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INTRODUCTION

At the end of World War II—a war caused by colonialism—empires crumbled and hopes blossomed everywhere. Third world leaders had hopes of their own, firmly believing that the key to development and material comfort depended on the attainment of political independence of the colonized territories.¹ Nearly fifty-one years later, despite nationals having taken over the political reigns, this hope has faded away. Repeated crises have torn the social fabric of the third world, unraveling it altogether in some countries. Instead of development for many, there came riches and power for a greedy few. Whether political power was acquired through elections, coups or prolonged military struggle, no magic detour has permitted the third world to circumnavigate the inevitable obstacles to development and nation building.

This Article takes its perspective on international law from within an operating legal system, namely, from the way a Nation's state policy became state action through its law. Operating through law, the State serves as the organized polity's primary instrument for the conscious social change that development and nation building require.

The legal order constitutes the operative form of state policy. Governments can implement policy only through laws directed at influencing the behavior of people. Government policy has no effective content until expressed as law. To explain Nigeria's approach to international law, this Article therefore examines the role of the Nigerian State and its legal order in the acceptance, respect, and implementation of the principles of international law. In a legal regime—whether established on land, sea, or in space—two points of vital concern are, first, the application of the law, and second, its enforceability. A legal regime is firmly established only if the law on which it is based is comprehensive in its field of application and effective in the manner of its enforcement. Because the subject of our concern here is inter-state law, its regime is essentially international. According to the two tests just noted, such as international legal regime would be dependent on the universality of its application and efficacy. The contribution of Nigeria towards these twin goals of the universal application and efficacy of international law within its own legal regime is indeed profound.

ARGUMENT OF THE PAPER

The central argument of this paper is that the character of a nation's system of law is inextricably connected with its socio-economic, cultural, religious and political make-up. To understand the attitude of a nation

1. Ghana's first president, Kwame Nkrumah, preached a text for third world's new leaders: "Seek ye first the political kingdom, and all else will follow."

towards other nations, one must not be ignorant of the laws through which that nation gives expression to its sense of justice and regulates its structure.² Furthermore, one must bear in mind that each system of law has different concepts through which its law is expressed, language through which it is explained, categories by which it is organized, and legal rules which themselves embody the law in particular ways. The successful study of any legal system presupposes an awareness of such structural differences. A legal system, moreover, is distinct from a legal tradition. A legal system is an operating set of legal institutions, procedures, and rules. A legal tradition, however, is not a set of rules of law about contracts, corporations, and crimes (although such rules will almost always be in some sense a reflection of that tradition).³ Rather, a legal tradition is a set of a deeply-rooted, historically conditioned attitudes about the nature of law, the role of law in society; about the proper organization and operation of a legal system; and about the way law is or should be made, applied, studied, perfected and taught.⁴

Today diplomats of any nation, whether they are negotiating trade agreements or participating in international conventions, must be ready to understand the outlook of others and know in what manner, and with what arguments, they can hope to be persuasive. Such diplomats will not be successful in their diplomatic responsibilities if they are unable to appreciate the thinking of their foreign homologues, or if they speak and act as though they were dealing with persons from their own country. It is not surprising that in the international arena, representatives of different nations, with their very different intellectual processes and cultural backgrounds, contemplate law and international relations in a manner very different from their counterparts in other countries.

For example, in negotiations with the United States, Canada, England, or Nigeria, diplomats must know something about their respective constitutional law so that they can appreciate, in particular, the limitations under which their federal authorities really operate. International understanding can readily be enhanced and promoted between countries within regional schemes or communities of cooperation, as for example, in certain federal states or the various political and economic groupings established in Europe and on other continents, through the instrumentality of international law. And while international conventions and customary rules of international law promote a modicum of international understanding, the national courts of each country would facilitate such understanding by taking into account the way in which the problem put to them is resolved by the legislation or courts of other nations.

2. The constituent document of UNESCO advocates the study of foreign laws and the comparative law method on a world-wide scale with a view to promoting mutual understanding.

