

# TRANSFORMATIONS in International Relations Since 1945



EDITED BY  
ABOLADE ADENIJI

# CONTENTS

	<i>Dedication</i> .....	<i>iii</i>
	<i>Acknowledgments</i> .....	<i>iv</i>
	<i>Preface</i> .....	<i>v</i>
	<i>Notes on Contributors</i> .....	<i>vi</i>
<b>1</b>	Distilling the Presence of the Past: Continuity and Change in International Relations – <b>Abolade Adeniji</b> ,.....	1
<b>2</b>	The Role of International Law in International Relations – <b>Rufus Olaoluwa</b> .....	16
<b>3</b>	The Cold War and Its Aftermath - <b>Abolade Adeniji</b> .....	48
<b>4</b>	United Nations During and After the Cold War – <b>H.A. Saliu, F.A. Aremu and M.L. Bello</b> .....	59
<b>5</b>	The Middle-East in Contemporary Times: A Historical Analysis – <b>Michael Ogbeidi</b> .....	85
<b>6</b>	The “Asian Tiger” Miracle: An Appraisal. – <b>Femi Adegbulu</b> .....	102

<b>7</b>	Terrorism and Force in Contemporary International Politics – <b>Abolade Adeniji and Wale Adeyemi-Suenu</b>	124
<hr/>		
<b>8</b>	Towards An Agenda for Peace and Security in Africa: The Role of the A.U. Peace and Security Council – <b>Charles Dokubo</b>	138
<hr/>		
<b>9</b>	United Nations Peacekeeping in Africa: Issues and Problems – <b>Ogaba Oche</b> .....	158
<hr/>		
<b>10</b>	Ethnic Nationalism and International Conflict: Implications for World Peace and Security - <b>Akinwale A. A. and Atere, A. A.</b> .....	178
<hr/>		
<b>11</b>	World's Natural Resources and Conflicts - <b>Odewumi, S. G. (Ph.D.) &amp; Olori E. Patrick</b> .....	192
<hr/>		
<b>12</b>	Military and International Politics Since 1945: Utility and Limitation of the Use of Force - <b>Emenu, O., Adeyemi - Suenu, W., Inokoba, P.</b> .....	215
<hr/>		
<b>13</b>	Globalization and Its Contradictions - <b>Sylvester Odion - Akhaine</b> .....	231
<hr/>		
<b>14</b>	International Relations in the 20th Century and Beyond – <b>Abolade Adeniji.</b>	239
<hr/>		

# 2

## THE ROLE OF INTERNATIONAL LAW IN INTERNATIONAL RELATIONS

Olaoluwa Rufus Olu, *Ph.D.*<sup>1</sup>

### INTRODUCTION

The creation and the existence of man is unique among other living and moving things on earth. This uniqueness is manifestly evident in God's charge to man after creation<sup>2</sup>.

Man and Human societies have evolved in their development at different stages. Man and its society developed through the stone age through to slave owning society and from there through the feudal society to the capitalist state of development. Most societies are at the level of capitalist stage while a few number of countries have developed into imperialist states with different acronyms like welfarist, socialist and free economies. It is noteworthy to mention that countries that gained independence especially after the World War II are developing at very slow speed or their development is not noticeable by empirical observations. This group of states are popularly referred to as either developing or third world countries.

These different developments are measured by wealth and the methods of acquiring it on one hand and by the means of labour predominant at one stage of development or the other on the other hand.

Fredrick Engels asserted that "*labour – the source of all wealth – establishes political economy. It is actually like that when applied to nature, giving its material which it turns to wealth. It is the first basic condition of all Human life and to the extent that we in a sense can say that: labour created man himself*"<sup>3</sup>.

In modern time especially since after the World War II countries and states at different levels of development need to interact and have been interacting based on national interest which operated principally on the municipal laws of states. The above approach will always lead to friction in international intercourse and there is need to adhere strictly to the principles and provisions of international law if states are to enjoy peaceful coexistence, even development and happiness for their people without discrimination as

to state of origin, sex, religion and ideology.

The objective of this chapter is to highlight the role of international law in the modern time. If the essence of international law is appreciated in international relations between states, most problems in the world today will be solved especially in the area of conflicts; terrorism, political and economic integration and the use of international institutions and negotiation in settling disputes amongst others.

## **THE CONCEPT OF INTERNATIONAL LAW**

The internationalization of economic and social life is producing a widening and deepening of linkages amongst states leading to increase in their mutual interdependence. These linkages create a growing need for international legal regulations found in legal norms.

Global problems have emerged upon whose resolution the very existence of human civilisation depends. Above all, there is the concern of the problem of enlarging internal peace and overcoming the threat of a thermonuclear catastrophe. These and other problems constituting some of the objects of international law may be resolved only through international cooperation and the development of corresponding international legal norms<sup>4</sup>.

International law is an autonomous subsystem of law that is distinct from the National Legal System of States. International law operates among its subjects (states and international organisations) and represents the normative subsystem of the international community:

The international legal system also derives its strength from relations amongst subjects of international law, international legal and other social norms (norms of morality, international comity, international custom and mutual interactions among all the components of the international system and between that system *inter se* and its components.

It should be noted that international law does not directly involve a very large and important field of relations that extend beyond the boundaries of individual states. These are relations between political party organisations, social, scientific, cultural and other organisations, industrial, commercial and other firms and also private individuals. These are mere objects of international law. But the question as to whether private individuals are object of international law is debatable.

The basic characteristic feature of the international system is that its principal components namely states are only partly integrated within it. They

continue to exist as independent and sovereign states or entities.

Law is generally divided into law operating within a country (municipal law) and the law that operates outside and between states, international organisations and similar entities (international law). International law includes conflict of laws (or private international law as it is sometimes called) and public international law (usually just termed international law).

The former deals with those cases, within particular legal systems, in which foreign element raise questions as to the application of foreign law or the role of foreign courts. For example, if two Nigerians make a contract in the U.K. to sell goods situated in London, a Nigerian court could apply U.K. law as regards the validity of that contract. By contrast, public international law is not an adjunct of any municipal legal order, but a separate system altogether. It is this field that is considered in this writing.

Virtually everybody who starts to read international law does so having learned or absorbed something about the principal characteristics of domestic law. These characteristics are recognised body to legislate or create laws, an executive arm to actualise the laws and a hierarchy of courts with competent jurisdiction to settle disputes over such laws. Without a legislature, the judiciary and the executive cannot talk about a legal order.

