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TOPIC:

OF NORMS, VALUES AND  
ATTITUDES: THE  
COGENCY OF  
INTERNATIONAL LAW



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By

PROFESSOR AKINDELE BABATUNDE OYEBODE

# **OF NORMS, VALUES AND ATTITUDES: THE COGENCY OF INTERNATIONAL LAW**

An Inaugural Lecture Delivered at the University of Lagos  
Main Auditorium on Wednesday, 7th December, 2011

by

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## INTRODUCTION

Mr. Vice-Chancellor, Sir,

This event is coming twenty years late! I became a professor way back in 1991 and would normally have been expected to have delivered my inaugural lecture much earlier than now. Accordingly, but due largely to circumstances beyond my control, today's lecture bears closer resemblance to what can best be described as an "exeugural" rather than an inaugural lecture.

Indeed, I must confess that some time in the 1990s, I had been invited to deliver an inaugural lecture, albeit not by this university but by an institution where fate had dispatched me to perform some yeoman service. However, my dear friend and colleague, Jelili Omotola had counseled then that it would have been most inopportune and untoward if not, in fact, an act of apostasy to accede to that request since I was merely a bird of passage in that institution, more so as the privilege of delivering my inaugural lecture is best reserved for my primary place of abode and vocation.

As it turned out, upon my return to the University of Lagos, I was reverted to my previous position of Senior Lecturer for nearly a year, a situation which effectively put off any thoughts at that time of paying my academic debt to this university. However, no sooner had I fulfilled all righteousness in order to assume a Chair in the acclaimed university of first choice and the nation's pride, was I again summoned to return to Macedonia, this time, in the capacity of chief executive of the selfsame institution of my previous sojourn. Again, this foreclosed the possibility of delivering my inaugural lecture until the expiration of my tenure.

It would seem that the wheel has finally turned full circle and, today is, therefore, the day which the Good Lord Himself had appointed and, for this, I am exceedingly grateful to the Almighty for enabling me to live till today and be able to finally



discharge my obligation to academe. I must here and now express my sincere gratitude to your good self, Mr. Vice-Chancellor, for reminding me of the necessity to discharge my obligation to this university by rendering account of my stewardship before exiting this highly acclaimed citadel of learning.

Mr. Vice-Chancellor, Sir, as a young secondary school student, I had actually entertained thoughts of one day becoming an engineer. In my school, anyone not opportune to be in the sciences was, in my days, considered a failure, misfit and an object of ridicule and derision. In fact, so consumed was I by this attitude that I had gone into Sixth Form offering the almighty Maths, Add. Maths and Physics, before Rod Marriot, then a US Peace Corps teacher in the school worked exceedingly hard and finally succeeded in persuading me to switch to History, English Literature and Economics. Indeed, in 1967, I had been offered admission to then nation's most prestigious higher educational institution-University of Ibadan-to study for the combined honours degree in English and Drama under the tutelage of that inimitable dramaturg, Wole Soyinka, a man who I greatly admire for both his charisma and gift of the garb. However, destiny ordained otherwise.

Following a most excruciating interview process, I was one of the lucky five among over 200 candidates selected to enjoy a scholarship of the Moscow Institute of International Relations and World Economy, under the aegis of the Nigerian Institute of International Affairs, to study International Law in the defunct USSR. Thus, I had to forfeit my deposit as well as room allocation in Mellamby Hall and, a few days later, I found myself in Moscow among strange people, in a strange environment and confronted by an impossible language, but all the same, retaining a starry-eyed love for exotica. From there, my peregrinations took me to Kiev, Cambridge, Massachusetts and ultimately, Toronto, Canada and, today, here I am, by the grace of God, a professor standing before this august assembly, charged with the unenviable task of acquainting you

with my forays into that uncanny area of law, known as International Law.

Now, International Law is a very wide and somewhat recondite discipline. My area of specialty in the subject is the Law of Treaties, a subject which had formed the focus of both my first Master's thesis and, ultimately, my doctoral dissertation. Indeed I was fortunate to have been privileged to be tutored by world acclaimed authorities on both sides of the Atlantic, first, by Academician Igor Ivanovich Lukashuk, a one-time member of the UN International Law Commission and late Professor Richard Reeve Baxter, President of the American Society of International Law, Editor-in-Chief of the Journal and Judge of the International Court of Justice. It is to these great jurists, Mr. Vice-Chancellor, that I owe my grounding in International Law. In this presentation, I intend to start by situating International Law within the rubric of the international legal order before interrogating the interplay of International Law and Municipal Law. Then, I shall delve into the question of the location of treaties within the hierarchy of sources, before assessing Nigeria's score card in the making and application of International Law generally. Finally, the lecture would highlight the presenter's modest contributions in the realm of treaty law and practice, and suggest much-needed areas of reform as well as recommendations and suggestions in relation to Nigeria's attitudes towards the making and practice of contemporary International Law generally.

## THE FUNCTION OF LAW IN THE INTERNATIONAL COMMUNITY

### The Meaning of Law

Law has, undoubtedly, exerted considerable influence on the shaping of the human destiny. Indeed it is no exaggeration to aver that the evolution of law has been a critical moment in the human experience. Without it, it is practically impossible to



contemplate human society or, as Roberto Unger once put it, law is the glue that holds society together.<sup>1</sup> Yet, it is somewhat paradoxical that a discipline with such an overarching role in human affairs has been bereft of a universally acceptable definition. Almost since the dawn of time, legal philosophers have been seized with the unenviable task of disputation concerning not only the meaning of meaning but, more significantly, the meaning of law as well as its role in ordering a society.

However, the controversy on the word "law" itself is not just about semantics but, very often, disguises attitudinal and ideological differences among the different proponents.<sup>2</sup> More often than not, the nuances brought into the discussion reflect each jurist's "inarticulate major premises", to borrow Oliver Wendell Holmes' memorable phrase. The difficulty in separating the insight of a jurist on law from the actuality of law is one of the enduring problems in thinking about law. In fact, this constitutes one of the defining moments of the schools of jurisprudence.

Broadly speaking, however, law connotes rules aimed at regulating human conduct or, as Lon Fuller had put it, it is "the enterprise of subjecting human conduct to the governance of rules."<sup>3</sup> These rules are inherently normative and are secured by public sanctions and ready to be inflicted on guilty parties in case of breach. Furthermore, lawyers' law, unlike those of our colleagues in the physical or natural sciences, is more prescriptive than descriptive. In other words, it consists of "ought" propositions backed by force of sanctions and does not consist of verifiable statements describing objective reality. Accordingly, even if law can be considered a science, it belongs to the social sciences with its laboratories being

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<sup>1</sup> R.M. UNGER, LAW IN MODERN SOCIETY 47 (1976).

<sup>2</sup> G. Williams, International Law and the Controversy Surrounding the Word "Law", 22 BYIL 146.

<sup>3</sup> L.L. FULLER, THE MORALITY OF LAW 53 (1964).

society itself rather than man-made reconstruction of nature in the form of chemicals, test tubes or specimens with which researchers are wont to establish the validity of verifiable statements describing objective reality. Its normative and prescriptive character obviates accents of truth or falsehood regarding human behaviour and instead emphasizes evaluations of right and wrong conduct to be met with reward or punishment, as the case may be.

When we speak of law, therefore, we have in mind commands issuing from a determinate authority, elevated above the addressees of such commands who, in turn, exhibit a habit of obedience to such commands because of fear or indeed certainty of punishment in case of disobedience. This is what is known in jurisprudence as the Austinian or imperative conception of law, otherwise called the trinity of sovereign, command and sanction.

This picture of law is admittedly somewhat primitive and embodies well-known limitations. For example, it does not make a distinction between the command of a customer to a teller in the bank to withdraw a sum of money from his account, or that of an armed robber ordering a vehicle owner to surrender his car at the risk of having his brains blown out; the difference between both orders being that the first is a perfectly authorized and lawful act while the other is, quite clearly, bereft of legality or legitimacy. Thus, there was a felt need for a means of distinguishing between lawful and unlawful orders in order to ensure lawfulness and propriety. Aside from this, law does not consist exclusively of orders, as it can also empower or permit people to act in furtherance of their interests or alter their circumstances, as the case may be. It is in light of this that a better understanding of law was called for and indeed deemed inevitable. These lapses came to be largely remedied by the analytical positivists such as H.L.A. Hart and the king of them all, the Austrian-American jurist,



Hans Kelsen, who propounded views of law as a model of rules uniting the so-called primary and secondary rules<sup>4</sup> or an elaborate scheme of hierarchically structured norms, respectively.

Accordingly, whereas primary rules merely prohibit certain conduct, secondary rules enable application of new rules which emerge to fill existing lacunae and supplement the law generally. Thus, law can be perceived as a union of primary and secondary rules, such that it becomes possible to recognize new rules, change existing rules and adjudicate cases of violation of the selfsame rules. On the other hand, law can be seen as exhaustive, gapless, hierarchically structured, logically deducible norms located in an inverted pyramid within which an anterior and higher norm creates, authorizes and legitimizes a posterior and lower norm and on and on until a super norm is reached which does not depend on another norm for its creation, authority or validity. This is what Kelsen denoted the *grundnorm*.<sup>5</sup> However, for this complex structure of norms to be operative and remain valid, its efficacy is a pre-condition. Accordingly, whereas validity is a function of imputation, efficacy is a matter of causation. Thus, validity is a *conditio per quam* while efficacy is a *conditio sine qua non*. What this means is that validity is a necessary but insufficient condition for the existence of a legal order, while efficacy is a pre-condition or condition without which it is impossible to envisage an operative legal order. A thorough grasp of efficacy, therefore, makes it possible to properly situate succession of legal orders if and when a revolution occurs or the State is faced with a situation of rebellion or usurpation of power and authority by insurgents.

Furthermore, there exists within the legal order a dialectical relationship between acts and norms, such that one can order

<sup>4</sup> H.L.A. HART, CONCEPT OF LAW (1961) *passim*.

<sup>5</sup> H. KELSEN, GENERAL THEORY OF LAW AND STATE (1945) *passim*; *id.*, PURE THEORY OF LAW 193-276 (1945).

the other depending on their location within the pyramid. On one hand, an act can create a binding norm if it is premised on a higher norm while the newly created norm could become an act for the creation of yet another norm in a process that links all the norms within a legal order to the primary or basic norm which does not depend on any other norm for its validity. Thus, *stufentheorie* or concretization of norms enables individual acts to be traced to higher norms and *vice-versa* right up to the highest or basic norm within a particular legal order.<sup>6</sup>

Fanciful as the analytical construct might be, when stripped of both its ontological and heuristic attraction, it merely complicates the understanding of law by the ordinary person who tends to see law merely as whatever the law-maker pronounces, the police and judges enforce and that which ensures order and stability in the society.

Now, jurisprudence is not altogether concerned with popular myths and attitudes, as such, but extrapolations, rationalizations and expositions by the cognoscenti who, in their self-proclaimed desire to roll back the frontiers of ignorance in respect of their discipline, more often than not, only succeed in achieving the very opposite! Yet, to the extent that theory attempts to rationalize apparently disjointed facts, to that extent is it necessary to establish a nexus between theory and practice. For, theory that is disconnected with reality is apt to be arid while practice not grounded in theory would tend to be casuistic and superficial. With that as a background, we may now proceed to unravel the intrinsic qualities of International Law.

<sup>6</sup> Cf. A. Oyeboade, Treaties and the Legal Order in *id.* INTERNATIONAL LAW AND POLITICS: An African Perspective 71 *et seq.* (2003).



## THE NATURE OF INTERNATIONAL LAW

The question that is usually posed by cynics, skeptics and ignoramuses alike whenever the subject of International Law is raised is, "Is International Law really law?" This stems from an overly Austinian or imperative notion of law as an amalgam of sovereign, command and sanction, which suggests that since there is no identifiable sovereign in the international system, it would be preposterous to contemplate therein any command or sanction. Indeed, Austin had himself consigned International Law to the realm of positive morality.