3. See JOHN HENRY MERRYMAN, *THE CIVIL LAW TRADITION* (1969).

4. *Id.*

Traditional international jurisprudence, however, has too often ignored this principle. The Permanent Court of International Justice cited as one of its governing sources of international law the “general principles of law recognized by civilized nations.”⁵ The International Court of Justice—which succeeded the Permanent Court of International Justice—repeats this same maxim word-for-word.⁶ This maxim unfortunately fails to recognize, however, the categorical priority it grants to some countries as opposed to others, and certainly neglects to observe the differences in principles of law that must be acknowledged among different countries if international understanding is ever successfully to be achieved.

Article 38 of the Statute of the International Court of Justice specifies the sources of the rules of international law which the Court applies to disputes. Nigeria and other Afro-Asian countries have directed a great deal of criticism toward this Article. In particular, Article 38(1) stipulates:

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 teachings of the most highly qualified publicists of the various nations, as subsidiary means for means for the determination of rules of law.⁷

Along with several other Afro-Asian countries, Nigeria takes issue primarily with subparagraphs 1(b) and (c). Although Nigeria does not reject rules of customary international law completely, she has been pragmatic in her approach. Nigeria recognizes that customary international law is the creation and practice of exclusively European States, reflecting little more than their own interests and power relations.⁸ To place emphasis on custom as the main source of contemporary international law is to ignore the changes that have taken place, and are indeed still taking place, in the composition of the international community. It also fails to recognize the radical transformation in the socio-economic field and in the politics of the European States

5. U.N. CHARTER art. 38(3).

6. U.N. CHARTER art. 38(c).

7. *Id.*

8. Recent jurisprudential debate over the concept of custom as a source of international law has managed to emphasize the distrust shown by the new States toward customary international law, whether it stems from insufficient knowledge of its content, from its alleged Christian origins or because they have not contributed to its elaboration, is reinforced by a feeling that customary law is the friend of the strong reflecting existing power relationship. See CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE, REPORT OF THE CONFERENCE ON THE NEWLY INDEPENDENT STATES AND INTERNATIONAL LAW 10 (Geneva, 1963) [hereinafter Carnegie Report]; WILFRED JENKS, THE COMMON LAW OF MANKIND 234 (1958); Georges Abi-Saab, *The Newly Independent States and the Rules of International Law*, 33 HOWARD L.J. 106 (1963); Grigory Ivanovich Tunkin, *Co-existence and International Law* 95 RECUEIL DES COURS OF THE HAGUE ACAD. OF INT'L L. 63.7 (1958).

themselves.⁹ Nigeria is opposed to some of these customary rules, not only because she did not participate in their formulation and practices, but also because some of them (discussed below) are contrary to her present and future national interest. Nigeria whole-heartedly welcomed, of course, those customary rules of international law that conformed with her national interest.

Both the applicability and efficacy of customary international law should depend on such will and express consent of the members of the international community.¹⁰ The Nigerian demand on this issue—which coincides with that of other African States—is that there should be a critical re-examination of these customary rules and their progressive development where necessary. Such a re-examination should account for the needs of the present-day and the future international community, as well as for a formal codification of customary international law by such “representative” bodies as the International Law Commission.¹¹

The second controversial and often criticized paragraph of the Article is 1(c). It specifies that the “the general principles of law recognized by civilized nations” constitute a source of international law. This statement implies that one part of the world assumes the authority to label the other part on the basis of a particular social theory, and thus determines its place in the world order. “Civilization” is understood as synonymous with European cultures and values and does not include the non-European civilizations.¹² Although this model is now, in the wake of decolonization,

9. See Hanna Bokor-Szego, *The New States and International Law*, QUESTIONS OF INTERNATIONAL LAW: JOURNAL OF HUNGARIAN BRANCH OF THE INT'L L. ASS'N. 19 (1968); S. Prakash Sinha, *Perspective of the Newly Independent States on the Binding Quality of International Law*, 14 INT'L & COMP. L. Q. 121 (1965); S.PRAKASH SINHA, *NEW NATIONS AND THE LAW OF NATIONS* (1967). Ginther further exemplifies this perspective:

Today, nation-building, legal codification and unification, and the proliferation of new legal and institutional devices for socio-political and economic development at the national level, as well as the multinational planning and operational activities at a regional and sub-regional level on the African continent, can no longer be ignored as a specific African input into the constitutive process of the international legal order of today.