However, international law is based and works on a whole range of legal order slightly different from what obtains in a municipal legal order. International treaties, conventions, pacts etc are jointly created and made enforceable by the principal subjects of international law and customs are recognised as binding legal rules by a defined principle of recognition:

Today, international legal norms are generally recognised. They are executed and obeyed through the help of universal international institutions and there is a system of judicial means of redress both by states and other subjects of that law. There is a unified system of sanctions in international law, such as reparations, restitution, satisfaction, severance of relations, embargo among others.

International law is primarily formulated by international agreement, which creates rules binding upon signatories and customary rules which are basically state practices recognised by the international community at large as laying down patterns of conduct that have to be complied with<sup>5</sup>.

However, it may be argued that since states themselves having signed law-making treaties and still indulge in courses of action that may be regarded as legally right, international law would appear to consist of a series of rules

displayed as if on a market stall for states to pick and choose from. Contrary to popular belief, states do observe international law and violations are relatively rare. However, such violations like acts of aggression (see Iraq Kuwait conflict and the reaction of the international community) and racial oppression (see the South-African apartheid question and the Iraq v. U.S. and its allies) are well publicized and strike at the heart of the international system that preaches preservation of international peace and justice. But just as incidents of murder, robbery and rape do occur within national legal orders without bringing down the whole edifice or stimulating citizens to deny that municipal law exists, so analogous assaults upon international legal rules point up the weakness of the system without destroying their validity or necessity. Thus, despite the occasional gross violations, the vast majority of the provisions of international law are followed.

Having found that states do observe international law and will usually only violate it on an issue regarded as vital to their National interest, the question arises as to the basis of this sense of obligation. This leads to the question of consent in international law. International system is horizontal consisting of states agreeing to the legal theory of equality based on consent. Once this consent is given, it cannot be withdrawn in the case of fundamental principles. As a withdrawal will constitute a breach of the principle of *pacta sunt servanda* (the principle that agreements are binding or that contracts ought to be kept).

## **SOURCES OF INTERNATIONAL LAW**

Sources are the legal provisions operating within the legal system at a technical level and such ultimate sources as reason and morality are excluded. The statute of the International Court of Justice (ICJ) is widely recognised as the most authoritative statement as to what the sources of international law are<sup>6</sup>. It provides that:

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

- a. International conventions, whether general or particular establishing rules expressly recognised by the contesting states;

- b. International custom, as evidence of a general practice accepted by law;
- c. The general principles recognised by civilised nations;
- d. Judicial decision and the teachings of the most highly qualified publicists of the various nations as subsidiary means for the determination of the rules of law.
- e. Art. 38(2) provides that the provisions of Art. 38(1) do not limit the right of the court to decide a case *ex aequo et bono* (equitable principle or common sense) if the parties agree thereto.

### Customs

The essence of custom according to the ICJ statute is that it should constitute “*evidence of a general practice accepted as law*”<sup>7</sup>. Thus it is possible to detect two basic elements of custom. Material fact i.e. the actual behaviour of states and the psychological or subjective belief that such behaviour is law.

1) **Material Fact:** The actual practice indulged in by states constitutes the initial factor. There are a number of points to be considered concerning its nature, including the duration, consistency, repetition and generality of a particular practice by states. In international law, there is no rigid time element and it will depend on the circumstances of the case and nature of the usage in question.

In certain branches of international law such as air and space law, the duration is not the most important of the components of state practice.

The basic rule as regards continuity and repetition was laid down in the *Asylum case*<sup>8</sup>. The court declared that a customary rule must be “*in accordance with a constant and uniform usage practised by the states in question.*” In that case, one *Haya de la Torre*, a Peruvian was sought by his government after an unsuccessful revolt. He was granted asylum by Colombia in its embassy in Lima, but Peru refused to issue a safe conduct to permit Torre to leave the country. Colombia brought the matter before the ICJ and requested a decision recognizing that it (Colombia) was competent to define Torre’s offence as to whether it was *criminal* as Peru maintained, or political in characterizing the nature of a customary rule; held that it had to constitute the expression of a right appertaining to one state

(Colombia) and a duty incumbent upon another (Peru). However, the court felt that in the asylum litigation, state practices had been so uncertain and contradictory as not to amount to a "*constant and uniform usage*" regarding the unilateral qualification of the offence in question. This issue is a regional custom prevalent only in Latin America that asylum could be granted in such a case if classified as political question. In other words, Colombia lost the case.

Another material factor is that circumstances of repetition are not at all necessary provided *opinio juris* could be established. Thus "*instant*" customary law is possible. For example, the principle of non-sovereignty over the space route followed by artificial satellites came into being soon after the launching of the first sputniks. International organisations in fact may be instrumental in the creation of international law. For example, the Advisory Opinion of the ICJ declaring that the UN possessed international personality was partly based on the actual behaviour of the UN<sup>9</sup>.

2) **The Subjective Belief:** Is an issue of behaviour based on law or an undertaken based on a whole range of other reasons ranging from goodwill to resentment and from ideological support to political bribery. In other words, it is the belief by a state that behaved in a certain way that it was under a legal obligation to act that way. It is known in legal terminology as *opinio juris*.

In the **Lotus Case**<sup>10</sup>, the Permanent Court of International Justice expressed its view on *opinio juris*. The issue at hand concerned a collision on the high seas between the *Lotus*, a French ship and the *Boz-kourt* a Turkish ship. Several people aboard the latter ship were drowned and Turkey alleged negligence by the French office of the watch. When the *Lotus* reached Istanbul, the French officer was arrested on a charge of manslaughter and the case turned on whether Turkey had jurisdiction to try him. Among the various arguments, the French maintained that there existed a rule of customary law to the effect that the flag state of the accused (France) had exclusive jurisdiction in such cases and that accordingly the national state of the victim (Turkey) was barred from trying him. The court rejected this and declared that even if such a practice of abstention from instituting criminal proceeding could be proved in fact, it would not amount to a custom.

The court held that "*only if such abstention were based on their (the states) being conscious of a duty.*" Thus the essential ingredient of

obligation (*opinio juris*) was lacking and the practice remained a mere practice and nothing more. Another interesting case is that of *North Sea Continental shelf Case*<sup>11</sup>. In this case, there were two cases combined in one by the court: *FRG v. Denmark*; *FRG v. Netherlands*. A number of bilateral agreements had been made drawing lateral median lines delimiting the North Sea Continental Shelves of adjacent and opposite states between FRG & Netherlands (1964) and FRG & Denmark (1965). Each of these agreements draw dividing line for a short distance from the coast beginning at the point at which the land boundary of the two states concerned were located. Further agreement had proved impossible. The parties agreed to refer the case to the ICJ. The question for determination by the court includes what principles and rules of international law are applicable to the delimitation as between the parties of the areas of the continental shelf in the North Sea which appertain to each of them beyond the partial boundary (already) determined?