It needs be admitted immediately that unlike laws of a State, International Law lacks policemen or prisons out to ensure compliance with its dictates. Whereas the domestic legal order is vertical in nature and towers above individuals, the structure of the international legal order is structurally horizontal and possesses no supranational entity that can compel its subjects-sovereign equals-to comply with its dictates. Unlike in the domestic sphere where the source of all laws is traceable to a definite law-maker, and whose agents monopolize the coercive apparatus of the state, the situation in the foreign domain is somewhat more diffuse and consensual such that obedience to the dictates of International Law is attained more by choice and sense of propriety than fear of punishment.<sup>7</sup> Nevertheless, this does not imply absence of sanction in International Law but compliance is a matter of enlightened self-interest in order not to invite reprisal or retorsion by other States. Aside from that, the sense of law consciousness and the desire to be thought of as a law-abiding member of the international community is seriously cultivated by many States that have a stake in international lawfulness and global well-being. To some, that can be cold comfort but to diplomats and formulators of a country's foreign policy, adherence to the

<sup>7</sup>For more on this, see C. Parry, *The Function of Law in the International Community* in *MANUAL OF INTERNATIONAL LAW 1 et seq.* (M. Sorensen, ed., 1968).

norms of International Law is a most serious matter. In fact, international relations are, more often than not, conducted on the basis of legality and this is perfectly understood by all parties concerned. Compliance with International Law has its clear benefits while default could prove very costly indeed, depending on the international nuisance value of a delinquent State.

Thus, if a State is hell-bent on flouting International Law, there is, perhaps, nothing anyone can do about that. However, there is a wide range of choices available to interested parties, especially permanent members of the UN Security Council, which can be exercised against breakers of International Law. If resolutions excoriating such acts of defiance against the will of the international community would not suffice, then the offender could be visited upon with different forms of sanction, diplomatic, economic, trade, postal, telegraphic embargo, etc. And, if all else fails, the possibility exists for military action, such as naval blockade, imposition of a "no-fly" zone and outright military intervention. Any country that has endured the effects of clampdown of a ***cordon sanitaire*** or banishment to the unwholesome penitentiary of an international pariah, would cherish the benefits of full-fledged membership of the international community. Accordingly, in the final analysis, International Law is not, as conceived in many quarters, a toothless bull-dog, but a worthwhile sentinel against flagrant misbehaviour and a blunt refusal to abide by well-established norms of international intercourse.

Accordingly, the rhetorical question of whether International Law is law is meaningful, perhaps, only in lecture and seminar rooms for it is simply impossible to imagine a world without International Law. From its previous pre-occupation with matters of war and peace, International Law has steadily progressed to practically everything that makes life worth living in the contemporary world-from the food we eat and drugs we ingest, the news we listen to on the radio or watch on television, from travel to other countries and posting and



receipt of letters abroad, import and export of goods and commodities, surfing or browsing on the internet and even breathing unpolluted air. In fact, if International Law had not existed, Man would inevitably have invented something else that would guarantee the existence of the world as we know it. In our contemporary world of thermo-nuclear power and inter-planetary travel, International Law has been the main bulwark against arbitrariness and an instrumentality for maintaining international peace and security. The vast stockpile of nuclear weapons and other weapons of mass destruction in the arsenals of the Super Powers is enough to deter international delinquents and ensure the viability of International Law.

Similarly, the frightening mass poverty and want ravaging many areas of the so-called developing countries, abysmal ignorance and widespread hunger, homelessness and disease coupled with drought, desertification, gully erosion, earthquakes, climate change and other vagaries of nature all requiring international action and collaboration underscore the necessity for a legal framework which International Law offers. Harnessing world resources for the benefit of humanity and ensuring transfer of technology from nations that know to those that do not are just a few examples of the challenges confronting the international community and the resolution of which International Law, undoubtedly, can help achieve.

It is, therefore, self-evident that International Law is generally obeyed because the human destiny demands no less. Our common humanity warrants obedience to the rules that shape and hold our world together. The relatively few instances of breach which usually hit the headlines are not enough to disparage this important law. Aside from the fact that one cannot violate what does not exist, it is sheer sophistry, for instance, to aver that criminal law does not exist merely on account of the incidence of rape or murder in a society. On the contrary, without law, International Law inclusive, it becomes practically impossible to set benchmarks for human conduct and apportion blame in case of infraction. Indeed selective

enforcement is not a monopoly of International Law since no society has yet recorded 100 percent of arrest, trial and imprisonment of criminals. So, even if International Law is, relatively speaking, a weak system in comparison with its domestic counterpart, that is not enough to warrant its consignment to limbo. The relevance and inevitability of International Law in the scheme of things is, therefore, self-evident.

Mr. Vice-Chancellor, Sir, let us now proceed to interrogate the interplay of International Law and municipal or domestic law in the affairs of nations.

## **THE ARCHITECTURE OF INTERNATIONAL LAW AND MUNICIPAL LAW**

### **International Law Norms and Municipal Law**

The relationship between International Law and Municipal Law is usually approached from two broad perspectives--dualism and monism. However, there are some postures in between the two--harmonization and co-ordination. Now, the very first doctoral dissertation on the topic was authored by Hendrich Triepel in 1899. According to him, International Law and Municipal Law operate along parallel lines, having different subjects, different subject-matters or objects of regulation and different scopes or spheres of operation. Thus conceived, International Law and Municipal Law do not intersect at all and the norms of one legal order never interact with the other except by adoption or incorporation.

In reality, however, the norms of both legal orders do intersect and sometimes conflict, hence the attempt by some other legal theorists to postulate ideas of their harmonization for the good of both systems. Sir Hersch Lauterpacht was a leading proponent of this approach, using human rights as the bridgehead for the interaction of both legal orders. In the view of Sir Gerald Fitzmaurice too, both systems need to be co-ordinated in such a way that each functions within its sphere



without obviating the possibility for joint application if and when the need arises. However, how to accommodate the two systems of law has continued to tax the ingenuity of scholars. Pursuant to this, hardly has any jurist been more creative and insightful than Hans Kelsen to whose theory we again have to turn.

### KELSEN'S GRAND MYSTERY

From a purely theoretical perspective, Kelsen, the father of the Pure Theory of Law, conceived of a grand theory which encompassed both International Law and Municipal Law in a logically consistent manner. As stated earlier, Kelsen contemplated law as a welter of higher and lower norms creating, authorizing or legitimating one another, depending on their location within the hierarchy of norms. Besides, as explained previously, an act which creates a norm can, in turn, be seen as a norm if it depends for its existence on another norm. Accordingly, in a bid to avoid a *regressus ad infinitum*, Kelsen anchors the International Law principle of *pacta sunt servanda* on what he described as the constitution in the legal-logical or transcendental-logical sense. In other words, the constitution of a country is binding only because an original constitution postulated by the elders some time in antiquity had prescribed that promises freely made are deemed binding on all. This now becomes the norm of all norms or the *grundnorm*, which does not depend on any other norm for either its existence or validity. In effect, this *grundnorm* is a meta-legal, extra-legal, *a priori* juristic pre-supposition which, strictly speaking, does not form part of the system of positive laws but breathes life into it in a manner not unlike the Biblical narration of creation where God animates the work of clay depicted as Man. Thus, the grand mystery of Kelsen, as Karl Olivecrona once described it, helped to resolve any conflict arising between International Law and Municipal Law in favour of the former.

Thus, international norms are higher in ranking than norms in the municipal sphere since the constitution, which is the highest municipal norm, depends for its validity on International Law. Furthermore, it is trite law that the inadequacies of municipal law, including the constitution are of no avail in the face of an international obligation. So, beyond the constitution, we have to inquire further as to the basis of International Law. However, this can jolly well become an endless enquiry.

Although primacy could, theoretically, be accorded either legal order, the atrocities of Nazi Germany effectively nullified any such pretensions towards according primacy to Municipal Law in modern times. Indeed, quite a number of countries today have constitutions which unabashedly proclaim the primacy of International Law over the constitutions themselves as well as their countries' legal orders. Accordingly, any attempt to disparage International Law in favour of Municipal Law is today apt to be met with disdain and derision. The world is too far steeped in the cogency of International Law to entertain the antics of any doubting Thomases regarding its primacy over Municipal Law. The conventional wisdom accords primacy to International Law vis-à-vis Municipal Law, and it is too late in the day to think contrary-wise.

In view of the foregoing, it seems, therefore, apposite to consider the overarching determinants of law in the ordering of the international system.

### NORMATIVE VALUES IN A GLOBALIZED WORLD

The survival of the world hinges on international peace and security, without which peaceful co-existence, good neighbourliness and cooperation between and among States cannot be contemplated. There is general awareness among members of the international community that peoples of the world share a common destiny and are joint stakeholders in the survival of the planet. The image of the Earth from space



as a spherical ball dramatizes the inter-connectedness, inter-dependence, and inter-relationship of the various peoples and nations that inhabit the world, irrespective of differences of colour, gender or social circumstance.

The concept of globalization which has since become part of the lexicon of contemporary discourse has, arguably, not done justice to the division and disparity that continue to characterize the world in spite of the lip-service paid to the so-called global village. The reality of the situation is that, as our people say, a well-fed dog cannot for long be a friend to a hungry one. The relation between the rich, industrialized North and the famished, niggardly countries of the South reminds one of a dinner between cats and mice.

Yet, there must be a basis for intermediation and interplay of forces and interests in an interdependent world. It is precisely this function that International Law is called upon to discharge. Whereas the formulation of rules that govern the world was for centuries a product of the will and interests of the most powerful States, it is only in the past sixty years or so that the former colonial territories have been able to contribute in a meaningful way to the progressive development and codification of International Law.

Paradoxically, one of the oldest treaties in recorded history was concluded between an African potentate and his Middle Eastern counterpart more than a thousand years before Christ was born. Yet, the thinking prevalent in the West for a long time was that Africa contributed almost nothing to world history so much so that some western historians used to aver that the history of Africa was merely a chronicle of the exploits of the white man in Africa!

In spite of the atrocities of the transatlantic slave trade and the slicing out of the entire African continent like an apple-pie to be shared among the marauder countries of Europe and the continuing exploitation and oppression of the African peoples

and their natural resources at the hands of their erstwhile **conquistadores**, it is quite remarkable that the States of Africa and their co-sufferers in Asia and Latin America have been able to impact on the evolution and reform of International Law such that today, it is simply inconceivable to force the genie back into the bottle. Contemporary International Law is slowly but surely adorning the toga of the plurality and diversity of the modern world. Notwithstanding the fact that the total de-europeanization of International Law is yet to be achieved, it is heart-warming to observe that things would never be the same again.

The values of the world necessarily have to reflect the various strands that form the tapestry of human civilization. The classification of nations into "civilized" and "uncivilized" has now, mercifully been consigned to limbo, as International Law strives, more and more, to capture and reflect the existing realities of the world. The bonding and sense of social solidarity existing in the contemporary world irrespective of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status constitute a basis for optimism concerning the human destiny. The values which undergird our common existence are increasingly percolating international society and crystallizing into the norms which order the world.

## THE EXPANDING FRONTIERS OF INTERNATIONAL LAW

The pre-occupation of International Law with matters of war and peace in the classical period has since yielded to cooperation in different spheres between and among States and international institutions in the present era. While maintenance of international peace and security continues to be a matter of considerable importance in today's world, that is now seen as a condition precedent to the enhancement of collaboration among the various members of the international community.



In the years preceding the 1960's, the international community was saddled with the task of speeding up the collapse of the world colonial system and consolidation of the sovereignty of the newly-independent countries. It was at this period that the full weight of the right of self-determination was felt in the interaction of the various nations and peoples of the new States with the rest of the world. Another important issue during the period concerned the need to combat racism and its blight on the human conscience as well as its deleterious consequences on equality, friendship and mutual respect among the family of nations.

