transport, or reloading. The country was also excluded from international sporting events and denied scientific, technical, and cultural support. The United States and European Union (EU) imposed similar sanction.

Although history has revealed that economic sanctions have a poor track record. Between 1914 and 1990, various countries imposed to achieve their stated objectives in 66 percent of those cases and were only partially successful in most of the rest. The success ratio for economic sanctions is believed to have fallen to 24 percent since 1973.

4.0 CONCLUSION

Despite all the forcible means of dispute resolution discussed above, we cannot simply say that they do not work, or do not achieve the desired objectives, and that we should not use them. We have to device a way by which governments whose practices usually do not comply to international standards are attacked in such a way that the innocent civilians or citizens are not made to suffer the consequences of coercive means applied to bring about a change in behaviour.

5.0 SUMMARY

Self-defence in international law either through a unilateral or multilateral approach in the above stated Articles 39, 41, 42 and 51 of the U.N was intended to be a restricted justification for the use of force or was intended to legitimate forceful resistance to armed attack or any threat to the peace. Nevertheless, it remains arguable that any use of force, except for reasons of self-defence, remains unlawful unless sanctioned by the Security Council.

6.0 TUTOR-MARKED ASSIGNMENT

1. Should acts of aggression ever justify the use of force as defined in Article 51 of the UN Charter?
2. Explain why reprisals are often carried out without condemnation despite being clearly unlawful.

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UNIT 5 THE COERCIVE OR FORCIBLE MEANS OF DISPUTE RESOLUTION (INTERVENTION)

CONTENTS

1.0 INTRODUCTION

As earlier discussed in the previous unit, that in default of the resolution of disputes by peaceful means, states may well resort to force, for the purpose of forcing a delinquent state to submit to recognised rules of international law and or to neutralise the illegal intervention of another.

2.0 OBJECTIVES

By the end of this unit and relevant readings, student should be able to:

- understand the meaning of intervention
- explain justification for intervention
- identify and discuss forms of intervention.

3.0 MAIN CONTENT

3.1 Meaning of Intervention

The word intervention does not have a definite meaning but encompasses a wide gaincit of activities in relations between states. There exists a distinction in degree between “intervention as an event” and “intervention as a concept” in terms of modes and characteristic features commonly shared by all interventions, which are referred to as “coming between” “interposition”, “stepping – in” or an “interference”.

Intervention as an event describes material “events in the real world”, what as a concept exists abstractly. And while intervention as an event is a concrete situation, which does not lend itself to an arbitrary conception

that as a concept does. In addition, while the former is military in nature, the latter is doctrinaire and intensely political. A typical example of intervention as an event is the violent entry of one state into the other's affairs, while intervention as a concept could be in form of an ill-chosen remark made by a statement about the affairs of another (foreign) state. The former, may be embarked upon in order to protect citizens denied justice in a foreign state(s), collect contract debts, or for pure humanitarian reasons; but the latter finds expression in policy thrusts like the recognition of belligerency, independence, insurgency, neutrality, good offices and mediation as well as consular practices.

Intervention in a nutshell relates to unjustifiable interference in the affairs of another nation. In as much as it does not have the concurrence of the affected state, it is regarded as forbidden by the rules and practice of international law. It should also be stated clearly that mediation or any of the other peaceful means or methods of resolving conflict does not come within this definition.

One of important advantages of political independence is assertion of sovereignty by a state that is so independent. Therefore, intervention by a state into the affairs of a foreign state is usually regarded as an affront to this status.

3.2 Justification of Intervention

Both jurists and political leaders have adduced a lot of reasons in support of their arguments for intervention of a state(s) into the affairs of a foreign state(s) which are as follows:

1. Intervention as Sanction Against Delict

This is the type of intervention that is carried out for the purpose of forcing a delinquent state to submit to recognised rules of international law or to correct the illegal intervention of another. This simply means that a state that violated or went contrary to the dictates of international law, is liable to encounter intervention by the state against which it had committed the delict.

There are times; intervention did not arise from a prior delict, but by ignoring the principle of states equality, the impermeability of state sovereignty to external intrusion.