Denmark and Netherlands argued that the “*equidistance-special circumstances principle*” in Art. 6(2) of the 1958 Geneva Convention on the continental shelf applied.

But the FRG rebutted this and proposed “*the doctrine of the just and equitable share*” as a the “*equidistance-special circumstances principle*” if adopted will give Germany a smaller continental shelf than it might otherwise obtain. The court rejecting any decision *ex aequo et bono* as in Art. 38 (2) statute of the ICJ by majority vote found that:

- a. The use of equidistance method of delimitation is not obligatory as between parties.
- b. There being no other single method of delimitation obligatory, the principles and rules of international law applicable are as follows:
  - i. Delimitation is to be by agreement on equitable principles
  - ii. If the above principle leads to overlapping of areas, it may come under the regime of joint jurisdiction, joint user or joint exploitation.

## **PROTEST, ACQUIESCENCE AND CHANGE OF CUSTOMARY LAW**

Some writers have maintained that abstention can amount to consent to a customary rule and the absence of protest implies agreement. In other words, where a state or a group of states take an action which they declare to be used as an expression of *opinio juris* or concurrence in the new legal law. This means that actual protests are called for to break the legitimizing process<sup>12</sup>.

### **State Practice**

Any act or statement by a state from which customary law may be inferred may be referred to as constituting state practice. The obvious way to find out how countries are behaving is to check Newspapers, consult historical records, look at past and present Governmental publications and laws. All these methods are available to help in finding or determining actual state practice<sup>13</sup>.

### **Treaties**

Treaties are written agreements whereby the participating states bind themselves to act in a particular way or establish particular relations between themselves. A series of conditions and arrangements are usually laid down which the parties oblige themselves to carry out. Treaties are known by a variety of names ranging from conventions, international agreements, pacts, general acts, charters, statutes, covenants and declarations.

Note that in practice, the names of cities where these treaties were originally signed are most of the time attached to the name of such treaties. For example, Vienna Convention on Diplomatic Relations (1961), the Chicago Convention on International Civil Aviation (1944); Vienna Convention on the Law of Treaties (1969).

Art. 38 of the statute of the ICJ refers to treaties as international conventions whether general or particular, establishing rules expressly recognised by the contracting states.

Treaties can be seen from two different angles:

- 1) Law making treaties which are intended to have

universal or general relevance and;

- 2) Treaty contracts, which apply only as between two or a small number of states and regulate limited issues between them.

All kinds of agreement exists ranging from the regulation of outer space exploration to the control of drugs and the creation of international financial and development institutions such as the IMF, UNDP, NEPAD etc. It would be impossible to telephone abroad or post a letter overseas or take an aeroplane to other countries without the various international agreements that have laid down the necessary recognised conditions of operation. Law-making treaties are those conventions whereby states elaborate their perception of international law upon any given topic or establish new rules which are to guide them for the future in their international conduct. Such law-making treaties, of necessity, require the participation of a large number of states to emphasise this effect, and may produce rules that will bind all.

They constitute normative treaties, agreements that prescribe rules of conduct to be followed in subsequent agreements between parties. Examples of such treaties include Vienna Convention of Law of Treaties (1969), Vienna Convention on Diplomatic Relations (1961). The Genocide Convention of (1948). Parties that do not sign and ratify the particular treaty in question are nevertheless bound by its terms. This rule was held in the *North Sea Continental Shelf Cases*<sup>14</sup> where W. Germany had not ratified the relevant convention and was therefore under no obligation to heed its term but it was bound by the relevant convention.

Certain treaties attempt to establish a "regime" which will of necessity extend to non-parties. The UN charter declares in Art. 2(6) that "*the organisation shall ensure that states which are not members of the UN act in accordance with these principles so far as may be necessary of the maintenance of international peace and security.*" Treaties may be constitutive in that they create international institutions and acts as constitutions for them, outlining their proposed power and duties<sup>15</sup>.

On the other hand, *Treaty-Contracts* are not universal instruments in themselves since they are between only two or a small number of states and on a limited topic, but are binding as *lege inter partes* and may provide evidence of customary rules. Treaties can also be multilateral or bilateral,

global or regional.

## GENERAL PRINCIPLES OF LAW

Principles are general concepts which serve as authoritative starting points for legal reasoning, employed continually and legitimately where cases for decision are not covered at all or are not fully or obviously covered by more specific and particular rules<sup>16</sup>. For example, in municipal laws, an employer must take reasonable care for the safety of an employee or a person cannot be held guilty of a crime unless he intended the conduct deemed criminal.

In the *Chorzó Factory Case*<sup>17</sup> which followed the seizure of a nitrate factory in Upper Silesia by Poland, the PCIJ declared that “*it is a general conception of law that every violation of an engagement involves an obligation to make reparation*” that court also regarded it as

a principle of international law that the reparation of a wrong may consist in an indemnity corresponding to the damage which the nationals of the injured state have suffered as a result of the act which is contrary to international law.<sup>18</sup>

## THE PRINCIPLE OF *EX AEQUO ET BONO*

This principle known as equitable principle in international law was provided for in Art. 38(2) of the statute of the ICJ.

The 1982 UN Convention on the Law of the Sea provides that “*the delimitation of the exclusive economic zone between states with opposite or adjacent coasts shall be effected by agreement on the basis of international law as referred to in Art. 38 of the statute of ICJ in order to achieve an equitable solution.*”<sup>19</sup> The ICJ in the *North Sea Continental Shelf Cases*<sup>20</sup> directed a final delimitation between the parties in accordance with equitable principles but not on *ex aequo et bono*.

## Judicial Decisions

Judicial precedents are previous decisions of the superior courts deemed to embody a principle of law, which in a subsequent case raises the same or a closely related point of law. It may be referred to as stating or containing the principle which may be at least influential on a court's decision, under the principle of *stare decisis* (having not only regard to former decisions of superior courts but be bound by such decisions). Judicial precedents are

sources of Anglo-American systems of law.

According to Art. 59 of the ICJ statute, the decision of the court has no binding force except between the parties and in respect of that particular case. Art. 38 of the ICJ statute describe judicial decisions as subsidiary means for the determination of law. As such, judicial decisions are not principal sources of international law.

### **Teaching of Publicists**

According to Art. 38 of the statute of the ICJ, the teaching of the most highly qualified publicists of the various nations are accepted as subsidiary means for the determination of rules of law. Historically, academic writers have influenced the development of international law. Writers such as Gentili, Grotius and Pufendorf to mention a few were supreme authorities of the 16th, 17th and 18th centuries and determined the scope, form, content and direction of international law.

With the advent of positivism and the consequent emphasis on state sovereignty, treaties and custom assumed the dominant position in the exposition of the rules of the international law and the importance of legal writings began to decline.