Meanwhile, the contradictions of the Cold War were such as to compel the big Powers to forge a ***modus vivendi*** aimed at peaceful co-existence between countries with opposed socio-economic and political systems. At a period of stockpile of thermo-nuclear weapons by certain Powers which were capable of destroying the world many times over, Mutually Assured Destruction (MAD), that is to say, a mutual balance of terror became the elixir for containing the insatiable appetite of the contending Powers for superiority in number of weapons of mass destruction and development of a first strike capability. The arms race was engaged in with an understanding among the opposing parties to keep these monstrous weapons strictly within the family by clamping a treaty of non-proliferation on the rest of the world. While there was no direct confrontation between the super Powers during the Cold War, there were numerous wars by proxy which, if and when not instigated by these Powers, became useful means for testing the potency of new weapons from their military-industrial complexes.

The end of the Cold War symbolized by the bringing down of the Berlin Wall in 1989 and the collapse of the socialist regimes in Eastern Europe in 1991, heralded a brave new world of globalization supposedly uniting the various peoples of the planet without distinction as to race, socio-economic circumstance, Gross Domestic Product or level of education or average lifespan. However, it did not take long for the pretence

of a common global destiny to unravel, as far-sighted observers discerned numerous ghettos in the new-fangled global village. The transformation of imperialism to globalization portended a mere change in nomenclature while the skewed terms of trade and lopsided division of labour endured to the detriment of the poor countries of the so-called Third World. It became clear that a dog called by another name remained a dog, as the situation of the developing world within the global political economy continued to go from bad to worse.

While International Law now began to reflect the aims and aspirations of the developing countries in such areas as the law of treaties, law of the sea, state succession, economic rights and duties of States, women and child rights and state responsibility, the focus of the subject has increasingly shifted to population explosion and immigration, housing, sustainable development, climate change, transfer of technology and intellectual property.

One thing that must be underscored in the changing horizons of International Law is the inevitability of ensuring that its progressive development and codification take into account the diversity of legal culture in the world and specificity of the historical experience of the various peoples and States that comprise the family of nations. The world has decidedly moved away from the classification of nations into "civilized" and "barbarian" formations to an acknowledgement of the heterogeneity of the international community, be it in relation to fashioning the rules that order international intercourse, conduct of the Olympics or organizing the World Cup. Accordingly, a cosmopolitan view of the relations between peoples and nations in the contemporary world is mandatory if we are to do away with the infelicities of a Eurocentric and white race supremacist attitudes that had characterized the applicable International Law of a bygone era.



## TREATIES IN THE HIERARCHY OF SOURCES OF INTERNATIONAL LAW

### The Nature of Treaties

Treaties are basically agreements between States in written form, governed by International Law and regulating relations between parties to them. Thus, treaties can be considered as "contracts writ large" since they are essentially bargains or accords of wills of the parties or what the municipal lawyers would term a meeting of the minds or **consensus ad idem**.

While some jurists, especially of French extraction, tend to distinguish between law-making treaties (**traités-lois**) and treaty contracts (**traités-contrats**), to majority of scholars, this is really a distinction without a difference, in that, juristically speaking, both types of treaties evince and are of equal normative value, as they are binding in character with respect to the parties thereto. The fact that the first type prescribes a legal regime for relations between the parties and is reinforced by observance while the other is extinguished by performance, is without any moment in terms of their inherent nature as binding obligations between the parties.

The essence of treaties as an accord of the parties' wills is reflected in the **ipso jure** resultant restriction on the freedom of action of the parties in accordance with the auto-limitation of sovereignty theory. Thus, there is no compulsion on any State to enter into a treaty but once it does, its freedom of action is, to that extent, limited and it is **ipso facto** obliged to implement the provisions of the treaty in good faith under the **pacta sunt servanda** principle. Accordingly, parties are required to live by bargains freely struck between them in order to maintain certainty and predictability in the affairs of States. The principle of **pacta sunt servanda** has been invested with the character of **jus cogens**, that is to say, a peremptory norm of general International Law from which no derogation is permitted and which can be modified only by a norm of similar character. In

effect, the sanctity of treaties enhances the effectiveness of International Law generally.

However, it should also be noted that the concept of reservations in the law of treaties exists in order to enable parties modify the provisions of a multilateral treaty applicable to them **vis-à-vis** other parties, as an incident of sovereignty. This enables as many States as possible to become parties of multilateral treaties which otherwise they might not have felt compelled to adhere to.

Finally, it should be emphasized that a treaty binds only parties to it in accordance with the maxim, **Pacta tertiis, nec nocent, nec prosunt**. This is not altogether dissimilar to the concept of privity of contract in municipal law (**Res inter alios acta**), but it should be stated that a treaty could bind non-parties in matters dealing with the maintenance of international peace and security or it could confer benefits on non-parties.

As far as the typology of treaties goes, it should be stated that treaties may be classified by the number of parties to them. Accordingly, they may be bilateral or multilateral. Also, treaties may be classified according to their subject-matter such as trade, defence, friendship, commerce and navigation, technical or cultural cooperation, etc. Furthermore, the term "treaty" is a generic one which encompasses different nomenclature of agreements such as charters, communiqués, declarations, pacts, protocols, proclamations, **process verbal**, concordats, etc. However, irrespective of designation, an agreement qualifies to be described as a treaty so long as it is between States **inter se** or between States and international institutions, in written form and governed by International Law. Accordingly, other types of agreements such as those between governments and international companies--international contracts--fall under particular systems of law, not International Law and, therefore do not qualify to be described as treaties. The lack of parity in the status of parties to such



engagements is also an important consideration in distinguishing treaties from international contracts.

## THE PRE-EMINENCE OF TREATIES IN THE SOURCES OF INTERNATIONAL LAW

Admittedly there is no explicit enumeration of sources of International Law. However, the sources of International Law can be extrapolated from the Statute of the International Court of Justice (ICJ) which is the highest judicial organ of the UN. Art. 38 of the Statute declares as follows:

1. The Court, whose function 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 recognized by the contesting states;
  - b. international custom, as evidence of a general practice accepted as law;
  - c. the general principles of law recognized by civilized nations;
  - d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

Since the Court is tasked with the resolution of disputes in accordance with International Law, it is quite logical to approximate the sources it consults in the performance of this function with sources of International Law. Accordingly, there is no gainsaying the fact that, going by the order of listing of the sources, treaties enjoy a priority over other sources of International Law. Furthermore, the Preamble to the Charter of the UN speaks of "treaties and other sources of international law" which, undoubtedly accords pride of place to treaties in the scheme of things. The sheer number of treaties concluded

by States and collated on an annual basis in the UN Treaty Series leaves one with no other conclusion than that treaties constitute the main instrument of regulating the affairs of States in the contemporary world. Another justification for the pre-eminence of treaties lies in their precision and definitive regulation of international intercourse, in comparison with other sources which require higher standards of proof before they can be deemed applicable. Accordingly, it is virtually impossible to appreciate the cogency of International Law without a thorough grasp of the law of treaties.

While under classical International Law, custom enjoyed pride of place in terms of sources of International Law, modern International Law justifiably adorns treaties with pre-eminence in the regulation of relations between States. Unlike custom which was suffused with judaeo-christian, western mores, treaties reflect the wills and consent of States of different socio-ethical values that feel inclined to enter into such engagements with their eyes wide open and without accepting to play any subordinate or inferior role vis-à-vis other States. The fact that no State can be compelled to become party to a treaty affirms the principles of sovereign equality of States, independence and self-determination, which were honoured more in their breach than in their observance during the period of colonial hegemony.

The ubiquity of treaties in contemporary international relations stems from their capability to define rights and duties and other legal issues in a way that leaves none in doubt as to their nature, content and scope. In an increasingly complex environment, there is perhaps no better way of defining the obligations of States to each other than the tested method of treaties. The import of treaties in the scheme of things is underscored by the fact that the constitutions of States usually embody provisions for the way and manner of their application domestically. This is understandable since whereas it is incumbent on States to observe and uphold the norms of International Law, the way and manner of doing so is a matter



left to States; hence the differences among them in approach in relation to implementation of treaties.

Accordingly, it is not unusual for the foreign ministries of States to have departments or units staffed by experts in International Law and charged with the task of advising on treaty matters generally or engaged in drafting treaties as well as forming part of the State's delegations for the negotiation and conclusion of treaties with other parties. This is to ensure adequate and effective representation of the State in this most important of activities of States at the foreign plane.

Mr. Vice-Chancellor, Sir, we can now proceed to the issue of Nigeria's score card in treaty-making and treaty implementation, in particular, and the codification and progressive development of International Law, in general.

## **INTERNATIONAL LAW CHIEFLY AS APPLIED BY NIGERIA**

### **Nigeria within the International Community**

After nearly a century of British colonial hegemony, Nigeria became politically independent on October 1, 1960. It is instructive that on the night before independence, Nigeria's incoming Prime Minister, Abubakar Tafawa Balewa had executed a Memorandum with Viscount Head, the British High Commissioner under which Nigeria had agreed to be bound by all the treaties pertaining to it and concluded by Britain during the colonial period. The implication of the instrument was to formally terminate Britain's responsibility for Nigeria at the foreign plane and to serve notice on the international community concerning the change in Nigeria's international legal status.

The fact that there is no evidence that Balewa inspected the treaties prior to accepting same for and on behalf of Nigeria betray extreme naivety on his part and confirms Nigeria's neo-colonial status, which fact coloured Nigeria's stance in the foreign plane and the country's attitude to the progressive

development and codification of International Law in the immediate post-colonial period. Indeed important multilateral treaties such as the Vienna Convention on Diplomatic Relations, 1961 and the Vienna Convention on Consular Relations, 1963 bore little or no imprint of Nigeria. However, it is worthy of note that Nigeria evinced a positive attitude towards nuclear test ban and disarmament generally by signing relevant treaties thereto.

Despite professing a non-alignment policy in relation to the Cold War, Nigeria frowned against Soviet interest-free loans as well as scholarships and other forms of cultural exchange, thereby earning the characterization by a scholar that the country's foreign policy during the period was "pragmatic, conciliatory, conservative, Africa-centred, friendly to certain powers in the Anglo-American camp, largely indifferent to the Soviet bloc and strongly pro-United Nations..."<sup>8</sup>

Although there was a slight shift towards a more even handed foreign policy during the First Republic, the general thrust of Nigeria's posture in the world was still pro-western, lacklustre and generally timid. Nigeria embarked on negotiating a relationship with the European Economic Community (EEC), a fact reflected in the appointment of Dr Pius Okigbo as Ambassador to the EEC and initialing of an agreement in March, 1965 which was, however, not ratified as a result of military incursion into the political space on January 15, 1966.

Despite the tragedy of the Civil War wrought on the nation by the military, it should be stated that Nigeria had a more assertive foreign policy during the military years. Not only was the relationship with the USSR and other East European countries more solidified, Nigeria contributed more actively to the conclusion of some of the most critical multilateral treaties of the period, most notably the Nuclear Non-Proliferation Treaty, 1968, Vienna Convention on the Law of Treaties,

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<sup>8</sup> C.S. Phillips, Jr., *The Development of Nigerian Foreign Policy* 134 (1964).



1969, Treaty concerning the Exploration and the Use of Outer Space including the Moon and Other Celestial Bodies, 1980.

At the sub-regional level too, the Treaty establishing the Economic Community of West African States (ECOWAS) concluded in Lagos in 1975 marked an important stage in the effort to lay the foundation for economic integration in Africa. It is noteworthy that Nigeria played a leading role in the re-negotiation of the relationship between the African, Caribbean and Pacific (ACP) countries and the EEC in 1973-75, culminated in the Lome Convention I, which constituted the basis for subsequent improvements thereto, heralding a new vista in terms of international economic law pertaining to the relationship between the developing and industrialized worlds. The Second Republic hardly built on the gains of the military interregnum. However, it is significant that it was during the period that the African Charter on Human and People's Rights, 1981 was adopted. Also, the Lagos Plan of Action, 1980 and the African Economic Community Treaty, 1982 were both conceived during the period, while the Lome Convention II was also signed. Besides, it was during the Second Republic that the Convention on International Trade in Endangered Species of Wild Fauna and Flora, 1973, otherwise called the Bush Meat Convention, was placed before the National Assembly for approval. Unfortunately, all action pursuant thereto came to grief as a result of the return of the military to the political space.