Konrad Ginther, *Re-defining International Law From The Point Of View Of Decolonization and Development and African Regionalism*, 26 J. AFR. L. 55 (1982) .

10. See Stanislaw E. Nahlik, *A Summing Up*, 32 Y.B. OF ASS'N OF ATTENDERS AND ALUMNI OF THE HAGUE ACAD. OF INT'L L. 97 (Dublin, 1962); Bokor-Szego, *supra* note 9, at 19-22.

11. YILMA MAKONNEN, *INTERNATIONAL LAW AND THE NEW STATES OF AFRICA* 88 (1983).

12. J.S. Mill, *A Few Words on Non-Intervention*, in 3 DISSERTATIONS AND DISCUSSIONS (1859) [reprinted in 4 READINGS IN WORLD POLITICS 47 (R.A. Goldwin et al. eds., 1957)]. Chaumont further states:

To characterize any conduct whatever towards a barbarous people as a violation of law of nations, only shows that he who so speaks has never considered the subject. A violation of great principles of morality it may easily be; but barbarians have no right as a nation, except a right to such treatment as may, at the earliest possible period, fit them for becoming one.

C. Chaumont, *General Course on Public International Law*, 129 RECUEIL DES COURS OF THE HAGUE ACAD. OF INT'L L. 343 (1970). See also Mari'on Mushkat, *The African Approach to Some Basic Problems of Modern International Law*, 7 INDIAN J. OF INT'L L. 357 (1967).

in the process of revision,¹³ the inclusion of “civilization” as an international standard smacks of an outright declaration of discrimination against the non-European States who are predominantly Afro-Asian. Imposing the legal norms of European powers on the newly independent States of Africa in the present expanded international community, with their varying forms of civilizations and legal systems, is clearly improper.¹⁴

The general scope of this inquiry concerns the place of international law in the Nigerian Legal System. Part One examines the relevance of the topic in the United Nations decade of international law. Part Two focuses on the attitude toward international law generally, and on established rules of international law in particular. Part Three demonstrates through an historical survey how international law has been perceived and practiced at various periods in the life of the Nigerian State, with especial attention to Nigeria’s inclusion of international law in her constitutional provisions. Part Four examines treaty practice. Part Five examines the applicable law in selected questions of international significance. To this end, issues are selected randomly to illustrate how Nigeria has dealt with them. Such an analysis will shed light on how the treatment of the selected questions differ or conform with so-called established international standards. Part Six of this inquiry analyzes the important topic of teaching, dissemination and wider appreciation of international law. Hopefully, this summary will reveal the enormous contribution Nigeria has made to the progressive development of international law within its legal system and through her active participation in various international bodies and organizations. The inquiry concludes with a statement on the prospects for international law development in Nigeria.

Before discussing the issue of international law in the Nigerian legal system specifically, however, a few key concepts of international law must be defined and interpreted. This is particularly necessary here because Nigeria’s legal system, to whose legal regime such key concepts will be applied and analyzed, has been characterized and substantially influenced by profound social and political changes since its creation as one sovereign and independent political entity nearly thirty-six years ago.

13. ERIC C. DJAMSON, *THE DYNAMICS OF EURO-AFRICAN COOPERATION* 249 (1976). Whereas the Conference of Berlin was largely a unilateral action by the colonial powers in their search for peaceful competition over the raw material potentials of the African Continent, the Brussels negotiations offer the opportunity for the erstwhile colonial powers to re-examine their future economic, social and possibly, political relations with the emergent States of the Third World on a footing of sovereign equality and mutual respect. . . . On the part of the Africans, the Brussels Conference must offer new vistas for a rewarding co-operation with Europe without the incidence of a status of inferiority and patronage. The Berlin Conference is a historical fact and cannot be jettisoned without qualms. The Africans, like their European counterparts, must be constantly reminded of what went wrong if those injustices are not to be resuscitated in more complex forms.

Id.

14. For the statements of a number of the representatives of some African States on this issue, see U.N. GAOR 6th Comm., 25th Sess., at 14, U.N. Doc A/C.6/SR.1217 (1970).