Thus textbooks are now used as methods of discovering what the law is on any particular point rather than the source of actual rules of law.

It should be noted that of all the sources of international law mentioned above, treaties and customs constitute the most authoritative sources of that system of law.

### **The Concept and the Principles of International Law**

Principles of law as earlier mentioned are general precept which serve as authoritative starting points for legal reasoning, employed continually and legitimately where cases for decision are not covered by more specific and particular rules e.g. an employer must take reasonable care for the safety of an employee or a person cannot be guilty of a crime unless he intended the conduct deemed criminal<sup>21</sup>.

In common law systems, principles are developed inductively by judges on the basis of several particular decisions or worked out by academic writers in legal treatises. This also applies in the civil law system.

A principle is generally regarded as a much more general concept than a rule of law. A rule of law is regarded as more particular and specific

than a principle of law and may be very particular and specific.

The real basis of international law is common consent, the recognition of states and other subjects of international law that it is better to regulate their relations by a body of principles which have developed by custom and usage, treaty or convention and arbitral or judicial decisions than to live in anarchy.

The principles of modern international law are clearly defined but not exhaustive in many international instruments. Article 2 of the UN Charter named six principles of international law. Apart from this article, other principles can be found in other articles of the UN charter e.g. Art. 55 provides for the principle of equal rights and self-determination of peoples. This principle serves as the foundation for the principle of sovereign equality of states.

Apart from the UN charter of 1945 (as amended), the G.A resolution of 1970 (Oct. 24) on the Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in accordance with the UN charter provides for seven principles of international law as follows:

- a. The principle that states shall refrain in their 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 UN;
- b. The principle that states shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered;
- c. The principle of non-intervention in matters within the domestic jurisdiction of any state, in accordance with the UN charter;
- d. The principle that states should cooperate with one another in accordance with the UN charter;
- e. The principle of equal rights and self-determination of peoples;
- f. The principle of sovereign equality of states;

- g. The principle that states shall fulfil in good faith the obligations assumed by them in accordance with the charter.

In furtherance of these principles, different regional fora and documents uphold these principles depending on the need of the region concerned. The final Act of the conference on security and cooperation in Europe held in Helsinki (Finland) in 1975 contains ten principles while the Constitutive Act of the African Union contains sixteen principles<sup>22</sup>. The charter of the Organisation of American States (OAS) signed in Bogota, Colombia in 1948 established twelve principles (see Art. 5). The Treaty of ECOWAS in 1975 (revised in 1993 at Cotonou) contains eleven principles.

The growth of nation-states or simply states, and the growing role of international law in international relations always lead to the increase and development of new principles of international law. It is these principles that define the volume of basic rights and duties of states and other subjects of international law.

### **THE PRINCIPLE OF SOVEREIGN EQUALITY OF STATES**

In international law, for a state to be sovereign, it has to exercise jurisdiction over a particular determinable territory, and be independent in its external relations. The principle of sovereign equality means that all states are equal in law. For example, despite the huge differences between the USA and Ghana in population, size of territory, technological development, financial and military might, among others, these two countries are equal in legal rights. As such, in the committee of states, these two countries have one vote each. The Principle of Sovereign equality of states include respect for the sovereignty of all states and their equal rights in international relations<sup>23</sup>.

In contemporary international law, the substance of the principle of sovereign equality can be interpreted as follows:

- Each state have the duty to respect the sovereignty of other states.
- Each state has the duty to respect the territorial integrity and political independence of other states.
- Each state has the right to freely choose and develop

its political, social, economic and cultural system e.g. capitalism, socialism, welfarism etc.

- All states are juridically equal.
- Each state becomes a subject of international law from the time of its emergence.
- Each state possesses one vote at international conferences and organisations except otherwise agreed by the states themselves e.g. voting in the IMF, IBRD, etc.
- Each state participates in creating norms of international law through agreements on the basis of equal rights.
- Each state has a right to take part in the resolution of international disputes and situations that affect its interest in any way.

Note that in practice, the application of these principles may not be uniform. See the voting system in the U.N. Security Council and in the international monetary institutions. This seem to have a negative impact on the principle of equality of states but it is a charter provision which was intentionally provided for as a mechanism for keeping and maintaining international peace.

The practical implication of this is that some states are more equal than others.

In actual fact, permanent members of the Security Council carry heavier weight in financial and other obligations to the United Nations which in itself accrue some benefits in rights or do we say allowance for breach of international law on the part of these superpowers.

## **THE PRINCIPLE OF FULFILMENT OF OBLIGATIONS IN GOOD FAITH**

An obligation is a legal concept signifying a bond or tie linking two or more persons, conferring on each party mutual legally enforceable rights and duties. These enforceable rights and duties may accrue from treaty or customary international law. The above principle means that states must fulfil in good faith obligations that derive from the norms of international law. This is one of the basic principles on which international law is based and without it, there will be no international law<sup>24</sup>.

In the case of *Nicaragua v. US*<sup>25</sup> the court declared that Nicaragua could rely on the USA declaration of 1946 accepting the court's compulsory jurisdiction as the necessary reciprocal element. This was a clear situation where USA was not allowed to derogate from the obligations it accepted under international law.

## THE PRINCIPLE OF SETTLEMENT OF INTERNATIONAL DISPUTES BY PEACEFUL MEANS

There is no specific definition of the term dispute. The Permanent Court of International Justice in the *Mavrommatis Palestine Concessions (Jurisdiction) Case*<sup>26</sup> declared that a dispute could be regarded as "a disagreement over a point of law or fact, a conflict of legal views or of interests between two persons." Dispute is different from situation which might lead to international friction or give rise to a dispute.

Peaceful means for the settlement of disputes are procedures and approaches devoid of threat of force or the use of it. It is thus fair to say that international law has always considered its fundamental purpose to be the maintenance of peace and security. This noble principle can be found in Art. 2(3) of the UN charter.

Peaceful means of settling international disputes must be based on the norms of international law and they include the following:

**Negotiation:** Of all the procedures used to resolve differences, the simplest and most utilised form is understandably negotiation. It consists basically of discussion between the interested parties with a view to reconciling divergent opinions, or at least understanding the different positions maintained. It does not involve a third party at least, at that stage. It is the first procedure usually adopted before other means are resorted to.

**Good Offices and Mediation:** The procedure of good offices and mediation involves the use of a third party whether an individual or individuals, a state or a group of states or an international organisation, to encourage the contending parties to come to a settlement. This process aims at persuading the parties in dispute to reach satisfaction term for its termination by themselves. The dividing line between good offices and mediation is often difficult to draw, as they tend to merge into one another, depending upon the circumstances.