The Buhari regime cast a pall on the ECOWAS Protocol on the Free Movement of Persons, Right of Residence and establishment, which Nigeria had ratified in 1986, by continuing with the Shagari policy of expulsion of "illegal aliens," most of whom were nationals of ECOWAS member States, coupled with the border closure of April, 1984 under the guise of preventing trafficking in currency during the change in the colours of the **naira**.

Admittedly, the Buhari regime was able to conclude the quadripartite Extradition Agreement of December 10, 1984 applicable along the West African coast line. Notwithstanding, the regime created tremendous animosity against Nigeria from other members of ECOWAS, which the Babangida junta that overthrew it characteristically exploited by re-opening the borders and generally easing the entry of nationals of the neighbouring countries, albeit right of residence was restricted to only six categories of professionals, that is to say, medical doctors, architects, engineers, surveyors, teachers and bilingual secretaries. Furthermore, the Brown Card Scheme devised in 1984 was ratified by the Babangida regime.

The establishment of the Technical Aid Corps by the Babangida junta in 1987 was aimed at refurbishing Nigeria's "Big Brother" image in Africa and the diaspora. Besides, the constituent instruments of the African Petroleum Producers Alliance were prepared by the regime in a bid to consolidate the status of African oil producers within OPEC.

However, perhaps the most outstanding contribution by Nigeria to the cause of progressive development and codification of International Law during the period under discussion was the UN Convention on the Law of the Sea, 1982 which the Babangida regime ratified in 1986. The provisions relating to the International Seabed Authority were a significant contribution by Nigeria to the new public order of the oceans.

The debit side of the ledger of treaty relations under the Babangida regime was the surreptitious joining of the Organization of Islamic Conference (OIC) and the purportedly indigenous Structural Adjustment Programme (SAP) forced down the throats of Nigerians with the unholy blessing of the International Monetary Fund (IMF).

The Abacha junta, which shoved aside the rickety Shonekan-led interim administration in November, 1993, made minimal



inroad in treaty-making, having effectively been consigned to the fringes of international relations as a rogue regime and pariah by most of the world. Its replacement--the Abdusalam regime--was too consumed by the necessity to effect a rapid transfer of political power to an elected administration that it had little or no time for treaty-making or making an impact on or contribution to the progressive development and codification of International Law.

What passes for the Third Republic is very much a work in progress as far as International Law is concerned. There does not seem to have been any earth-shaking insight in relation to treaty-making or treaty implementation over the past decade or so, as things have followed the normal bureaucratic routine in these matters. Whereas President Obasanjo seemed to have been his own Foreign Minister for most of his tenure, his successors--Yar' Adua and Jonathan--had neither evinced his forceful personality nor left any imprint on the Nigerian state practice with respect to International Law.

Perhaps this is quite understandable since the international system has stabilized somewhat with the sole surviving Super Power generally calling the shots in terms of shaping the norms and rules by which international intercourse is ordered. While issues such as the global war against terrorism, piracy, war crimes, child rights, patents, transfer of technology or global warming offer great opportunity for the developing countries to make notable input in determining the rules governing international relations, the poorer countries must be ready to seize the moment and avail themselves of every chance to contribute to the global discourse instead of waiting for the opportunity to fall onto their laps.

As a prime mover in the scheme of things, Nigeria must be ready and willing to play a leading role in that regard but not until its domestic infelicities have been taken care of, if the country is to be spared cruel jokes within the international community. The level of incompetence and self-doubt which

Nigeria has exhibited domestically does not recommend country highly to assume its rightful place within the international system. Accordingly, the current drift and stasis in most departments of human endeavour would need to be speedily arrested if the potentialities of the country are to be actualized.

However, at this juncture, Mr. Vice-Chancellor, Sir, permit me to spend a few minutes on the process of treaty-making and treaty implementation in Nigeria.

## **THE BUREAUCRACY OF TREATY-MAKING AND THE PROCESS OF TREATY IMPLEMENTATION IN NIGERIA**

### **Legal Counseling in Relation to Treaty-making**

While states are duty bound to implement treaties in good faith, in compliance with the *pacta sunt servanda* maxim, that is as far as International Law goes. It leaves states with the choice of means of implementing their treaties. It is for this reason that state practice evinces a multiplicity of models in relation to both treaty-making and treaty implementation. However, starting with treaty-making, it should be stated that the process can be broken into the following stages:

1. international and/or municipal decision to negotiate an agreement;
2. municipal discussion of the principles which are to guide the negotiators;
3. formulation of the agreement during the (international) negotiations;
4. municipally relevant decision;
5. internationally binding declaration of the municipally relevant decision (However, item no. 5 may sometimes precede no. 4); and,
6. municipal performance of the agreement.

Pursuant thereto, it is necessary to emphasize that the nature of legal counseling in foreign matters adopted by a State, more often than not, impacts somewhat on its treaty-making



process. Accordingly, there is a multiplicity of arrangements of legal counseling, chief among which the following are the more commonly found:

- a. a permanent legal service within the ministry responsible for foreign affairs;
- b. a centralized legal counseling system, usually within the Ministry of Justice;
- c. a case-to-case reference to private legal practitioners or academics.

Upon independence, Nigeria had opted for the second approach, based, according to Dr. T. O. Elias, on the need for uniformity and high quality of legal counseling. Thus, all legal work in respect of government activities was to be handled by the Federal Ministry of Justice, a situation which occasioned considerable red-tape and in-fighting between officials of the Ministry, those of Foreign Affairs, National Planning and others, with respect to the treaty-making process in Nigeria.

## THE LEGAL FRAMEWORK FOR TREATY-MAKING IN NIGERIA

Admittedly there have been twists and turns in Nigerian treaty-making, very often arising from the personality, power and influence of heads of the various ministries mentioned. However, it is worthy of note that, after a hiatus in treaty relations when it appeared as if the right hand did not know what the left hand was doing in terms of treaty-making, since there was no clear prescription on the matter, more so as it was most difficult to enunciate the legal position regarding treaty-making in Nigeria, the country has finally arrived at a point when it has been able to stipulate the modalities for concluding treaties. Accordingly, the Treaties (Making Procedure, Etc.) Act of 1993 specifies guidelines for concluding Nigeria's treaties under, which treaties have now been classified into three categories, viz.,

- (a) law-making treaties, being agreements constituting rules which govern inter-state

relations and co-operation in any area of human endeavour and which have the effect of altering or modifying existing legislation or which affects the legislative powers of the National Assembly;

- (b) agreements which impose financial, political and social obligations on Nigeria or which are of scientific or technological import;
- (c) agreements which deal with mutual exchange of cultural and educational facilities.

Furthermore, the legislation defines treaties or agreements as 'instruments whereby an obligation under international law is undertaken between the Federation and any other country and includes "conventions", "Act", "general acts", "protocols", "agreements", and "*modi vivendi*", whether they are bilateral or multi-lateral in nature.' Presumably, these would include agreements with international organizations. In addition, it should be pointed out that the Nigerian Institute of International Affairs, which had previously laid claim to being the depositary of Nigeria's treaties, has now been compelled to yield its place to the Federal Ministry of Justice as stipulated under the legislation. In addition, it is noteworthy that the law now provides that "the Federal Ministry of Justice shall, **to the exclusion of any other Ministry or authority**, have power to give notification on the conclusion of any new treaty to the Federal Government Printer for purposes of publication."

Accordingly, the trend towards centralization of legal counseling in the treaty-making process has now been complete all but complete, having received legal imprimatur, compared with the decentralized form of treaty-making which hitherto had characterized Nigerian state practice regarding treaty-making generally. This is secured via the usual practice of dispatching lawyers from the Federal Ministry of Justice to other ministries, departments and agencies as legal advisers.



Mr. Vice-Chancellor, it now seems apposite to dilate a little on the treaty-making process in Nigeria.

## THE TREATY-MAKING PROCESS IN NIGERIA

In Nigeria, the prevalent practice is for each ministry, if not indeed, department and agency to, as much as practicable, be responsible for the foreign dimensions of its activities, especially the cultivation and development of ties with corresponding ministries of other states and relevant international organizations. Accordingly, any federal ministry, department or agency can initiate action leading ultimately to the negotiation and conclusion of a treaty between Nigeria and another party, in pursuance of matters falling within its competence.

This is usually commenced by way of presentation by the ministry concerned of a memorandum containing proposals in respect of the intended treaty to the Federal Executive Council for the purpose of securing Federal Government approval, in principle, of the proposed treaty. Once the approval is granted, officials duly designated members of the negotiating team are then issued with instruments of full powers to enable them commence negotiation with representatives of the other party. In the event that the proposed treaty has a subject-matter cutting across the responsibilities of a number of ministries, an inter-ministerial negotiating team is usually constituted under the leadership of the representative of the ministry that took the initiative of seeking Federal Government approval for the negotiations.

Upon completion of the negotiations, the text of the treaty is usually initialed or signed *ad referendum* and forwarded to the respective minister or the President, as the case may be, for full signature at a later date. However, in case the treaty is a multilateral one and which, *ipso facto*, is to be concluded by a diplomatic conference specifically convened for that purpose, the members of the country's official delegation to

the conference are usually empowered to perform all actions thereto, such as adoption of the text and signature of the treaty.

To sum up, treaty-making in Nigeria is an open-ended, decentralized activity which permits each and every ministry to take charge of treaty-making in respect of its schedule of duties, despite the potential for conflict and dysfunction embedded in such a hydra-headed approach. However, before any conclusions can be drawn on Nigeria's practice in respect of treaties, it is necessary to consider the question of treaty implementation.

## TREATY IMPLEMENTATION IN NIGERIA

If by treaty implementation, is meant the execution or fulfillment of obligations assumed by a state under a treaty, it follows that implementation of a treaty can only occur, *stricto sensu*, after the treaty had entered into force at the international plane. This is, of course, without prejudice to the obligation of the parties not to defeat the object or purpose of the treaty prior to its entry into force.

It needs also be pointed out that treaty implementation in a federation is very often beclouded by problems arising from the division of powers between the federal government and constituent units. Unlike a unitary state where the government which concludes the treaty is also the one which sees to its implementation, in a federation, performance of treaties frequently requires co-operation between both levels of government, federal and state, despite the well-established prerogative of the federal government in foreign relations generally.

Division of powers in a federation varies from federation to federation. In some federations, legislative power over specific items may be conferred on the federal government, leaving the residue in the hands of the constituent units. Alternatively, specific items are assigned to the constituent units, with the residuary power vested in the federal government. Finally, it is



quite possible to have a combination of both approaches such that items falling within the competence of the two levels are separately enumerated, with the understanding that whatever is omitted can be legitimately acted upon by the federal government in consonance with the doctrine of covering the field.

However, with regard to the issue of division of powers and treaty implementation, federal constitutions can be classified into two main groups. The first group comprises federations under whose constitutions the federal legislature is empowered to enact laws for the implementation of treaties or which provide that, in certain circumstances, a treaty once made, could have the force of law throughout the federation even if, in the absence of such a treaty, the subject-matter of the treaty would normally have been reserved for the constituent units.

The second category includes those federations whose constitutions do not provide for treaties to automatically become the law of the land or allow the federal legislature to alter the distribution of powers enshrined in the constitution by way of treaty implementation.

The constitutions of the United States, Australia, India and Malaysia are considered as belonging to the first group while those of Canada and the Federal Republic of Germany lean more toward the second.