DEFINITIONS

A definition of international law is both fundamental and necessary to this inquiry. The definition offered here, however, is not intended to provide an exhaustive examination of the concept of international law, as this has been amply discussed elsewhere. Rather, its purpose is to state briefly the assumptions on which later arguments are based, and to examine in a general way certain issues which are central to the discussion which follows. More specifically, this segment addresses the question: What is international law?

Definition is used here in the sense of delimiting the boundaries of a scientific subject. It includes the methods, basic assumptions, and categorizations, as well as the basic principles of legal systematization. In this sense, definition is designed to provide the blue print for international law as a theoretical discipline, conducted in a perspective that is wide enough to take into account both old and new social theories, ideologies, and myths, that are the necessary preconditions for achieving collective action and building social systems, particularly state systems.

The foundations of international law rest upon realities, which belong to the world of facts which are observable and at times measurable.¹⁵ On the one hand, the structure of international law results from a constellation of political, military, economic, and ideological power. On the other hand, this structure emerges from manifest political behavior, including positive legal acts and underlying modes of perception, values, and beliefs, that condition these acts.¹⁶ International law reflects at any given time the political structure and culture of its environment. International law must be placed within its social and cultural context.

The absence of legislative bodies and clear judicial authority makes international law more difficult to define than municipal law.¹⁷ Practitioners, scholars, and writers of international law have given this term countless definitions. Every writer, it seems, feels compelled to re-define the concept, the present author being no exception.¹⁸ The resulting confusion has exercised an adverse impact on the practice of international law itself.¹⁹ So how can one evaluate a phenomenon when there exists little agreement about what it is? Absent accepted criteria for determining degrees of success or failure in international relations, it remains conceptually difficult to adjudicate whether international law is good or bad or in between. Judging the adequacy of international law is consequently a function of the nature of

15. Ginther, *supra* note 9, at 53.

16. *Id.*

17. HEATHER A. WILSON, INTERNATIONAL LAW AND THE USE OF FORCE BY NATIONAL LIBERATION MOVEMENTS 6 (1988).

18. CHRISTIAN N. OKEKE, CONTROVERSIAL SUBJECTS OF CONTEMPORARY INTERNATIONAL LAW ix (1974).

19. *Id.*

the expectations it arouses. These expectations, of course, depend upon the operative definition of international law.²⁰

This inquiry assumes that law is a sociological notion from which legal consequences ensue. Law should never prevent the normal course of life, whether this course is pursued on a national or international plane. All law consists of regulating the action of those subject to it. The law is therefore incompatible with notions of unrestricted liberty or license. The practice of law must consequently attend to social change.²¹ This requirement arises not so much because, like spectators at a show, we are interested—yet dispassionately so—in what is going to happen. Rather, like players on a field, we are passionately interested in what is happening now, and are noting such changes, some of us with approval, some with mixed feelings, but none with indifference.²²

Leading scholars in the first half of the twentieth century defined international law as “the sum of rules or usages which civilized states have agreed shall be binding upon them in their dealings with one another.”²³ In the 1927 *SS Lotus Case*, the Permanent Court of International Justice held that international law governs relations between independent States. The rule of law binding upon States therefore emanates from their own free will as expressed in conventions or by usages generally accepted as expressing principles of law and established to regulate the relations between these coexisting independent communities or to achieve common aims.²⁴

The concept of international law itself is thus closely bound up with the question of who the subjects of the law are.²⁵ Discussions of this subject have engaged the attention of international scholars from various legal systems over time. The then-Soviet legal scholars, for example, engaged in heated academic debate on the subject of public international law. As a result, there emerged two leading schools of Soviet thought on the general question of international personality in international law. The first school of thought, led by Professors L.A. Modzhorian,²⁶ V.M. Shurshalov, and others, favors a “traditionalist” or “classical” concept. This theory grants a monopoly of international personality to sovereign states, to the complete

20. *Id.*

21. *Id.*

22. Gerald G. Fitzmaurice, *The Future of Public International Law and of the International Legal System in the Circumstances of Today*, 138 *INSTITUT DE DROIT INT'L* L. 11 (1973).