**Inquiry:** Where difference of opinion on factual matters underline a dispute between parties, the logical solutions is often to institute a commission

of inquiry to be conducted by reputable observers to ascertain precisely the facts in contention. Provisions for such inquiries were first elaborated in the 1899 Hague conferences as a possible alternative to the use of arbitration.

Inquiry was most successful used in the *Dogger Bank Incident Of 1904* where Russian naval ships fired on British fishing boats in the belief that they were hostile Japanese torpedo craft. The Hague provisions were put into effect and the report of the international inquiry commission contributed to a peaceful settlement of the issue. However, the use of commissions of inquiry in accordance with Hague convention of 1907 is very rare in practice.

It should be noted that inquiry is not a whole process in itself but part of other processes of dispute settlement.

In many disputes, the determination of relevant circumstances would simply not aid a settlement, whilst its nature as a third party involvement in a situation would at times, discourage some states. But inquiry is a veritable instrument for establishing factual situations that in turn can facilitate peaceful settlement of disputes.

**Conciliation:** This is the process of settling a dispute by referring it to a commission of persons, whose task is to elucidate the facts and issues a report containing proposals for a settlement. Such proposals do not have binding character of an award or judgment. Conciliation involves elements of both inquiry and mediation and in fact the process of conciliation did emerge from treaties.

The rules dealing with conciliation were elaborated in the 1928 General Act on the pacific settlement of international disputes. A number of multilateral treaties do however provide for conciliation as a means of resolving disputes. The 1957 European Convention for Peaceful Settlement of Disputes, the 1963 OAU charter Art. XIX, the 1969 Vienna Convention on the Law of Treaties, the 1982 convention on the law of the sea and the UN charter Art. 2(3) all contain provisions concerning conciliation.

**Arbitration:** This is a procedure for the settlement of disputes between the subjects of international law. Arbitration tribunals may be composed in different ways and it is in an issue for the parties to decide. There may be a single arbitrator or a collegiate body. In the latter case, each party will appoint an equal number of arbitrators with the chairman or an umpire appointed by either the parties or the arbitrators already nominated.

In its modern form, arbitration emerged with the *Jay Treaty* of 1794 between Britain and America, which provided for the establishment of mixed commissions to solve legal disputes between the parties. The procedure was successfully used in the *Alabama Claims Arbitration* of 1872 between the two countries which resulted in the UK having to pay compensation for the damage caused by a confederate warship built in the UK. This served as the beginning of many arbitration settlements that followed since then. Arbitration usually ends with an award which must determine all the differences referred for arbitration.

An arbitration tribunal is in reality not a court since it is not composed of a fixed body of justices. It consists of a panel whose members are nominated by the contracting states (each party nominating a maximum of four). There has been continuing interest in the arbitration process by states<sup>27</sup>.

**Judicial Settlement:** Judicial settlement comprises the activities of all international and regional courts deciding disputes between subjects of international law, in accordance with the rules and principles of international law. There are a number of such courts. However, by far the most important of such bodies, both by prestige and jurisdiction, is the International Court of Justice.

Although the various diplomatic procedures for the settlement of international disputes by peaceful means can be divided into negotiations, good offices, mediation, inquiry, conciliation, arbitration and judicial settlement many situations will of course call for various combinations of these in order to settle particular international disputes.

**Defrainment from the Threat or the Use of Force Against Territorial Integrity or Political Independence of Another State**

Art. 2(4) of the UN charter declares that:

all members shall refrain in their international relations from the threat or the use of force against territorial integrity or political independence of any state or in any other manner inconsistent with the purpose of the UN.

This article prohibits the use of force against the territorial integrity or political independence of any state or in any other manner inconsistent with the purpose of the UN. Historically, the use of force is a different measure of self-help ranging from economic threat or retaliation to the use of violence

pursuant to the right of self-help. But since the coming into force of the UN charter, there are basically three categories of compulsion open to states under international law. These are retorsion, reprisal and self-defence.

**Retorsion:** It is the adoption by one state of an unfriendly and harmful act, which is nevertheless lawful as a method of retaliation against the injurious legal activities of another state. Examples include the severance of diplomatic relations and the expulsion or restrictive control of aliens.

**Reprisals:** Acts which are in themselves illegal and have been adopted by one state in retaliation for the commission of an earlier act by another state. They are thus distinguishable from acts of retorsion, which are in themselves lawful acts. The classic case of reprisals is the *Naulilaa Dispute*<sup>28</sup> between Portugal and Germany in 1928. This concerned the military raid on the Colony of Angola, which destroyed property in retaliation for the mistaken killing of three Germans in the Portuguese territory. In fact, the Germany's claim that they had acted lawfully was rejected on all grounds by the tribunal.

By Art. 2(4) of the UN charter, reprisals short of force may be undertaken legitimately while reprisals involving armed force may be lawful if resorted to in conformity with the right of self-defence.

### **The Right of Self-Defence:**

The traditional definition of the right of self-defence in customary international law is illustrated by the *Caroline Case*<sup>29</sup>. The dispute revolved around an incident in 1837 in which British subjects seized and destroyed a vessel in an American port. This had taken place because the *Caroline* had been supplying groups of American nationals, who had been conducting raids into Canadian Territory.

In correspondence with British authorities which followed the incident the American secretary of state laid down the essentials of self-defence. These are "*a necessity of self-defence, instant, overwhelming, leaving no choice of means, and no moment for deliberation.*" Not only were such conditions necessary before self-defence became legitimate, but the action taken in pursuance of it must not be unreasonable or excessive, "*since the act, justified by the necessity of self-defence must be limited by that necessity and kept clearly within it.*" While Art 2(4) of the UN charter prohibit threat or the use of force. Art. 15 introduces an exception by providing for the right of states to individual or collective self-defence if an armed

attack occurs to a member of the UN.

It follows that the rights to self-defence will not stand if there is no prior armed attack. The view that restricts the right of self-defence to response to actual armed attack thus rejects any notion of anticipatory or pre-emptive self-defence. States have employed pre-emptive strikes in self-defence. Israel, in 1967, launched such a strike upon its Arab neighbours, following the blockage of its Southern port of Eliat and the conclusion of a military pact between Jordan and Egypt.

It is noteworthy that the UN in its debates in the summer of 1967 apportioned no blame for the outbreak of fighting and did not condemn the exercise of self-defence by Israel. A pre-emptive strike embarked upon too early might constitute an act of aggression. The right to pre-emptive attack is now being adopted by the U.S. believing that it is a veritable means of fighting terrorism. The pre-emptive policy of state practice has now been extended to cover such areas such as arms control and disarmament.