Nigeria's constitutional arrangement and treaty practice combine attributes of both groups. Thus, under Nigeria's constitutional law and practice, the treaty power has, to all intents and purposes, signified power to implement treaties since it had never been considered necessary to have explicit constitutional provisions regarding treaty-making. However, it should be remembered that if treaty-making had generally been an area conceded to the federal government under the various constitutional arrangements which had operated in the

country, treaty implementation is an issue in which some role had been granted to the constituent units, the only point of contention being, perhaps, the extent of their role.

It is remarkable that, although Nigeria has been spared the cantankerous experience of some other federations which had witnessed political conflict and misgivings over the exercise of the treaty power by the federal government, Nigeria apprehended the wisdom of accommodating its constituent units in as delicate an issue as treaty implementation. Unlike in Canada, for example, where Quebecois nationalists have found a ready outlet in the foreign arena to ventilate their grievance against Anglophone Canada, local protagonists of "statism" are yet to discover the foreign arena as a forum to propagate their "anti-Abuja" sentiments.

Accordingly, Nigeria's various constitutions have embodied provisions such as is contained in s. 12 of the 1999 Constitution on treaty implementation thus:

- (1) 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.
- (2) The National Assembly may make laws for the Federation or any part thereof with respect to matters not included in the Exclusive Legislative List for the purpose of implementing a treaty.
- (3) A bill for an Act of the National Assembly passed pursuant to the provisions of subsection (2) of this section shall not be presented to the President for assent, and shall not be enacted unless it is ratified by a majority of all the Houses of Assembly in the Federation.

However, in line with the Treaties (Making Procedure, Etc) Act earlier referred to, not every treaty concluded by Nigeria



warrants implementation by way of enabling legislation. Only those which, one way or another, affect existing legislation or the legislative powers of the National Assembly require implementation by way of legislative enactment. Accordingly, treaties which impose financial, political and social costs or which are strictly of scientific or technological import require legislation for their implementation, while mutual exchange or cultural agreements generally do not necessarily have to be implemented via legislation.

Today, there is a growing tendency among countries to adopt less formal methods of treaty implementation, especially in relation to so-called agreements in simplified form which usually take effect upon signature. While the relevant statute to which reference had just been made really fails to distinguish between treaties and agreements, it is safe to assume that Nigerian state practice would still continue to reserve the term "treaty" for more solemn engagements which, more often than not, are multilateral in form, needing to be laid before the National Assembly for their implementation domestically, as against those that are usually bilateral in nature and envisaging executive rather than legislative action for their implementation.

The loose use in many quarters of the term "ratification" in relation to actions taken pursuant to treaty implementation should not blur the distinction between ratification and legislative approval. Indeed, ratification which is an executive act communicating to other parties of a country's intention to be bound by the treaty usually follows legislative approval by way of an enabling legislation transforming the treaty into domestic law, thereby opening the door for its implementation. Nigeria has had a chequered history as far as its treaty implementation is concerned. While upon independence, Nigeria had acceded to a number of existing multilateral treaties, it, nevertheless, had to enact laws to bring them into force domestically, in consonance with the country's Independence Constitution. These included the Chicago

Convention on International Civil Aviation, 1944, the Berne Copyright Convention, 1952 and the International Convention for the Prevention of Pollution of the Sea by Oil of 1954. As observed earlier, the rather unimaginative acceptance by Nigeria's Prime Minister of all the treaties concluded by Britain in colonial times saddled Nigeria with a considerable amount of treaty obligations for which it now had to take action toward their implementation.

With regard to timing and choice of method of implementation of treaties, it is difficult to establish any discernable pattern. For example, the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 1965 which, by the way, Nigeria was the very first party to ratify, was speedily implemented through the International Centre for the Settlement of Investment Disputes (Enforcement of Awards) Decree No. 49 of 1967. On the other hand, the Convention Relating to the Status of Refugees, 1951 and its Protocol, both of which Nigeria had acceded to in 1967 and 1968, respectively were left unattended for a long time and implemented through administrative action rather than explicit legislative enactment.

Similarly, a treaty as important as the UN Convention on the Elimination of All Forms of Discrimination Against Women of 1979 was signed by Nigeria in April, 1984 with the instruments of ratification deposited with the UN Secretary-General as far back as June 13, 1985, but is yet to be transformed into domestic law by way of an enabling legislation, perhaps on account of the reticence or reluctance of the powers-that-be to place Nigerian women on the correct pedestal as prescribed by International Law. Mercifully, Nigerian children are somewhat luckier in that the Child Rights Act was passed in 2003, pursuant to the UN Convention on the Rights of the Child 1989, even if exigencies of socio-cultural idiosyncracies would seem to have continued to hamstring the full implementation of the Convention.



It is instructive that the 1982 Convention Establishing the West African Examinations Council (W.A.E.C.) provided that member states should, as soon as the Convention entered into force, "enact laws in accordance with their legislative processes incorporating into their respective laws the provisions of [the] Convention." In addition, the Convention declared that "[s]uch laws incorporated...shall, without prejudice to existing laws such as those dealing with forgery, fraud and kindred offences, including offences against malpractices in examinations and relating to awards of certificates and diplomas for examinations conducted by the Council..." However, following Nigeria's ratification of the Convention in 1984, there is no record of enactment of a specific law transforming it into Nigerian law. Rather, what we have is the Miscellaneous Offences Decree No. 20 of 1984 which encompassed a wide spectrum of offences among which are examination malpractices which formed part of the subject-matter of the WAEC Convention.

As far as charters of international organizations are concerned, it should be pointed out that accession to the constituent instruments or charters of international organizations has usually been effected via executive action as against legislation, more so as obligations arising from membership in such organizations are expected to be mostly performed abroad. Accordingly, Nigeria's admission into the United Nations was effected through the simple act of the Prime Minister appending his signature to the UN Charter. Nevertheless, it is worthy of note that serious problems could arise if the charter of an international organization is signed by someone else apart from the President, Minister of Foreign Affairs or the ambassador accredited to the country where the headquarters of the organization is located. In accordance with Nigeria's practice, such a signature would be a signature *ad referendum*. If, subsequently, such signature of the representative fails to secure confirmation or approval by a higher authority or, in fact, the charter of the international organization is at variance with the country's Constitution, it is

doubtful if Nigeria's membership in the organization would be sustained. It would be recalled that the controversy surrounding Nigeria's admission into the Organization of Islamic Countries (O.I.C.) in February, 1986 came about, in part, as a result of the feeling in certain quarters that the charter of the body was incompatible with the relevant provisions of the country's Constitution declaring the secularity of the Nigerian state.

With regard to treaties concluded under the auspices of international organizations, implementation of such treaties is usually in compliance with their provisions or according to the established procedure for treaty implementation. Accordingly, ILO Conventions, the ECOWAS treaty and Protocols and similar obligations arising from Nigeria's membership in international organizations, are usually implemented through enabling legislation or administrative action, as the case may be.

The distinction between treaties and agreements now having become largely academic in consequence of the Treaties (Making Procedure) Etc. Act, it should be emphasized that implementation of agreements in Nigeria is now carried out regardless of form, whether concluded by "High Contracting Parties" or "Heads of State" If there is necessity for ratification, that can be done by the Minister of Foreign Affairs on behalf of the Federal Government within the period specified in the agreement. This is usually done by way of exchange of notes between Nigeria and the other party as was done in relation to the series of visa abolition agreements between Nigeria and Cameroon, Chad, Dahomey (Benin), Ivory Coast (Cote d'Ivoire), Morocco, Niger and Togo in the 1960's.

Similarly, Nigeria's extradition agreements such as those with Liberia, the US and the quadripartite West African engagement, fall for implementation by administrative action as envisaged under the Extradition Decree No. 87 of 1966. Otherwise, it would have been unwieldy to enact statutes for



the implementation of each and every new extradition agreement concluded.

A notable feature of Nigeria's practice is resort to economic, scientific and technical co-operation agreements which have assumed an increasing profile in recent times. With more and more emphasis on international exchange in goods and services, formulators and implementers of Nigeria's foreign policy are seeking novel ways and forms of international economic relations symbolized by economic, scientific and technical co-operation agreements. Just as their conclusion is usually under the auspices of the Federal Ministry of National Planning, agreements on economic, scientific and technical co-operation are usually implemented through the instrumentality or general supervision of the ministry.

However, the procedure for the implementation of these agreements varies in accordance with the terms of each agreement. Thus, a particular agreement might envisage implementation through execution of separate programmes, subsidiary agreements or contracts by competent authorities or bodies designated by the agreement. In such cases, the Federal Ministry of National Planning is usually designated the appropriate organ to ensure the implementation of the agreement and other matters related thereto. However, this does not exclude the possibility of designating another ministry, department or agency to act in lieu of the National Planning Ministry, depending on the subject-matter of the agreement.

Another significant development in relation to these agreements is the use of joint commissions in the implementation of economic, scientific and technical co-operation agreements. Accordingly, joint commissions encompassing representatives of Nigeria and the other party have been established with the intention of performing a wide range of functions, among which are the following:

- (i) promotion and co-ordination of the economic and industrial co-operation between the two Contracting Parties;
- (ii) consideration of proposals aimed at effective implementation of agreements; and
- (iii) working out of proposals for removing obstacles arising during execution of projects established under on-going agreements.

Today, Nigeria has more than seventy joint commissions and regularly attends the sessions of these commissions usually held every other year, hosted in each party's capital city, with the Nigeria-Niger Joint Commission even having a permanent headquarters located in Niamey.

As far as other agreements go, particularly, those dealing with trade, education or cultural exchange, the practice is for the Ministry of Foreign Affairs to act in liaison with the respective ministry, department or agency at whose initiative the agreement is concluded in ensuring its implementation. This is usually done by way of protocols based on existing agreements. The expanding role of the Federal Ministry of Justice in treaty matters, hopefully, would not result in diminishing the role of the Ministry of Foreign Affairs in this endeavour.

## JUDICIAL APPLICATION OF TREATIES

### **Treaties in the Hierarchy of Norms of Municipal Law**

The location of treaties within the hierarchy of norms is inseparable from that of the relationship between International Law and Municipal Law. Depending on the theory of relationship between both systems of law entrenched in a legal order, treaties may be positioned higher or lower than or be at the same level as domestic law. It is the prevalent theory on the relationship between both legal orders that usually guides



the courts in the application of treaties within a country's legal system.

Interestingly, none of the various constitutional arrangements pertaining to treaties in the Nigerian experience deemed it fit to address the question of the relationship between International Law and domestic law. Not even the 1979 or 1999 Constitutions, which went further than their predecessors in considering the issue of application of treaties domestically, made a definitive pronouncement in this regard. Notwithstanding, there is a lot of merit in the view of Okoye that "Nigeria like other Commonwealth countries practically inherited the English common law rules governing the municipal application of international law."<sup>9</sup> Accordingly, it can be stated without any fear of contradiction that the rules governing the application of treaties in England apply *mutatis mutandis* in Nigeria. More importantly, treaties do not operate *ex priopio vigore* but require transformation into Nigerian law before they can take effect domestically. On the basis of this, it can arguably be postulated that in Nigeria, treaties are located at par with statutes in consonance with the tenets of dualism.

### TRANSFORMATION OF TREATIES INTO NIGERIAN LAW

The first thing to say here is that it is the statute enacted to implement a treaty that normally serves as a source of law and not the treaty *per se*. Accordingly, the method of transformation adopted in the treaty-implementing statute could play a decisive role in the way and manner in which the treaty is going to be applied by the courts. Now, there are, broadly speaking, two methods of transforming treaties into domestic law-by re-enactment and by reference.

Transformation by re-enactment, otherwise known as the "force of law" technique is adopted when the implementing statute directly enacts specific provisions or the entire treaty usually in the form of a schedule to the statute. The advantage of this method is that it enables the courts to confront the treaty itself, albeit in the form of an enabling statute, thereby reducing the likelihood of their being hamstrung in the process of interpreting the treaty by the so-called ambiguity rule as well as other restrictive or exclusionary common law rules of statutory interpretation.

