COVENANT UNIVERSITY
NIGERIA

TUTORIAL KIT
OMEGA SEMESTER

PROGRAMME:
INTERNATIONAL RELATIONS

COURSE: IRL 325

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IRL 325: LAW OF NATIONS

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QUESTIONS

1 Discuss the models of analysis that have been propounded to explain international law
2 The debate over the controversies of international law discourse is yet to be settled in scholarly literature. Advance your contribution to the debate.
3 Using the recent case of Nigeria-South Africa diplomatic row discuss the contradictions surrounding the concept of reciprocity in international law.
4 Do you think the conditions explicitly stated by international law to justify intervention in another state were fully met before the recent military adventure in Libya?
5 International law expressly argues that immunity is not available as a defence to certain categories of crime. Discuss using relevant examples.
6 Using the Israel raid on Entebbe as a case study, discuss the controversies surrounding the concept of force in international law.

7 Attempt clear distinctions in the major theoretical positions in international law.

8 The concept of immunity has come under heavy attack by recent pronouncements in the field of international law. Discuss

9 The nature of international law is clearly embedded in its dynamics. Discuss

10 The origin of international law can be discussed in tandem with the evolution of international system. Discuss

11 "The nature and development of international law are inextricably linked to the evolution of international relations" Discuss
12. Examine the theories that underpin the subject of international law
13. Critically analyse the factors that have impeded the territorial exclusivity of states
14. "The 'great debate' over the subject of international law centres on the *reality* against the *morality* of the subject matter". Attempt
15. "International law recognises certain prevailing conditions that must justify a reprisal attack". Contextualise these conditions using any example(s) of your choice
16. International law as a subject of enquiry has come under heavy attack especially by Third World Theorists. Proffer possible solutions.
17. The evolutionary process of international law can be discussed in tandem with state development in international system. Attempt.
18. The effectiveness of international law is rooted in the functions which it performs. How much do you subscribe to the above assertion?
19. The Monist School of Thought sees the primary function of all law as concerned with the well-being of individuals. Posit this argument within perspective.
20 International law is faulted on the loopholes created for states to justify resort to hostilities in the international system. Discuss.

MODEL ANSWERS IN ALTERNATE SEQUENCE (ODD NUMBERS)

Question 1

Discuss the models of analysis that have been propounded to explain international law
Solution: the following are the theories of international law

- Naturalist theory
- Positivist-dualist theory
- Eclectic or Monist theory
- Neo-Realist theory

The concluding part will attract the remaining marks

Question 3

Using the recent case of Nigeria-South Africa diplomatic row discuss the contradictions surrounding the concept of reciprocity in international law.

Solution

Retortion is a kind of reciprocity that involves 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. It is the legitimate method of showing displeasure in a way that hurts the other state while remaining within the bounds of legality.
The student is expected to demonstrate the understanding of this concept within the context of the recent Nigeria-South Africa diplomatic row over the issue of fake yellow cards.
The conclusion will attract the remaining marks.

Question 5

International law expressly argues that immunity is not available as a defence to certain categories of crime. Discuss using relevant examples.

Solution

- Immunity from prosecution is a doctrine of international law that allows an accused to avoid prosecution for criminal offences. There are two types of immunity under international law discourse; they are functional and personal immunity.
- Functional immunity arises from customary international law and treaty law and confers immunities on those performing acts of state and will only cease if the state itself ceases to exist. Personal immunity on the other hand is confers immunity on people holding a particular office like the Head of state or Head of government, senior cabinet members, foreign ministers and ministers of defence; such immunity ceases when the official tenure of the above named categories of persons end.
- However, international law argues that immunity is not available as a defence to international crimes such as crimes against humanity, war crimes and genocide. The student is expected to demonstrate mastery of these categories of crime and relevant examples to attract the remaining.

Question 7

Attempt clear distinctions in the major theoretical positions in international law

Solution

The student is expected to begin by a definition of international law and highlight the five major theories of international law: the naturalist theory; the positivist theory; the eclectic theory; the monist theory and the neo-realist theory.

The Naturalist theory argued that all law derived from God's law, and that law was therefore universal and unchangeable. The intellectual and philosophical heritage from St Augustine, who argued that war was justifiable in self-defence or to punish evil, has helped to buttress the position of the naturalist school of thought. Considering the diversities of religion, cultures, ideologies, philosophies and moralities that exist in the world, it becomes an up-hill task to determine what God's law is. More so, one can readily see that those who sought to implement international standards on natural law precinct faced a formidable task even if they had the best of intentions.