The U.S. and its allies relied on this policy to launch an attack on Iraq with the accusation that the country is in possession of weapon of mass destruction. After destroying Iraq as a state, no weapon of mass destruction was found and the occupation of this country under the pretext of trying to form a new democratic regime continues unabated. This is a flagrant violation of all known principles and norms of international law on the part of the so-called protectors of that same law.

Modern international law also embodies the right of peoples of colonial and dependent countries to have recourse to armed force against metropolitan countries that impede their right to self-determination. This is also a legitimate form of self-defence and it flows from the United Nations Charter. But it is expressed more concretely in many international documents most especially in the numerous resolutions of the UNGA and the 1970 declaration on the principles of international law. The principle of non-use of force does not extend to events taking place within a state, since international law does not govern intrastate relations directly but the mechanism provided for by the constitutional law of individual states. In spite of state sovereignty, most questions classified under Human Rights today are not only under the control of internal jurisdiction of a state but also under the supervision of international law e.g. the suspension of Nigeria from the Commonwealth following the handling of Ken Saro-Wiwa and other eight Ogoni Youths under the Abacha regime was in consequence of its violations of Human Rights etc.

## **THE PRINCIPLE OF COOPERATION AND ASSISTANCE TO THE U.N. IN ANY ACTION IT TAKES**

This principle is one of the cardinal principles of international law. The principle of cooperation of states is an outcome of the deepening of the international division of labour and of a wide development of modern international economic and other relations. The economic and political need for cooperation among states to ensure international peace and security and also the further development of productive forces and culture has led to the emergence of this legal principle. That principle recurs throughout the UN charter.

In developing these propositions of the charter, the declaration on principles of international law of 1970 defines the substance of the principle of cooperation of states as follows:

- a. States have the duty to cooperate with one another in the various spheres of international peace and security and to promote international economic stability and progress;
- b. States should cooperate with one another irrespective of the differences in their political, economic and social systems;
- c. States should cooperate in the promotion of economic growth throughout the world especially that of the developing countries;
- d. State members should cooperate with the UN and carry out in good faith decisions of the organisation.

## **THE PRINCIPLE OF NON-INTERVENTION IN THE DOMESTIC AFFAIRS OF OTHER STATES**

The principle of non-intervention in Art. 2(7) of the UN charter is referred to as the principle of non-interference by a member state in All Constitutive Act<sup>30</sup> and the right of the union to intervene<sup>31</sup>. This principle is closely associated with the principle of sovereign equality of states. It follows from the nature of the sovereignty of states that while a state is supreme internally, that is, within its own territorial frontiers, it must not intervene in the domestic affairs of another nation. This duty of non-intervention within the domestic

jurisdiction of other states provides for the shielding of certain state activities from the regulation of international law e.g. grant the nationality and rights of aliens.

However, international law nowadays has influence in areas hitherto regarded as subject to the state's exclusive jurisdiction e.g. the treatment by a country of its own nationals is now viewed in the context of international human rights regulation (see Saro-Wiwa's case and the consequent reaction of the international community against Nigeria).

The above principle was noted in *Nottebohm Case*<sup>32</sup> where the court remarked that while a state may formulate such rules as it wished regarding the acquisition of nationality, the exercise of diplomatic protection upon the basis of nationality was within the purview of international law.

There is also the basic rule that no state may plead its municipal laws as a justification for the breach of an obligation of international law<sup>33</sup>. Also see the classical case of *Gani Fawehinmi v. Abacha & Ors*<sup>34</sup> the C.A decision reaffirmed by the Supreme Court of Nigeria in year 2000 in the case of *Abacha v. Fawehinmi*<sup>35</sup>. The dividing line between issues firmly within domestic jurisdiction on the one hand, and issues susceptible to international legal regulation on the other is by no means as flexible as it may first appear. Art. 2(7) of the UN charter declares that:

Nothing contained in the present charter shall authorize the UN to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the members to submit such matter to settlement under the present charter.

The international legal concept of "*matters which are essentially within the domestic jurisdiction of any state*" is a legal concept whose substance changes as international law develops. This has certainly not prevented the UN from discussing or adopting resolutions relating to the internal policies of member states and the result of more than fifty years of practice has been the further restriction and erosion of domestic jurisdiction, and by necessary extension, of state sovereignty.

It is noteworthy that the European colonial powers fought a lost battle against the U.N. debate and adoption of resolutions concerning issues of self-determination and independence for their colonies. The involvement of

the UN in human rights matters led to the collapse of the apartheid system of government in South Africa, and to the grant of independence to former colonial territories and trust territories.

Nevertheless, the concept does retain validity in recognizing the basic fact that state sovereignty within its own territorial limits is the undeniable foundation of international law. The above principles are the bedrock upon which international law rests not minding the fact whether the matter is that of recognition, territory, air, space, sea, state succession, jurisdiction, human rights or international institutions among others.

### **THE RELATIONSHIP BETWEEN INTERNATIONAL LAW AND MUNICIPAL LAW**

Municipal law governs the domestic aspect of government and deals with issues between individuals, and between individuals and the administrative apparatus of government, while international law focuses primarily upon the relations between states and other subjects of that law.

Nevertheless, there are many instances where problems can emerge and lead to difficulties between the two systems. In a case before a municipal court, a rule of international law may be brought forward as a defence to a charge e.g. a fishing vessel may be prosecuted for being in what in domestic terms is regarded as territorial waters but in international law it would be treated as part of the high seas. Also there may be questions as to the precise status of a municipal legal rule before an international tribunal. The current arrest and trial of a Nigerian serving Governor in a magistrate court in London and the question of immunity for the Governor being in possession of a diplomatic passport brings into the fore the relationship between international law and municipal law.

The relationship between international law and municipal law is replete with theoretical problems as follows

#### **a. The Dualist or Pluralist Theory**

The exponents of the dualist doctrine try to point out the essential difference between international law and municipal law. They make the point that the two systems differ in both their contents and scope. While international law essentially regulates the relationship between states, municipal law applies within the territory of a state and regulate the relations of its citizens with each other and between the citizens and the government.

According to this point of view, neither legal order has the power to create or alter the rules of the other. If there is a conflict between the two legal systems, the dualists would hold the view that the courts should apply municipal law. This doctrine is closely connected with the positivist doctrine of law which denies the validity of the sources of international law apart from the practice of states. See *Fawehinmi V Abacha & Ors*<sup>36</sup>. Lagos, where it was held that no government will be allowed to contract out by local legislation international obligations and that ouster clauses cannot affect the operation of African Charter on Human and People's Rights in Nigeria.

### b. The Monist Theory

This theory asserts that neither international law nor any system of municipal law is superior to the other but that all form parts of one legal order or system of norms binding states and individuals alike, their rules being interrelated. If there is a conflict international law will be prevail<sup>37</sup>.