On the other hand, the implementing statute can transform the treaty into the domestic law merely by reference either *eo nomine* or generally. Sometimes, also, references to a treaty could be contained either in the long and short titles of the statutes or in the preamble or schedules. The main question raised by this method concerns whether or not, and to what extent courts can depart from the text of the implementing statute in case of ambiguity or mistake in its wording.

It is also possible for a statute to employ its own substantive provisions to effectuate a treaty whose text it has not directly enacted. Although such a statute *stricto sensu* does not appear to be an implementing enactment, it can be considered as such if a comparison of its text and that of the statute combined with its legislative history or other extrinsic evidence would reveal whether its purpose is to implement the treaty or give it legal effect domestically. Indeed English courts are known not only to have shown a readiness to treat such statutes as implementing legislation but also had recourse to the selfsame treaties which they are deemed to implement as by way of extrinsic aids toward their implementation.

It needs be emphasized that the judicial function in relation to treaties differs little from general adjudication. Courts, especially superior courts of record, state High Courts, the Federal High Court, the Court of Appeal and the Supreme Court are empowered to adjudicate in "all matters between

<sup>9</sup> F.C. Okoye, International Law and the New African States 32 (1972).



persons, or between government or authority and any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person." Accordingly, only the courts enumerated above can deliberate and issue binding decisions in respect of treaties where and when such treaties constitute the basis of claims or otherwise engender consequences within the domestic legal order.

Under the Constitution, the High Courts enjoy unlimited jurisdiction over "any criminal activity, privilege, interest, obligation or claim...and...any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person." Thus, matters having their origin in treaties would normally fall for determination, in the first instance, by the High Courts before undergoing judicial review, if need be, at the appellate level. However, this is without prejudice to the original jurisdiction of the Supreme Court in matters concerning treaties if the dispute is one between the Federal Government and a state or between the states *inter se*.

With regard to the jurisdiction of the courts in respect of treaties, the problems which could arise after treaties have been transformed into domestic law are varied and complex. They include the scope of a treaty both in time and space, consistency of the treaty with existing law as well as the legality of actions, administrative or otherwise, taken pursuant to implementation of the treaty. In other words, numerous questions could arise concerning the extent to which treaties can be considered as norm-creating within the legal order. More often than not, the resolution of most of these questions would depend on the prescription by the Constitution on the relationship that should subsist between International Law and Municipal Law and, arising from that, the status accorded treaties vis-à-vis other normative acts within the legal order. Where, as in Nigeria, there is no express constitutional formulation on the issues highlighted above, an opinion can

only be formed regarding the attitude of the country through a review of judicial decisions, one way or another, in matters concerning treaties.

## NIGERIA'S TREATIES IN THE COURTS

In spite of the fact that the various constitutions which had operated in Nigeria did not contain specific guidelines regarding the relationship between International Law and Municipal Law or the location of treaties within the hierarchy of sources of law, Nigerian courts have striven to come to grips with cases involving treaties, albeit without attempting to dilate on doctrinal issues raised by such cases. Thus, in **Alfred C. Toepfer Inc. of New York v. John Edokpolor**,<sup>10</sup> one of the earliest reported cases in Nigeria involving treaties, the Supreme Court held that a suit brought upon a foreign award ought not be struck out merely on the ground that there was no treaty regarding reciprocal enforcement of judgments between Nigeria and the US.

In **The Swiss Air Transport Co. Ltd. v. The African Continental Bank**,<sup>11</sup> the issue involved was the application in Nigeria of the Warsaw Convention for the Unification of Certain Rules Relating to International Carriage By Air, 1929, commonly known as "The Warsaw Convention". The respondent bank had initiated proceedings in the Lagos High Court against the appellant for a refund of 13,000 Sudanese pounds which it had contracted with the appellant to transport from Geneva to Kano but which had got lost in transit. Counsel for the appellant had raised a preliminary objection to the action at the lower court in respect of jurisdiction, arguing that, in accordance with Art. 28 of the Warsaw Convention, the court which ought to exercise jurisdiction in the case was a court located in the destination of the journey, that is to say,

<sup>10</sup> [1965] 1 All NLR 292.

<sup>11</sup> [1971] 1 All NLR 37.



Kano and not Lagos. The Supreme Court held that the applicable law in the matter was not just the contract between the parties but really the Warsaw Convention. Accordingly, it overturned the decision of the lower court overruling the applicant's objection to the court's ruling and sent the case back for re-trial.

While the Supreme Court's decision in respect of the interpretation to be put on the phrase "place of destination" as used under the Warsaw Convention was quite sound, it is to be regretted that the Court did not consider it necessary to pay attention to the question of the basis of the application of the Convention itself. By glibly accepting the argument that the Convention had become binding on Nigeria as a result of the Carriage by Air (Parties to Convention) Order of 1958, the Court missed the opportunity of advancing Nigeria's legal development through addressing the issue of succession by Nigeria to the various treaties concluded by Britain during the colonial era.

On yet another occasion when the Supreme Court could have made pronouncements regarding application of treaties domestically as well as related matters, it chose to be reticent. I am here referring to the case of **A.G. Ishola-Noah v. The British High Commissioner**.<sup>12</sup> In that case, an aggrieved citizen had sued the head of a diplomatic mission accredited to Nigeria for his being denied an entry visa. As it is well-known, under the Vienna Convention on Diplomatic Relations of 1961, diplomats are immune from vexatious cases like the one brought before the Court. However, the Court chose merely to summarily dismiss the case for lack of jurisdiction instead of handing down a robust judgment, expatiating on the nature of diplomatic immunity generally, Nigerian state practice on diplomatic immunity and the position of treaties within the hierarchy of sources, etc.

<sup>12</sup> [1980] 8-11 SC 100.

It needs be admitted that Nigerian judges and lawyers are not altogether enamoured of International Law. Where they could have made heavy weather of the international legal ramifications of matters in dispute, they usually skirt round such and seek refuge in the portals of Municipal Law. However, the ratification and transformation of the African Charter on Human and Peoples' Rights, 1981 would seem to have finally ignited the interest of our judges and lawyers in treaties and International Law generally. This laudable trend can be said to have begun with the landmark case of **Muhammed Garuba and Others v. Lagos State Attorney-General and Others**,<sup>13</sup> where Femi Falana successfully invoked the provisions of the African Charter against the Robbery and Firearms Decree and rescued fourteen teenage accused robbers from execution by the firing squad. Similarly, the Constitutional Rights Project (CRP) was able to save General Zamani Lekwot from the hangman's noose by invoking provisions of the African Charter before the African Commission on Human and Peoples' Rights, a feat it could, regrettably, not replicate in the matter of Ken Saro-Wiwa and his Ogoni kinsmen, owing to the implacable nature of the Abuja junta.<sup>14</sup>

Today, there is a plethora of cases where the African Charter has been upheld against executive recklessness, arbitrariness and impunity of public officials. From the case of **Oshevire v. British Caledonian Airways Ltd.**,<sup>15</sup> **Olisa Agbakoba v. Director, SSS**<sup>16</sup> to the *locus classicus* of **Fawehinmi v. Abacha**,<sup>17</sup> **Ogugu and Others v. The State**,<sup>18</sup> **Ibidapo v.**

<sup>13</sup> Suit No. ID/559M/90 of October 31, 1990 (unreported).

<sup>14</sup> See CRP v. The President. Suit No. M/102/93 of May 5, 1993 reported in *The CRP Journal*, October-December, 1993 at pp. 30-31.

<sup>15</sup> [1990] 7 NWLR (Pt. 163) 507.

<sup>16</sup> [1994] 6 NWLR (Pt.351) 475.

<sup>17</sup> [1996] 4 NWLR (Pt. 475) 710.

<sup>18</sup> [1996] 6 NWLR (Pt. 316) 1.



*Lufthansa Airlines*,<sup>19</sup> *Trustees of National Association of Community Health Practitioners of Nigeria v. Medical and Health Workers Union of Nigeria & Ors*,<sup>20</sup> indeed hardly does any human rights matter go through the judicial process today without pegging it on the African Charter. Accordingly, it can truly be said that we are now living in what can be characterized as the golden age of treaties in the Nigerian firmament.

Nevertheless, it should be borne in mind that, in Nigeria, treaties are not *strictu sensu* part of the sources of law. For a treaty to become applicable domestically, it needs to be transformed into Nigerian law by way of an implementing statute. Furthermore, the technique of transformation, whether by re-enactment or by reference, plays a significant role in the application of treaties by the courts. Since it is the implementing statute that constitutes the source of law as far as the courts are concerned, the interpretation thereof is normally effected in consonance with the established rules pertaining to statutory interpretation.

Admittedly, Nigerian case law regarding application of treaties is relatively scanty, despite the expanding role of Nigeria in its interaction with other subjects of International Law. The paucity of case law explains the difficulty of discerning well-defined trends in the attitudes of the courts in respect of application of treaties in the judicial process or indeed, interpretation of treaties. However, since Nigerian courts have generally striven to follow decisions of British courts in cases of first impression and matters not adequately addressed by Nigerian law, it stands to reason that they would do the same in respect of application of treaties.

<sup>19</sup> [1997] 4 NWLR (Pt. 498) 124.  
<sup>20</sup> [2008] 3 MJSC 121 at 157.

The omission in Nigeria's various constitutions of more definitive provisions regarding application of treaties domestically, compels fresh ideas on the issue in order to wean the courts off their slavish adherence of British judicial attitudes. Not only would this encourage the development of Nigerian law, it would also reinforce Nigeria's resolve to uphold International Law, free of the strictures of *stare decisis*.

## MY CONTRIBUTIONS TO PEDAGOGY, INTERNATIONAL LAW AND POLICY

Mr. Vice-Chancellor, Sir, with your kind permission, may I now proceed to recapitulate my modest contributions in the areas of pedagogy, research on International Law generally as well as public or community service.

Over the past 38 years, I have been opportune to commune with generations of students who have later in life attained great heights in the legal profession. They include over 40 Senior Advocates of Nigeria, 25 law professors, innumerable judges, straddling practically all echelons of the temple of justice, Governors, Senators, ministers, commissioners, ambassadors as well as hundreds of my learning friends here present and awaiting their own great day of glory to be admitted into our most noble of professions. Honestly, I cannot but declare that I feel highly fulfilled and vicariously stake a claim to the successes of these my illustrious former wards while also wishing my present students the very best in their chosen career.

I make bold to say that I was lucky and privileged to be the very first person to complete extensive research into the recondite subject of treaty-making and treaty implementation in Nigeria, an endeavour which ultimately earned me the Doctor of Jurisprudence degree from the Osgoode Hall Law



School of York University, Toronto, Canada some 23 years ago.

I have also had the good fortune of helping to formulate the legal framework for cross-border co-operation between Nigeria and the Republic of Benin, following the workshop held in ASCON, Badagry by representatives of both countries way back in 1987. I was also privileged to be part of a similar workshop between representatives of Nigeria and Niger held at Bagauda, Kano in 1988. Today, the necessity of the African countries to hang together, if they do not wish to be hanged separately, has been apprehended by all. This leads me to the high point of my romance with treaties which was my appointment by the African Union (AU) in 2009 to draft the Continental Treaty on Trans-border Co-operation, a task which I successfully completed and remitted to the AU and which is now awaiting adoption by African Heads of State and Government.

In February, 2005, I recall that I was invited to make expert submissions to the House of Representatives Committee on Foreign Affairs at its Public Hearing on Nigeria's Obligations on Implementation of Ratified International Conventions and Treaties. The encounter helped put the necessity for Nigeria to implement its treaties and conventions on human rights on the front burner of national discourse.

In 1984, at the instance of Dr. Agboola Gambari, then Federal Commissioner for External Affairs, I developed the curriculum of a Post-graduate Diploma on International Law for the training of officials of the ministry. This was to later metamorphose to the now highly acclaimed and much imitated Master of International Law and Diplomacy programme of the University of Lagos.