23. See L. OPPENHEIM, *INTERNATIONAL LAW: A TREATISE* 4-5 (7th ed. 1948); CHARLES C. HYDE, *INTERNATIONAL LAW CHIEFLY AS INTERPRETED AND APPLIED BY THE UNITED STATES* 1 (2nd ed. rev. 1945); GREEN H. HACKWORTH, *DIGEST OF INTERNATIONAL LAW* 1 (4th ed. 1949); J. L. BRIERLY, *THE LAW OF NATIONS: AN INTRODUCTION TO THE INTERNATIONAL LAW OF PEACE* 1 (4th ed. 1949); GEORG SCHWARZENBERGER, *A MANUAL OF INTERNATIONAL LAW* 1 (6th ed. 1947); WILLIAM E. HALL, *A TREATISE ON INTERNATIONAL LAW* 1 (8th ed. 1924); T.J. LAWRENCE, *THE PRINCIPLES OF INTERNATIONAL LAW* 1 (7th ed. 1923).

24. *S.S. Lotus (Fr. v. Turk.)*, 1927 P.C.I.J. (ser. A) No. 10, at 18.

25. For a detailed theoretical examination of the subject of international law, see OKEKE, *supra* note 18, at 9-19.

26. See L.A. MODZHORIAN, *SUB'EKTY MEZHDUNARODNOGO PRAVA* (1958).

exclusion of all other entities operating on the international plane—including universal international organizations such as the United Nations Organization and its related agencies. The second school of thought, led by Professor G.I. Tunkin²⁷—one of the best-known Soviet Scholars of international law—and others, held the view that a subject of international law is not merely an entity possessing international rights and obligations, but one which also actively participates in the international law-creating processes.²⁸ If only State did this, they alone would possess international personality. Because other entities may now participate in these processes, sovereign states no longer possess a monopoly over international personality. This perspective came to represent the majority opinion in Soviet international legal doctrine.²⁹

To continue to maintain that international law regulates the affairs and relations of states alone—that states are therefore the sole subjects of international law—ignores both reason and reality. If developments in the substance of international law that occurred in the first half of the twentieth century have so transformed the character and content of the international legal system that it can no longer be satisfactorily presented within the framework of classical concepts, then the developments in the latter half of the century demand a much more expanded concept of international law.

It is already obvious, and indeed, no longer debatable that within the framework of any give legal system, not all the subjects of that system will possess exactly the same characteristics. Still, the primary function of international law remains that of regulating the relations of states with one another. In its Advisory Opinion on Reparation For Injuries Suffered in the Service of the United Nations Organization, the International Court of Justice held:

The subjects of law in any legal system are not necessarily identical in their nature or in the extent of their rights, and their nature depends upon the needs of the community. Throughout its history, the development of international law has been influenced by the requirements of international life, and the progressive increase in the collective activities of States has already given rise to instances of action upon the international plane by certain entities which are not states.³⁰

Referring to the United Nations, the Court concluded that

[T]he Organization is an international person. That is not the same thing as saying that it is a State, which it certainly is not, or that its legal

27. GRIGORY IVANOVICH TUNKIN, *OSNOVY SOVREMENOGO MEZHDUNARODNOGO PRAVA* (1956).

28. *Id.*

29. For more details of their views, see OKEKE, *supra* note 18.

30. *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion (1949) 4 I.C.J. Rep. 178-9.

personality and rights and duties are the same as those of a State. . . . [I]t is a subject of international law and capable of possessing international rights and duties, and . . . it has capacity to maintain its rights by bringing international claims.³¹

The list of organizations that have legal personality is extensive and would include, for example, the European Economic Community, the various specialized agencies of the United Nations, such as the International Labor Organization, and international regional organizations, such as the Organization of African Unity, the Organization of American States, and the Association of South-East Asian Nations, to name just a few. All these examples are bodies composed of or created by States. When one gets beyond international organizations to consider individuals and groups not created by States and, in some cases, not even sanctioned by them, the issue becomes more controversial.