The inadequacies inherent in the naturalists' postulations brought to birth another school of thought known as the positivist school. Positivism rejected divine authority as the basis for law and argued that only law that existed was what its subject agreed to. They stressed the consensual basis of law; rights and responsibilities of international actors were protected by laws and standards of behaviour which they aligned with themselves. Positivism stresses the overwhelming importance of the state and tends to regard international law as founded upon the consent of the state.

Eclectic or monist school of thought was the third theory which posited that two levels of law existed. One, which is universal and timeless, was God-given, and the other which is finite and voluntary, was man-made. The eclectic school attempted to bridge the gap between naturalists and positivists; has a perception that naturalist law and positivist law were simply different sides of the same coin.

The Neo-realist assertions which came as a reaction to the position of the monist school of thought stated that rules were irrelevant, but policy and values were important. International law to the neo-realist was just a product of the desires of the prevalent powers. They contended that international law was not a constraint on power, but a product of power; not timeless; not universal; and need not to be accepted by consent, but might be imposed by power. Neo-realist being somewhat a modification of the dualist position attempts to establish a recognised theoretical framework tied to reality**.**

In the concluding part of the essay, the student is expected to create an analytical synergy in the different postulations on the school of thought in international law**.**

Question 9

The nature of international law is clearly embedded in its dynamics. Discuss

Solution

International Law is an instrumentality, a social weapon for regulating and controlling relations among nation-states. It is a body of rules and regulations which have evolved over time and which nation- states have accepted for the conduct of their transactions in all spheres of international relations, particularly in military, political, diplomatic and economic fields.

The question surrounding the controversy over international law, involving the third world theorists can be discussed under the great debate on international law as a subject of study. This debate bothers on the existence, sources, enforcement, effectiveness and interpretations.

On the issue of existence, third world theorists are questioning the concept of international law itself. According to them, law is a body of principles, rules, and regulations made, recognized and enforced by judicial decisions balanced by the coercive power of the state. Since international law does not meet these criteria, especially recognition and coercive ability, the question of its existence is therefore not certain**.**

On the issue of enforcement, the argument is that since international court of justice and other judicial arms of international law hear cases only if the states concerned accepted their

jurisdiction and decisions of these courts could only be enforced if the parties affected consent to such, we cannot therefore say that international law is a law.

There is also mundane disagreement over the sources of international law. The theorists are questioning the recognized sources of the law and the composition of those instruments. They argue that since it is not widely representative, that international law is questionable. On interpretation (effectiveness), the theorists are asking such fundamental questions as who is qualified to interpret international law. How is the body of the ICJ or ICC constituted? What criteria, if any, are used in the process of the constitution? Which nations' candidates are most qualified to interpret international law?

All the above disagreements notwithstanding, references to international law indicate that, at least, on the verbal level, all states believe there is international law and they are bound by it. The fact that many national courts invoke its provisions is an evidence of its existence as law. There is also a sanction process which is akin to enforcement. Collective sanctions can be imposed on nations and they could have pariah status if they disobey international law or at best be tagged rogue nations. Finally, citizens of nation states break domestic laws, so why would the infrequent disobedience of international law by states impugn on its integrity?

Question 11

The nature and development of international law are inextricably linked to the evolution of international relations. Discuss

Solution: the following are the main issues to be discussed;

Introduction: Definition of international law will attract**.**

- The beginning point is to understand international law as an important aspect of international relations.
- The natural existence of the community of nations presupposes the existence of laws, which regulate the conducts of such nations among themselves.
- The evolution of nation states and by implication, international law can be collapsed into three phases:
- Pre-Westphalia Era
- Westphalia Era
- Post-Westphalia Era

Concluding remarks will attract the remaining marks.

Question 13

Critically analyse the factors that have impeded the territorial exclusivity of states

Solution:

Introduction: Definition of territorial exclusivity of states in international law.

- Technology and economic interdependence (economic globalization).
- Democracy and democratization (political globalization).
- The rise in human rights advocacy and self-determination.
- The growth and proliferation of international organization (multilateral diplomacy).
- Commonality in the use of seas and air (common-heritage concept or the law of seas.

Student are expected to conclude by recognising that despite these factors, territorial sovereignty remains a key concept in international law**.**

Question 15

International law recognises certain prevailing conditions that must justify a reprisal attack. Contextualise these conditions using any example(s) of your choice

Solution:

Introduction: Definition of reprisal in international law.