### c. Theories of Coordination

According to Sir Gerald Fitzmaurice, the monists and dualists are two systems of law that do not come into conflict as systems since they work in different spheres. Rousseau characterizes international laws as a law of coordination which does not provide for automatic abrogation of internal rules in conflict with obligations on the international plane. These jurists prefer practice over theory in this matter. States practice in the application of international law is based on either the doctrine of *incorporation* or *transformation*. What is clear on this questing is that the practice of states varies.

### Incorporation

The doctrine says that international law is part of municipal law only if and so far as it is made part of that law by statute, decision or equivalent Act.

There is no specific provision in the 1979 and 1999 constitutions of Nigeria that the municipal laws of the country will confirm with the rules of international law. It is only with respect to international treaties specifically that the constitution provides. Section 12(1) of these constitutions provides that "*No treaty between the federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly.*" This appears that Nigeria prefers the doctrine of incorporation to that of transformation only

in respect of treaties.

### **Doctrine of Transformation**

This doctrine grew from the procedure whereby international agreements are rendered operative in municipal law by the device of ratification by the sovereign. The idea has developed from this that any rule of international law must be transformed or specifically adopted to be valid within the internal legal order.

For example, all European Union agreements and decisions are deemed to be transformed to the national laws of members of the organisation<sup>38</sup>. Art. 6 clause 2 of the constitution of the USA provides that

This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.

Article 25 of the constitution of the Federal Republic of Germany further illustrates the doctrine of transformation by providing that:

The rules of public international law are an integral part of federal law. They shall take precedence over the laws and shall directly create rights and duties for the inhabitants of the federal territory.

Irrespective of whatever method a state uses in the application of international law, it should be noted that, a state cannot plead a rule or gap in its own municipal law as a defence to a claim based on international law<sup>39</sup>. The above statement is ascertained by Art. 27 of the Vienna Convention on the law of treaties 1969 which provides that "*a party may not invoke the provisions of its internal law as justification for a failure to perform a treaty.*" In the *Alabama claims arbitration of 1972*<sup>40</sup>, the USA successfully claimed damages from Great Britain for allowing a confederate ship to sail from Liverpool to prey upon American shipping.

It was held that the absence of British legislation necessary to prevent the construction or departure of the vessel could not be brought forward as a defence for being neutral and Britain was accordingly liable to pay damages for the depredations caused by the warship in question.

## **SUBJECTS OF INTERNATIONAL LAW**

In defining the concept of a subject of international law, one must recognise that the object of international legal regulations is international relations among participants in those relations.

There is no universal definition of subjects of international law but suffice to say that "subjects of international law are entities and participants that possess legal capacity to claim rights and have obligations to fulfil in international law." One of the distinguishing characteristics of contemporary international law has been the wide range of participants performing on the international scene. These include states, international universal organisations, international regional organisations, international non-governmental organisations, public companies, private companies and individuals. Not all such entities will constitute legal persons although they may act with some degree of influence upon the international plane.

### **States**

A state as a subject of international law should possess the following qualifications

- a. A permanent population
- b. A defined territory
- c. A government
- d. Capacity to enter into relations with other states<sup>41</sup>.

### **International Territories**

These are territories whose fact of existence is not in doubt but their existence as subjects of international law is not settled. In such cases, a particular territory is placed under a form of international regime, but conditions under which this has been done have varied widely from autonomous areas within states to relatively independent entities. Examples of these territories are many in our contemporary time but we will just look

at two territories.

### **1. The Saharan Arab Democratic Republic**

The Polisario liberation movement conducting a war to free the Western Saharan territory from Morocco declared the independence of Saharan Arab Democratic Republic in February 1976. Morocco did not only refuse to recognise the declaration but has continued to claim the territory as part of its territory. However, in 1984 the OAU recognised SADR and even admitted it to the OAU as a member. The United Nations G.A. has made efforts to pacify Morocco so as to accept a settled solution but without success so far. These actions can be take as recognition of statehood and as such of major evidential significance.

Until all controversial issues are resolved and hostilities ceased, the issue of the SADR as a subject of international law will remain a de-facto one only.

### **2. The Holy See and The Vatican City**

The Holy See and the Vatican City is the small territorial part of Rome in Italy where the Catholic Church World Headquarters is situated. It has no permanent population apart from church functionaries and exists only to support the work of the Holy See. Italy carries out a substantial number of administrative functions with regards to the city. Italy recognised the state of the Vatican City and the sovereignty of the Holy See in the field of international relations as an attribute that pertains to the very nature of the Holy See in the 1929 Lateran treaty signed between Italy and Holy See.

The Holy See is a party to many international treaties and a member of the Universal Postal Union, International Telecommunication Union, but not a member of the UNO. It is today recognised as a state. It is a neutral state. The Holy See and the Vatican City maintains diplomatic relations with many countries and has functioning embassies in them. Remember the General Noriega saga in Panama with the Vatican embassy? From the above, it is clear that the Holy See and the Vatican City is a subject of international law.

## **INTERNATIONAL ORGANIZATIONS**

These are permanent institutions created by two or more states and/or organisation for the purpose of achieving set objectives or goals. When we

talk about organisations we mean international intergovernmental universal or regional or sub-regional organisations. Example of a universal organisation is the UNO, regional – the A.U. and a subregional – ECOWAS.

Since the 19th century, a growing number of such organisations have appeared and thus raised the question of personality. Whether an organisation possesses personality before international law will hinge upon its constitutional status, its actual power, functions and practice.

Significant factors in this context will include the capacity to enter into relations with states and other organisations and to conclude treaties with them, and the status it has been given under municipal law. In *the Reparation case* (supra) the personality of inter-government organisation as subjects of international law was affirmed. The ICJ noted in the case that:

Fifty states representing the vast majority of the members of the international community, have the power, in conformity with international law to bring into being an entity possessing objective international personality and not merely personality recognised by them alone, together with capacity to bring international claims.

Note that non-governmental organisations are not subjects of international law but personality may be acquired by a combination of treaty provisions and recognition or acquiescence by other international persons. For instance, the international committee of the Red Cross, a private non-governmental organisation subject to Swiss law, was granted special functions under the 1949 Geneva Conventions. It has been accepted as being able to enter into international agreements under international law with international persons, e.g. the EEC and the World Food Programme.

## INDIVIDUALS

The status of individuals in international law is closely connected with international protection of Human Rights. The status of individuals in international law was originally taken as the object of international law where only states and possibly international organisations were subjects of the law. The question whether individuals are subjects of international law has been literally a pin-pong in the hands of the naturalists and the positivists. It only suffice here to say that the positivists triumphed in the 19<sup>th</sup> century by

emphasising the centrality and even exclusivity of the state in this regard.