Another source of debate among international legal scholars regards recent developments in human rights law, which is intertwined with the rights of the individual, the right of peoples to self-determination, and recent developments in the humanitarian law of armed conflict. The concept of international law as a body of rules binding only States is no longer valid. As Heather Wilson remarks, “[nothing] precludes national liberation movements from assuming personality status in international law when the requirements of international life necessitate their inclusion.”³² While the primary function of international law remains that of regulating the interrelations of States, it has recently occupied itself with other kinds of international organizations, institutions, units (of limited legal capacity), and even individual persons.³³

To suppose that merely by describing an entity as a “subject” one is formulating its capacities in law is therefore a mistake. Because the rules of law can alone determine who or what is competent to act, they may select different entities and endow them with different legal functions. An entity claiming to have international legal capacity does not come under the rule of international law until the entity internationally asserts itself.³⁴ Whether the entity is entitled to assert itself internationally is a function of whether it possesses the international capacity it claims for itself. If the entity does in fact possess its claimed international capacity, and this claim is recognized by the international community, acts performed by that entity in the field of international relations are legal acts, thus showing that the entity has the international capacity to perform them.³⁵

In sum, to qualify as a subject of a system of law, or to be a legal

31. *Id.* at 79.

32. WILSON, *supra* note 17, at 8.

33. OKEKE, *supra* note 18, at 18.

34. *Id.*

35. *Id.*

person within the rules of that system, implies the following essential elements:

First, a subject of law has duties, thereby incurring responsibility for any behaviour at variance with that prescribed by the legal system.

Second, a subject of law is capable of claiming the benefit of the rights conferred by the content of the law. This is more than being the mere beneficiary of a right, since a considerable number of rules may serve the interests of groups of individuals who do not individually have a direct legal claim to the benefits conferred by the particular rules.

Third, to the extent recognized by the legal system, a subject of law possesses the capacity to enter into contractual or other legal relations with other subjects of the system, but the extent of such capacity may vary with the nature of the person or entity concerned.³⁶

I. UNITED NATIONS DECADE OF INTERNATIONAL LAW

The question whether there exists an African conception of international law, or more specifically, the place of international law in the Nigerian legal system, is very relevant to the main purposes of what the General Assembly of the United Nations has proclaimed "THE DECADE OF INTERNATIONAL LAW."³⁷

On September 12, 1990, the Secretary-General of the United Nations Organization presented his first report on this item containing the initial reactions gathered from the views of member States, international organizations, and non-governmental bodies, pursuant to Paragraph 3 of that resolution.³⁸ The main purposes of the Decade, as defined in the Resolution, are

- (a) To promote the acceptance of and respect for the principles of international law;
- (b) To promote means and methods for the peaceful settlement of disputes between States, including resort to and full respect for the International Court of Justice;
- (c) To encourage the progressive development of international law and its codification;
- (d) To encourage the teaching, study, dissemination and wider appreciation of international law.³⁹

A consensus has emerged that the program of actions for the Decade, including the plan to convene a Third Hague Peace Conference in 1999, should be "generally acceptable, well-defined and action oriented," and at the

36. *Id.* at 19. See also NKAMBO MUGERWA, *MANUAL OF PUBLIC INTERNATIONAL LAW* 249 (1968).

37. G.A. Res. 44/23, November 17, 1989, moved by the non-aligned countries following the initiative taken by their Foreign Ministers at the Conference in The Hague in June 26-29, 1989.

38. *Id.* at para. 3; see also UN Doc. A/45/430 (1950), add. 1, 2.

39. G.A. Res. 44/23, *supra* note 37, at para. 2.

same time, "concrete and realistic" without duplicating the work of existing organs.⁴⁰ Reactions of States, as gathered and reflected in the first Secretary-General's report in 1990, have been mixed. The focus of this inquiry, however, is not to enter into an examination of the different positions taken by various groups of States, including countries formerly known as "socialist" (such as the Russian Federation, China, Cuba and Bulgaria), the West European countries, etc. Rather, the focus here is to encourage individual African countries to accept the invitation to submit suggestions for consideration by the Sixth Committee of the General Assembly regarding the areas of international law that States consider ripe for codification or progressive development.