2. Intervention by Consent or Invitation

It is a form of intervention undertaken on the basis of consent or invitation of the legitimate governments, which could be through treaty

relations between state A consenting or authorising another state B to intervene in her domestic affairs. A typical of example or case study was that between Cuba and the United States in 1903, in which the former authorised the latter to intervene for the preservation of Cuban independence and the maintenance of a government. Although, this form of intervention was criticised or faulted on the grounds that consent could hardly be obtained in a situation where a civil strive was involved as neither faction would speak as legal representative of the whole.

3. Intervention to Maintain a Balance of Power

There are occasions or instances by which foreign states intervene in the domestic affairs of others for varied reasons in order to save humanity and to foster a balance of power. Intervention could take various forms ranging from sanction, blockade, and withdrawal of financial or technical aids and the use of force. Of all the above mentioned forms of intervention, intervention by force of arms was regarded as the most important method of maintaining balance of power and enforcing the laws of nations, for it compelled refractory states to obey the rules, which they had agreed to regard as obligatory in their mutual dealings without resort to war. But it harbored the explosive potential of provoking counter – intervention by a third state, which could even lead to war. For example, in 1860, during the Peloponnesian War, Athens sent a fleet in aid of Corcyra against Corinth to prevent the Corcyrean fleet from surrendering or succumbing to the Corinthians and upsetting the power balance against the Athenians. Another example is the British, French and Russian intervention in Turkey in 1827, which degenerated into wars.

4. Intervention to Save Humanity

This form of intervention is hinged on humanitarian considerations against the violation of traditional human rights. It is usually carried out or undertaken unilaterally by one state or states through the use of coercive action having established facts to justify such action. Justification of the intervention is usually based on the fact that the Target State violated some minimum international law standard. According to Carey at traditional international law, humanitarian intervention was asserted, for it was held that when a state, although acting within its rights of sovereignty, so violated the rights of humanity beyond all limits of reason and justice, whether the violation applied to its own nationals or the nationals of other nations, a right to intervene was lawful. This was based upon the understanding that in international law, there were no perfect rights, no absolute rights; and that all rights must be exercised prudently with ordinary precautions, without abusing them or exceeding their equitable limits, since the right of independence

notwithstanding, such independence gave way when it was abused. This type of intervention is quite different from such that arbitrarily aimed at imposing a preferred social system on a state by another foreign state, as was the case by Great-Britain, France and Russia.

3.3 Forms or Types of Intervention

a. Internal Intervention

This is type of intervention in which an intervening state interfering in the dispute between two warring or disputing parties within the territorial integrity of a country which could be in the case of the legitimate government a state versus a combating section of the country or between insurgents.

b. External Intervention

This could take the form of an external or foreign interfering state fighting or whose military armed forces are involved in the conflict of another state as in the case of country A taking side, with country B in the war or dispute between countries B and C.

c. Punitive Intervention

This may take the form of a reprisal for the injury suffered in the hands of another state. This may be carried out in form of pacific blockade or air blockade against the state being so punished.

d. Subversive Intervention

This could be in form of propaganda or other related activities by one state for the purpose of causing revolt or civil strive in another state.

4.0 CONCLUSION

It should be pointed out that, Article 2(4) of the United Nations Charter and the United Nations General Assembly, in its resolution 2131 (xx) of December 21, 1965, reaffirmed the principle of non- intervention in international law. The resolution says:

> No state has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other state. Consequently, armed intervention and all other forms of interference or attempted threats against its political, economic and cultural elements are condemned.

However, experience has shown that proscription of intervention here is more of a moral persuasion in its effect, rather than of legal enforcement as it is being displayed by various states either covertly or overtly from time to time all over the world to pursue their selfish interests.

5.0 SUMMARY

Although, efforts were made to abolish intervention, but despite that, it is not in all cases that intervention would be frowned against. Intervention may therefore be justified in any of the following situations or conditions: to pursue the UN objectives, to protect the rights and interests and the personal safety of citizens, for self-defence and to guide against unlawful interference in the affairs of a state.

6.0 TUTOR-MARKED ASSIGNMENT

Critically examine and justify the intervention of a state(s) in the affairs of other state(s).

7.0 REFERENCES/FURTHER READING

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