- (1) It must be an act done against an earlier act that was illegal.
- (2) The injured state must ask for reparation first before the reprisal takes effect.
- (3) The demand of the state that was injured must be unsatisfactory.
- (4) There must be an element of "proportionality" – that is, what is done in response must be proportional to the illegal act initially.

Conclusion is attract the remaining marks**.**

Question 17

The evolutionary process of international law can be discussed in tandem with state development in international system. Attempt

Solution

The question of what international law is concerns its very nature. There have been some controversies among scholars over this but some basic understanding have emerged. International law is the body of rules and principles of action binding sovereign political units, especially the modern nation states, in their relations with one another. In other words, it's the law of nations. International Law is an instrumentality, a social weapon for regulating and controlling relations among nation-states. It is a body of rules and regulations which have evolved over time and which nation- states have accepted for the conduct of their transactions in all spheres of international relations, particularly in military, political, diplomatic and economic fields. Those rules developed as customs, practices and conventions which nation-states have expressly consented to and have, therefore, accepted as regulating their relations.

One could trace the origins of international law to the fourth and third millenniums B.C. However, although there were rules in the ancient and medieval world which may be characterized as international law, the development of the branch of jurisprudence which is called international law dates back from the 16^{th} and 17^{th} centuries. These constitute the era of the sovereign national states. The shapes of the European state system which evolved with the peace of Westphalia determined the special character of international law. International law, as it developed from 1648, took, as its basic premise, the existence of a number of states that are secular, national and territorial**.**

The Greeks and the Romans contributed a lot to the origins and growth of international law. While the Roman contribution is the development of a system of rules governing the relations between the Roman citizens and foreigners, the Greek contribution was the development of rules governing the relations between the Greek city-states.

From the medieval period to the beginning of the 17^{th} century, there was some growth in the evolution of international law. With the dissolution of the medieval period and the Holy Roman Empire, a multiplicity of states appeared on the scene. They emerged in the form of independent political units. As these units gained in strength, they were forced to develop rules in order to live together. The sources of these rules were both Roman law and the church Canon law. Men began to talk about a law of nature, a reasonable system of rules that all men would rationally follow. As time went on Roman law was looked to as evidence of, or the sum of those principles

which ought to control human conduct because they were founded in man's nature as a rational and social being. As a result, Roman law became the foundation of international law.

During the late 18th to early 20th century, there was what could be regarded as a turn to positivism. This means the reliance on the practice of states and the conduct of international relations as evidenced by custom and treaties rather than as evidenced by natural law. Incidentally, this turn to reliance on state practice occurred when the nation-state was in its heyday and its power and authority were rising to a peak. At this time, legal and political thought centered on the idea of sovereignty. Since states were sovereign, the only way, therefore, to justify international law was to regard it as an act of voluntary acceptance by sovereign states.

International law during the 20th century took yet another turn. The basis of custom and obligation started to be challenged. Since the end of World War 11, three major developments have also occurred in international law:

1. Massive increase in international organizations for co-operative purposes;
2. Increasing importance of states representing non-Western state law;
3. Increasing gap between the less developed countries and the West which provided challenges to some western international law norms.

International law has thus been moving from the stage where it was primarily international law of co-existence in the early 17th century to mid-20th centuries, to a phase where states must develop new forms of co-operation and organization in addition to tradition and rules of inter-state relations. This transition is a product of politics, economics, technology and the increasing interdependence of nation-states.

Question 19

The Monist School of Thought sees the primary function of all law as concerned with the well-being of individuals. Posit this argument within perspective.

Solution

Monist approach tend to fall into two distinct categories: those who, like Lauterpacht, uphold a strong ethical position with a deep concern for human rights, and others, like Kelson, who maintain a monist position on formalistic logical grounds. The monists are, however, united in accepting a unitary view of law as a whole and are opposed to the strict division posited by the positivists**.**

The naturalist strand represented in England by Lauterpacht's works sees the primary function of all law as concerned with the well-being of individuals, and advocates the supremacy of international law as the best method available of attaining this. It's an approach characterized by deep suspicion of an international system based upon the sovereignty and absolute independence of states, and illuminated by faith in the capacity of the rules of international law to imbue the international order with a sense of moral purpose and justice founded upon respect for human rights and the welfare of individuals.

The student is consequently expected to take a definite position and construct intelligent arguments to justify the above position. This will be coupled with a good flow of language and clarity of expression.