A recent survey provides evidence of a distinct lack of involvement by African States in this process. The American Society of International Law published in 1995 a special series of studies in Transnational Legal Policy concerning precisely the kind of survey of State Practice encouraged by the United Nations. The publication of "National Treaty Law and Practice" covered six country studies, and coincided with the celebration of the fiftieth anniversary of the San Francisco Charter. No country from the African continent was included in the study.⁴¹ Several years have elapsed since the Decade began. After five annual reports by the United Nations Secretary General, it is time for a mid-term review of any progress made, at least in some selected areas of primary interest and concern to the international community, especially in the African region of the world.

With the theoretical consideration of the issues discussed above as background, this inquiry proposes to analyze the impact that the Nigerian legal system has had on certain selected fields of international law. Has Nigeria developed a specific body of theory and practice in international law which is original to her and by which she can, more or less, be easily identified? Can we already speak of an emerging Nigerian State system, of a *jus publicum Nigerianum*⁴² consisting of a legal order of the Nigerian State system in the making, by which her practice within the international

40. U.N. Doc. A/45/430, at 6.

41. Its first volume contains six essays on the law and practice of major legal systems: France, Germany, India, Switzerland, Thailand and the United Kingdom.

42. We concede that this is a new term, and has perhaps never been used. However, it is an expression used to refer to the public order system which is akin and particular to a specific state or group of states. Pax Africana is essentially how Africans conduct their affairs with Africans, while Pax Nigeriana refers to how Nigerians conduct their affairs both internally (with Nigerians) and externally (continental, inter-regional, and global international relations), and how non-African States react. An illustration is The Lagos Plan of Action 1980, C/CN.14/781/Add. 1, which is a translation of African Unity into terms of "collective self-reliance" within the larger context of a new international economic order. This plan must be understood with due consideration to its underlying ideal and myth of African Unity within a world community based on specific groupings of States and regionalism.

legal sphere can be easily noticeable and/or ascertainable?⁴³

II. HISTORICAL OUTLINE

A proper study of Nigeria and international law requires a short reference to the early history and development of the law of nations in the country.⁴⁴ This approach is imperative because the primary purpose of this study is to unravel the complex international legal problems of Nigeria, to reveal those rules of traditional international law which she opposes, and to explain why she opposes them. By examining the development of the general rules of international law and their contents, geographical extensions, and applications, it may be determined whether Nigeria was a member of the international community, and therefore, subject of international law, during her early historical period and to what extent she contributed to the formulation of the norms of international law.

The survey would help to answer the following basic questions:

1. Was Nigeria a member of the international community prior to October 1, 1960?
2. Did she participate in the formulation of the norms of international law prior to 1960, and if so, what was the extent of her contribution?
3. Were the rules of international law equally applicable to Nigeria, and thus, was she a subject of international law prior to October 1, 1960?

A. Nigeria and Pre-Colonial International Law

Opinions differ among international legal scholars as to whether the development of international law was restricted solely to the West-European nations.⁴⁵ The history of the Nigerian legal system has been much associat-

43. It could be objected that to speak of a *jus publicum* Nigerianum is to refer to a myth or to the mystification of international legal phenomena within the Nigerian State. Such an objection may, however, not be sustainable or hold good, since it is argued that myth is a component part of international law and must be considered whenever one attempts to discuss the basis of international law as a scientific discipline.

44. J.J.G. SYATAUW, SOME NEWLY ESTABLISHED ASIAN STATES AND THE DEVELOPMENT OF INTERNATIONAL LAW 29 (1961).

45. Mushkat stated,

Once we begin to dig deep into the strata of history we find that thousands of years before Europe even achieved any significance in world affairs the rudiments and increasingly effective institutions of international law were already known on other continents. Those scholars recognized as the founders of the doctrine of international law, such as Vitoria, Grotius and others who took account of the historical background of the system, spoke of it as a universal order, not only in scope but also in origin. Ancient Shumer, Babylonia, Persia, Egypt, Greece and Rome - these are but some of the civilizations in which international law has its roots.