I contributed, albeit in an indirect manner, towards the recognition of treaties as a source of Nigerian law with the support and initiative of that inimitable human rights lawyer and crusader, Femi Falana, especially in relation to the

**Muhammed Garba** case and that of **Jega v. AFRC and Others**.<sup>21</sup> By suggesting the necessity to test the applicability of treaties and International Law generally in municipal courts, one was able to make life a little tolerable during bouts of harsh, inhumane military dictatorships. In the same vein, let me put it on record that I was the one who first suggested the necessity of "healing the land" through the establishment of a Truth and Reconciliation Commission *a la* South Africa which later crystallized into the Oputa Panel, at a lecture I had delivered on the World Press Day on May 3, 1999, under the aegis of the Centre for Press Freedom.

The three generations of human rights as articulated by Karel Vasak are well-known to human rights scholars all over the world. What is perhaps not so well-known is the fact that I have since extended the generations of human rights to nine, that is to say, from the age of neo-classical human rights, economic and social rights and solidarity rights to that of environmental rights, right to democracy and good governance, women rights or reproductive rights, sexual preference rights, peace rights and, I daresay, animal rights!

Finally, at a lecture delivered at the Financial Institutions Training Centre, Lagos on April 15, 2000 entitled "Repatriating Nigeria's Stolen Funds," I had suggested the adoption by the UN of a multilateral treaty to stem the tide of financial hemorrhage from our country and other developing economies with a view to facilitating the return of financial resources pillaged by avaricious elements working in concert with immoral foreign nationals and kept in coded accounts far removed from the local jurisdiction... It seemed the world was listening. For, on December 9, 2005, the UN decided not only to adopt the Convention against Corruption but also declared that day, my birthday, the International Day against Corruption. No greater birthday present could anyone have given me!

<sup>21</sup> Suit No LD/2267/92 (unreported).



## RECOMMENDATIONS AND SUGGESTIONS

Mr. Vice-Chancellor, Sir, I now come to my humble recommendations and suggestions that would help increase Nigeria's relevance, if not indeed nuisance value on the international plane.

- The Nigerian ruling class should immediately jettison its obscurantism and anti-intellectual attitude that currently attend policy formulation and implementation on international matters by encouraging informed input from academics and experts, especially in International Law and related fields, so as to spare the nation of a repetition of its ugly experience over, for example, the Bakassi imbroglio.
- Nominations by Nigeria for appointment to important international positions of bodies such as the International Law Commission (ILC), International Court of Justice (ICJ), International Criminal Court (ICC), African Court of Justice and Human Rights and the Community Court of ECOWAS should be drawn from experts in International Law instead of the current practice of considering such appointments as mere political spoils, "jobs for the boys" or sinecures for political jobbers.
- There is an urgent need for collation and regular publication of Nigeria's Treaties in Force as is being done in better organized countries in order to equip legal practitioners and the general public with requisite information concerning Nigeria's treaty obligations.
- Finally, in view of Nigeria's rising profile in the world and the leading role of the country in Africa and beyond, the time is now ripe to consider making International Law a compulsory course in the curriculum of Law Faculties in all Nigerian universities.

Accordingly, for a start, the University of Lagos should emulate the example of other Nigerian universities which have apprehended the wisdom of embracing this idea. This would not only ensure a broader horizon of lawyers produced from this university of first choice and the nation's pride, it would go a long way in putting our graduates at a better pedestal and help enhance the quality of legal expertise that would be available to drive the making and execution of the nation's policies in its forays into the global scene.



## ACKNOWLEDGEMENTS

Mr. Vice-Chancellor, Sir, let me now pay homage and do honour to whom it is due on this auspicious occasion.

I have to begin by acknowledging God Almighty, the Omnipotent, Omnipresent and Omniscient, the author and finisher of our faith, without whose grace and blessing I would not be standing here before you today. To Him be all honour and glory for enabling me to survive the vicissitudes of life in a peripheral, neo-colonial dependency up to the point of finally paying my academic debt to this citadel of learning.

Next, I wish to pay tribute to my parents, now translated to higher service, Chief Zacchaeus Oladipo Oyeboode and Mrs. Janet Olanrewaju Oyeboode, thorough whose love and affection I had the good fortune of coming into this world.

I must, without mincing words, express full gratitude and appreciation to all my teachers on three continents who, jointly and severally, endeavoured to equip me with an incomparable education that has stood me in good stead over the years in the performance of my pedagogical, research and other obligations. The role of Professor Lukashuk in molding me into an international lawyer is particularly striking. It was he who rescued me from the *cul de sac* of international tourism and opened my eyes to the magnificent world of treaties. Also, I wish to pay homage to the indefatigable Professor Sharon Williams of the Osgoode Law School, York University, Toronto, Canada who painstakingly undertook the yeoman task of supervising my doctoral dissertation. I wish also to appreciate the effort of my teacher and housemaster at Christ's School, Ado-Ekiti, Chief F.A. Daramola for his love and encouragement over the years.

I wish to pay tribute to my mentor, Professor J.F. Ade Ajayi for his abiding faith and confidence in me. But for his

encouragement and support, I would most probably not be standing here today. Thank you ever so much, uncle. My regards also go to Professor Tolu Odugbemi, former Vice-Chancellor of this university for his abiding love, benign interest and loving care.

Let me thank, most sincerely, our royal fathers, starting with my own *Oba* HRM (Barrister) Ajibade Fasiku, FCA, the Elekole of Ikole-Ekiti and Paramount Ruler of Egbeoba Kingdom for dignifying today's event with his royal presence. Also, I wish to express gratitude to the Oluyin of Iyin and former Chief Judge of Ekiti State as well as the Apalufin of Aisegba-Ekiti, *Oba* Oguntinyinbo for their love for me and support in various ways.

My thanks to the University of Lagos know no bounds. First, the university offered me appointment as an Assistant Lecturer, way back in December, 1973, thereby making me the first Soviet-trained lawyer to be employed as an academic by any Nigerian university. For this, I wish to pay tribute to the then Dean of Law, Professor Bamidele Kasunmu, SAN who enabled me to surmount the prejudice against lawyers like me who some believed knew nothing else other than Marxism-Leninism or guerrilla warfare! I wish also to celebrate scholars like the inimitable Professor Jelili Adebisi Omotola, SAN, Professors Mike Jegede, SAN, Ayo Ajomo, Adedokun Adeyemi, C.O. Olawoye, late Anthony Adeogun, Egerton Uvieghara, Abiodun Adesanya, SAN, Akintunde Obilade, Amechi Uchegbu, Oladeji Akanki, Dr Ahmed Abdulai, Dr George Emiko, both of blessed memory, George Onwuchekwa, Dr Dele Oyebanji, late Olayide Adigun and others for affording me the space for fulfillment and self-actualization. My appreciation also goes to Professors David Ijalaye, Funso Akingbade, Union Edebiri, Anthony Asiwaju and Funso Falade, Toyin Ogundipe, Tade Longe and Bolaji Owasanoye for their friendship and support.



The university has been extremely kind to me and my family. It not only enabled me to attend some of the world's leading universities, but also graciously granted me unprecedented leaves of absence, totaling nine years in order to enable me sow the seeds of a law faculty in another university and later act as its chief executive. For this, I am eternally grateful. Without the institutional support of this great university, It is unlikely that I would have been able to win the laurels which had adorned my career. Mr. Vice-Chancellor, Sir, I wish to thank you personally for your friendly disposition and disarming informality which has created the right atmosphere for me to carry out my academic and other pursuits.

As for my other colleagues in the Faculty of Law, words fail me in recounting your various contributions towards assisting me in the performance of my duties. I am particularly appreciative of the demeanour of our amiable Dean, Professor Oyelowo Oyewo, the support and love of other professors and colleagues, Professors Nkiruka Uzodike, Taiwo Osipitan, SAN and Peter Fogam, Drs Joe Abugu, Ego Chinwuba, Dayo Amokaye, Biola Sanni and also from my Department, Drs. Hakeem Olaniyan, Dayo Ayoade and Simeon Igbiniedion, Messrs Wahab Shittu, Yinka Owoeye, Yomi Olukolu, Miss Efe Ojomo, my secretary, Nonye Mbonu, my Man Friday, if ever there was one; Akeem Ibrahim and all those who have contributed, one way or another, towards the success of today's event.

I cannot forget my staff in the IRRP Office, particularly Messrs Adedunye and Layonu, Mrs Nancy Akinade-Solomon and Kemi Akinsulire, for their support and devotion to duty. I wish also to acknowledge the support of Miss Helen Okobi, Dr Virgy Onyene and Funke Oduwole, for their kind consideration at all times. The support and love of Professors Diran Famurewa and Wale Adesina as well as Barrister Abubakar Sani, all of the Ekiti State University cannot pass without mention. They went to

incredible lengths to ensure my well-being during my sojourn in that university.

I wish also to acknowledge the love and friendship of my classmates in Christ's School, contemporaries at Kiev State University, particularly Professor Chris Okeke, Chiefs Dele Ajomale, Folarin Popoola, Hakeem Giwa, my bosom friends, Ayo Ajumobi and 'Demolu Sonuga, Kunle Oshodi-Glover, Professor Wasiu Alli; my soul mate, Professor Bayo Ninalowo, whose friendship dates back to our days in Toronto, Chief Segun Osoba, former Governor of Ogun State and very good friend from the time we spent together at Harvard, Dr Kayode Fayemi, Governor of my beloved State, former Governor Niyi Adebayo of Ekiti State, members of the **Magna Tabla** of the University of Lagos Staff Club, erstwhile members of the Catholic Secretariat Think-tank, particularly Fr. George Ehusani, Bishop Felix Ajakaye of Ekiti Diocese, The Editorial Board of **The Guardian**, members of the **Ekitipanupo** Internet chat group, especially its moderator, Mr. Seye Adetumbi and members of **Ekitiparapo**, Lagos. My appreciation also goes to my childhood friend, Engr. Taiye Ajayi, Hon. Saka Gidado, Dr. Bode Olajumoke, Dr and Dr (Mrs) Kola Joaquim, Professor Tolu Odukoya, Prince Sola and Tokunbo Adenmosun, Arc. Taiwo Kara and Dr Afoka Isiave. I wish to acknowledge the love and support of my social media friends and all men and women of goodwill who have found the time to grace this event with their esteemed presence.

My appreciation would be incomplete without mentioning the students of the Faculty of Law, undoubtedly, the leading law faculty in the country. I sincerely appreciate your readiness for having my thoughts bounced off your receptive ears. Thank you all, very much indeed.

Finally, I wish to appreciate my immediate and extended family. First, let me acknowledge the presence of Chief



(Mrs.) Bose Oyeboode, our matriarch, Dupe Aluko, eldest of my siblings, Mrs. Toyosi Omope, my sister and her husband, Gbenga, Pastor Femi Oyeboode of the Redeemed Christian Church of God and his wife, Sade as well as my brother-in-law, Goke Ayodele-Oyefin. There are nine and a half lawyers within the Oyeboode clan. Starting with the bagman of the family, Gbenga or the man we all call "GO", managing partner of Nigeria's largest law firm and his spouse, another lawyer, Aisha. We also have here present, Bose Ayodele-Oyefin, my sister and sometime Lagos State Director of Public Prosecutions, Lanre who lives in New York and, therefore, cannot be here with us today, Temi, my niece who has just graduated in law from the University of Ibadan and is at present attending the Nigerian Law School.

Bose, my inimitable and loving spouse of thirty-two years is very much here. I have a confession to make: When I could not get a lawyer to marry, I did the next best thing in the circumstance--seek out a lawyer's daughter. Happily, she has since remedied that inadequacy by going back to school and qualify as a lawyer. She has given me three lovely children--Kintunde, who is a top bank executive and, I believe, has all the markings of a lawyer, except a law degree, Deji, my second son, who is also a lawyer and enamoured of corporate law practice. Then, there is Jumoke, the baby of the family, who is at present serving in the NYSC after successfully completing her course of studies at the Nigerian Law School and who harbours dreams of some day becoming an academic. I am sure you are all wondering who the half lawyer in the family is. Well, he is Femi Oyeboode, actually, a doctor of medicine, neuro-chemist, poet, recently retired Professor and Director of the Institute of Psychiatry at the University of Birmingham Medical School UK but who also happens to brandish another doctorate degree in Medical Jurisprudence.