Nevertheless, modern practice demonstrates that individuals have become increasingly recognised as participants and subjects of international law. States may agree to confer particular rights on individuals, which will be enforceable under international law, independently of municipal law.

This proposition was reiterated in the *Danzig Railway Officials Case*<sup>42</sup>. In that case, there has been an agreement between Poland and Danzig relating to the conditions of employment of Danzig railway officials working on the Polish rails system. Poland agreed that since an international treaty was involved and since the particular rights conferred had not been incorporated into her municipal law, any failure to enforce such rights would be a matter between herself and Danzig alone and the individuals concerned would just have to make such representations as they could to Danzig. The court dismissed the arguments having regard to the particular circumstances of the treaty and the intentions at the time of agreement of the two parties to it. Whether a treaty does establish rights and duties as regards individuals will depend on the facts of the case and the intention of the parties.

As far as obligations are concerned, international law has imposed direct responsibilities upon individuals in certain specified matters. In case of piracy those found guilty of a crime against the international society can be punished by international tribunals or by any state.

Jurisdiction to hear the charge is not confined to, for example, the state on whose territory the act took place, or the nationality of the offender.

The Nuremberg Tribunal following the Second World War for crimes against peace, war crimes and crimes against humanity pointed out that "*International law imposes duties and liabilities upon individuals as well as upon states.*" This is because crimes against international law are committed by persons but not by abstract entities and only by punishing individuals who commit such crimes can provisions of international law be enforced. This practice with regard to the international rights and duties of the individual under customary and treaty law clearly demonstrates that individuals are subjects of international law clearly demonstrates that individuals are subjects of international law. The nature and extent of this personality may be different in individual cases. However, the issue of *locus standi* of individuals before international courts is addressed differently. While the International Court of Justice is yet to accord individuals *locus standi*, the European Court of Human Rights, accords individuals *locus*

*standi* in matters relating to and affecting their interest.

In the evolution of international law, this branch of law has sprouted into a system of law with many branches. In the different branches of international law, there are different challenges of law and especially international law is very dynamic in nature.

The branches of international law today include: sources of international law, subjects of international law, international law and municipal law, international human rights law, recognition in international law, territory in international law, jurisdiction in international law, international law of treaties, state succession in international law, air and space law, international law of the sea, law of international institutions, state responsibility, international environmental law, diplomatic and consular law, international law and the use of force, international economic law, international humanitarian law, settlement of disputes by peaceful means, international information technology law and international transport law among others.

## CONCLUSION

Looking at the branches and the items covered by international law, it is pretty difficult if not impossible to highlight the new trends in the evolution and development of these branches of international law based on international relations especially after the fall of the Berlin wall and the end of the Cold War.

One thing that is evident apart from the normal development of international law is the fact that one unipolar world in politics, law and state interest has emerged exposing all the secret political maneuvers of the avant-garde to their disadvantage. In the economic front, the grip is being weakened and the only means to remain relevant is by means of display of force.

The focus today is for the leading Western European countries to emphasise the fight against terrorism and the war against possession of weapons of mass destruction. It is good to achieve the above by strict adherence to the rules and principles of international law. Today, those rules and principles of international law seem to have been relegated to the second pedestal, as they seem not to be advancing the interest of those having the first responsibility to uphold and keep up the tenets of international law.

## ENDNOTES

1. Senior Lecturer, Department of Jurisprudence and International Law, Lagos State University, Ojo, Lagos, Nigeria.
2. Genesis 1 verse 28 *“And God blessed them (Men) and God said unto them, Be fruitful and multiple and replenish the earth and subdue it: and have dominion over the fish of the sea and over the fowl of the air, and over every living thing that moveth upon the earth.”*
3. F. Engels: The role of labour in changing the monkey to man// K. Marx and F. Engels, collected works in three volumes, Vol. 3, Moscow, 1983, p. 69
4. Olaoluwa, R.O. Introduction to International Law, Published by Silk Communications, Ikeja, Nigeria 2000 at p. 1.
5. See such Instruments as the UN charter 1945 Art. 57: The AU Constitutive Act, 2000, The New Partnership for Africa’s Development (NEPAD), 2001.
6. Art. 38.
7. Art. 38(1) (b) statute of ICJ 1945
8. 1950 ICJ Reports, P. 266.
9. See Reparation for Injuries Suffered in the Service of the United Nation Case, 1949, ICJ Reports, p. 174
10. PCIJ Series A, No. 10, 1927, p. 18
11. 1969 ICJ Report, p. 3
12. See the Lotus Case (Supra). See also Anglo-Norwegian Fisheries Case ICJ Report 1951, p. 116, 131.
13. See Reparation case (supra) and The Asylum case (supra).
14. North Sea Continental Shelf Cases (Supra)
15. The Chicago Convention on Civil Aviation creating the International Civil Aviation Organisation (ICAO) 1944
16. David Walker, The Oxford Companion to Law Clarendon Press, Oxfor

1980 at 989

17. PCIJ Series A No. 17, 1928, p. 29
18. Ibid.
19. Art. 74 (1)
20. North Sea Continental Shelf Cases (Supra).
21. David Walker, *op. cit.*
22. See Art. 4 Constitutive Act of the African Union, Lome, 2000.
23. The Principle of Sovereignty equality of states is provided for in the UN charter Art. 2(1).
24. This principle can be found in Art. 2(2) of the UN charter and in other important basic instruments in international law.
25. 1984 ICJ Reports, p. 392.
26. PCIJ Series A, No. 2, 1924, p. 11.
27. The international law commission formulated a set of Model Rules on Arbitral procedure, which was adopted by the UN General Assembly in 1958
28. 2 RIAA 1928, p. 1011
29. 32 AJIL 1938, p. 82
30. See Art. 4(g)
31. CAAU AA. 4(h)
32. 1955 ICJ Report, p. 4, 20-21
33. See Art. 27 of the Vienna Convention on the law of Treaties 1969 in so far as treaties are concerned and also Arr. 13 of the Draft declaration on the Rights and Duties of State 1949.
34. M(1996) 9 NWLR (pt. 475), p. 710
35. (2000) FWLR (pt. 4), p. 533
36. (1996) 9 NWLR (pt. 475), p. 710 A.C
37. See the case of *Coast V ENEL* (1964) ECR 585 at 593.

38. See *Coast V ENEL* (supra)
39. See *Fawehinmi v. Abacha* (supra)
40. More, *International Arbitration* Vol: 1, p. 495, 653.
41. See Art. 1 Convention on Rights and Duties of States, 1933.
42. PCIJ Series B, No. 15, 1928.