Mr. Vice-Chancellor, Sir, distinguished ladies and gentlemen, friends, invited guests, gentlemen of the Press, I am done.

I thank you very kindly for your attention.



## REFERENCES

- Adegbite, L.O., Federated States in International Law: The Western Nigeria Experience, Proc. of the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Ann. Conf., Nig Soc. of Int'l L. 17 (1968).
- Agoro, I. O., Government Legal Advising in the Field of Foreign Affairs, Proceedings of the Afr. Conf. on Int'l L. and Afr. Problems 101 (1967).
- Ajala, J.B., Nigeria's Treaties in Force, Proc. Of the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Ann. Conf., Nig. Soc. of Int'l L. 28 (1968).
- Ajomo, A., Of Order and Disorder: The Relevance of International Law, Inaugural Lecture, University of Lagos Press, 1984.
- Akinyemi, A. B. (ed.), Nigeria and the World: Readings on Nigerian Foreign Policy, OUP/NIIA, Lagos (1979).
- \_\_\_\_\_. Foreign Policy and Federalism, Ibadan University Press, Ibadan (1974).
- Alexandrowicz, C. H., The European-African Confrontation: A Study in Treaty Making, Sitjhoff, Leiden (1973).
- \_\_\_\_\_. and Shaw, T.(eds.), Nigerian Foreign Policy: Alternative Perceptions, Macmillan, London (1983).
- Anand, R.P., New States and International Law, Vikas Publishing House, Delhi (1972).
- Aust, A., Modern Treaty Law and Practice, Cambridge U. Press, Cambridge (2000).
- Baxter, R. R., Treaties and Custom, 129 Hague Recueil des Cours 31 (1970).
- Bernier, I., International Legal Aspects of Federalism, Longman, London (1973).
- Blix, H., Treaty-Making Power, Stevens, London (1960).
- Bokor-Szego, H., New States and International Law, Akademiai Kiado, Budapest (1970).
- Delupis, I., International Law and the Independent State, Crane, Russak, New York (1974).
- Di Marzo, L., The Legal Status of Agreements Concluded by Components of Federal States with Foreign Entities, 16 Can. YB Int'l L. 197 (1978).

- Elias, T. O., The Modern Law of Treaties, Oceana, New York (1974).
- \_\_\_\_\_. Africa and the Development of International Law, Sijtoff, Leiden (1972).
- \_\_\_\_\_. The Office and Duties of the Federal Attorney-General in Nigeria, 6 Nig. L. J. 157 (1972).
- Fitzmaurice, G., (First) Report on the Law of Treaties, United Nations, New York (1956).
- Friedmann, W. G., The Changing Structure of International Law, Columbia U. Press, New York (1965).
- Fuller, L. L., The Morality of Law, Yale U. Press, New Haven (1964).
- Ghosh, R. B., Treaties and Federal Constitutions, World Press, Calcutta (1961).
- Gotlieb, A. E., Canadian Treaty-Making, Butterworths, Toronto (1968).
- Haraszati, G., Some Fundamental Problems of the Law of Treaties, Akademiai Kiado, Budapest (1973).
- Hendry, J. M., Treaties and Federal Constitutions, Public Affairs press, Washington, DC (1955).
- Hollis, D. B., Why State Consent Still Matters: Non-State Actors, Treaties, and the Changing Sources of International Law, 23 Berkely J. Int'l L. 137 (2005).
- Holloway, K., Modern Trends in Treaty Law, Stevens, London (1967).
- Hart, H.L.A., Concept of Law, OUP, Oxford (1961).
- Idang, G. J., Nigeria: International Politics and Foreign Policy, 1960-1966, Ibadan U. Press, Ibadan (1973).
- Ijalaye, D. A., Nigeria and International Law Today and Tomorrow, Inaugural Lecture, University of Ife Press, Ile-Ife (1978).
- Jacomy-Millette, A., Treaty Law in Canada, Ottawa U. Press, Ottawa (1975).
- Kelsen, H. General Theory of Law and State, Harvard U. Press, Cambridge, Mass. (1945).
- \_\_\_\_\_. Principles of International Law, Holt, Rinehart and Winston, New York (1966).



Looper, R. B., The Treaty Power in Switzerland, 7 Am. J. Comp. L. 178 (1958).

Macdonald, R. St. J., The Role of the Legal Adviser of Ministries of Foreign Affairs, 156 Hague Recueil des Cours 377 (1977).

McDonald, S. A., The Problem of Treaty-Making and Treaty Implementation in Canada, 19 Alberta L. R. 293 (1981).

McLaughlin, C. H., The Scope of the Treaty-Making Power in the United States, 42 Minn. L. R. 709 (1959).

McNair, A. D., The Law of Treaties, The Clarendon Press, Oxford (1961).

Mensah-Brown, A. K., African International Legal History, UNITAR, New York (1975).

Mestral, de A.L.C., Treaty Power and More Rules Obiter Dicta, 61 Can. Bar R.856 (1983).

Milani, M., The Canadian Treaty Power: Decidedly Anachronistic, Potentially Antagonistic, 46 Sask. L. R. 196 (1981).

Morris, G. L., Treaty-Making Power: A Canadian Dilemma, 45 Can. Bar R. 478 (1967).

Odubayo, W. O., The Process of Making and Executing Treaties With Special Reference to Aviation Agreements, 4 Nig. Lawyers' Q. 80 (1969).

\_\_\_\_\_, International Law in the Nigerian Legal System, 27 Cal. Western Int'l J. 311 (1996-7).

Okeke, C. N., The Nigerian Draft Constitution: Treaty-Making and Treaty Implementation by a Federal State Under International Law, Proc. of the Workshop on the Draft Constitution for Nigeria 399 (1977).

\_\_\_\_\_, The Theory and Practice of International Law in Nigeria, Fourth Dimension, Enugu (1986).

Okoye, F. C., International Law and the New African States, Sweet and Maxwell, London (1972).

Oyebode, A., Grappling with the Burden of the Past, Federal Ministry of Tourism, Culture and National Orientation (2011).

\_\_\_\_\_, Legal Dimensions of Reparations for the Transatlantic Slave Trade, Centre for Black Culture and International Understanding (2010).

\_\_\_\_\_, Global Economic Crises: Perspectives, 6 African Renaissance 58 (2009).

\_\_\_\_\_, Public Resources for Public Good, EFCC (2009).

\_\_\_\_\_, The 1892 British-Benin Treaty: Legal and Domestic Implications for Contemporary Nigeria, Institute for Benin Studies (2008).

\_\_\_\_\_, Domesticating the UN Convention Against Corruption: Challenges and Strategies for Combating Corruption in Nigeria in Idrisu *et al.*, eds., Contemporary Issues of Law and Justice: Essays in Honour of Honourable Justice Umaru Ali Eri 80 (2007).

\_\_\_\_\_, International Criminal Law as Part of International Law, NIALS (2006).

\_\_\_\_\_, The Problem of an International Criminal Law, NIALS (2006).

\_\_\_\_\_, Law and Nation-Building in Nigeria, CEPAR, Lagos (2005).

\_\_\_\_\_, International Law and Politics: An African Perspective, Bolabay Publications, Lagos (2003).

\_\_\_\_\_, Repatriating Nigeria's Stolen Funds: The Legal Implications, FITC, Lagos (2000).

\_\_\_\_\_, External Imperatives of Democracy, Obafemi Awolowo Foundation (1999).

\_\_\_\_\_, Nigeria, the Media and the International Criminal Court, Centre For Free Speech (1999).

\_\_\_\_\_, United Nations and the Protection of Human Rights in Africa in G Obiozor and A. Ajala, eds., Africa and the UN System: The First Fifty Years 86 (1998).

\_\_\_\_\_, Government Legal Advising in Foreign Affairs, NIALS (1997).

\_\_\_\_\_, The New ECOWAS Treaty, paper delivered at the Second Annual Corporate Lawyers' Forum (1993).

\_\_\_\_\_, Nigeria-Benin Treaty Relations in Asiwaju and Igwe, eds., The Nigeria-Benin Transborder Cooperation, 241, University of Lagos Press, Lagos (1991).



- \_\_\_\_\_. *Treaties and the Colonial Enterprise*, 2 RADIC 17 (1990).
- \_\_\_\_\_. *Nigeria-Niger Treaty Relations: An Overview in Asiwaju and Barkindo, eds., Nigeria-Niger Border Cooperation*, 425, Malthouse, Lagos (1989).
- \_\_\_\_\_. *The Constitution and the Conduct of Foreign Relations*, NIALS (1989).
- \_\_\_\_\_. *International Law and World Peace*, 15 J. Contemporary L. 1 (1988).
- \_\_\_\_\_. *The Treaty-Making Power in Nigeria in J. A. Omotola and Adeogun, eds., Law and Development* 43, University of Lagos Press, Lagos (1987).
- \_\_\_\_\_. *Treaties and the Legal Order*, Graduate Seminar Paper, Osgoode Hall Law School (1981).
- \_\_\_\_\_. *Africa and International Law: Succession to Treaties in Africa Re-visited*, 10 The Lawyer 53 (1980).
- \_\_\_\_\_. *Treaties: Their Making and Implementation under the New Nigerian Constitution*, Proc. of the 15<sup>th</sup> Annual Conf. of the Nig. Soc. of Int'l L. (1979).
- \_\_\_\_\_. *Treaty-Making Powers and their Implementation Under a Federal Constitution in Akinyemi, A. B., ed., Readings on Federalism* NIIA/ University of Ibadan Press 52 (1979).
- \_\_\_\_\_. *Towards a New Policy on Decolonisation in Akinyemi, A.B., ed., Nigeria and the World* 96 (1979).
- \_\_\_\_\_. *The International Legal Regulation of the Multinational Corporation: A Fresh Look at Some Recent Proposals*, 5 Black L. J. 231 (1977).
- Phillips, Jr. C. S., *The Development of Nigerian Foreign Policy*, Northwestern U. Press, Evanston, Ill. (1964).
- Rand, M.C., *International Agreements between Canadian Provinces and Foreign States*, 25 U. Tor. Fac. L. R. 75 (1967).
- Rise, W. G., *The Position of International Treaties in Swiss Law*, 46 Am. J. Int'l L. 641 (1952).
- Rodgers, R. S., *The Capacity of States of the Union to Conclude International Treaties*, 61 Am. J. Int'l L. 1021 (1967).

- Rosenne, S., *The Law of Treaties*, Sijthoff, Leyden (1970).
- Rovine, A. W., *Separation of Powers and International Executive Agreements*, 52 Indiana L. J. 398 (1977).
- Seidl-Hohenveldern, I., *Transformation or Adoption of International Law into Municipal Law*, 12 Int'l L. & Comp. L.Q. 90 (1963).
- Sorensen, M., *Manual of International Law*, Macmillan, London (1968).
- Surrency, F. C., *The Treaty Law of the United States*, 14 Int'l & Comp. L. Q. 602 (1965).
- Tobi, N., *The Federal Ministry of Justice as Government's Legal Adviser to the Ministry of External Affairs*, 5 Dalhousie L. J. 201 (1979).
- \_\_\_\_\_. *Impact of International Law on the Nigerian Constitution*, NIIA (1979).
- Unger, R. M., *Law in Modern Society*, Free Press, New York (1976).
- Wildhaber, L., *Treaty-Making Power and Constitutionalism*, Helbing and Lichtenhahn, Basel (1971).
- Williams, G., *International Law and the Controversy Surrounding the Word "Law"*, 22 BYIL 146.