Mari'on Mushkat, *Some Remarks on the Factors Influencing the Emergence and Evolution of International Law*, 7 NETH. INT'L L.REV. 351 (1961).

ed with the establishment of British colonial rule in the country.⁴⁶ However, this assertion is not entirely correct.⁴⁷ Any nation was considered sovereign "if it governed itself, under whatever form, and did not depend on any other nations."⁴⁸ Even Sir Alan Burns, former Governor of Nigeria, stated, "[n]o European nation had the right to assume sovereignty over the inhabitants of any part of Africa, and the claims put forward by the various Governments at the Berlin Conference in 1885 took little account of the rights of the people who lived in the territories claimed."⁴⁹ While it is beyond the scope of this inquiry to explore at length the history and evolution of Nigeria's formation as a State, outlining in a preliminary manner the broad sketches of Nigerian political societies and their international relations from a brief historical view is necessary. Such a discussion will lay to rest the mistaken and deliberately distorted opinion that Nigerian history started with its colonization by Britain.

Ample scholarly historical evidence exists to support the view that some kingdoms and states of what later became Nigeria had their own well-organized political systems and Governments prior to nineteenth century colonial period. Their organs of government and the mechanisms for their maintenance, including military apparatus, were in place and operative.⁵⁰ Belligerent relationships between states represent the greatest strain on the application of law. In the Fulani wars, the Ijebu and Aro expeditions, and other numerous tribal or inter-village wars in Nigeria, important laws of war developed. These laws were based on considerations of humanity and chivalry. For example, those who surrendered (held green leaves in their hands), or who were found without arms, sleeping, naked, or clearly unprepared, or who were merely innocent onlookers, were never to be killed. The dictates of humanity helped the development of laws of war in ancient Nigeria on a remarkably modern basis. The rules of warfare applied even if the struggle was in the nature of civil war, which conforms with the modern concept embodied in the Geneva Conventions of 1949 and its underlying recognition of belligerency. Moreover, the distinction between combatants and non-combatants, as well as the rule forbidding weapons of mass destruction, were not only formulated but actually practiced in ancient

46. OMONIYI ADEWOYE, *THE LEGAL PROFESSION IN NIGERIA 1865-1962* 1 (1982).

47. CHRISTIAN N. OKEKE, *THE THEORY AND PRACTICE OF INTERNATIONAL LAW IN NIGERIA* 13 (1986).

48. S. PRAKASH SINHA, *NEW NATIONS AND THE LAW OF NATIONS* 13 (1967).

49. See TASILIM OLAWALE ELIAS, *AFRICA AND THE DEVELOPMENT OF INTERNATIONAL LAW* 18 (1972).

50. The history of the Nigerian army has been clearly traced. Therein, the point is made that as a result of numerous tribal or inter-village wars, rules of war were developed. Various tribes and kingdoms in Nigeria had comparatively good military organizations. Several encounters between the native soldiers and the British forces were recorded. The great Fulani wars, the formidable Ijebu Expedition of 1892, and the senatorial Aro Expedition of November 1901 to March 1902, to mention a few, are clearly remembered both in oral tradition and in books. See O. ACHIKE, *GROUNDWORK OF MILITARY LAW AND MILITARY RULE IN NIGERIA* (1978).

Nigeria.

The economic activities of ancient Nigeria also suggest a high degree of sophistication prior to British colonialization. The kingdoms, for example, of the Hausa States of Bornu, Sokoto, and Kano had trade and other relations with each other and with foreign countries far and near, before the British powers occupied the territory of Nigeria.⁵¹ They conducted relations similar to the Greek City States, the States of India, and those of the Roman Empire.

Furthermore, there exist records of international relations between modern North-Eastern states of Nigeria and the region of Segu in modern Mali.⁵² In the South of Nigeria, the Benin Empire had extensive relations with the Portuguese.⁵³ During this period, Nigeria waged wars, conducted trade across its borders, exchanged ambassadors, settled disputes, negotiated and signed agreements, and held conferences.⁵⁴

In terms of diplomatic relations, an abundance of evidence suggests that rulers of the era exchanged ambassadors and diplomatic notes. Tarikh El-Fetash described how the Songhay Emperor, Askia Muhammed, made restitution to three poor scholars in who had suffered persecution by Chi Ali, a previous and despotic ruler in A.D. 913. Having received servants and cattle from Askia, these men asked for safe conduct through all the cities of the empire, to which he agreed. The emperor's secretary wrote a note under his dictation and signature commanding all whom it may concern to respect and protect the three scholars. He further authorized the scholars and their descendants to marry any women they may wish throughout his empire, from the Kanta to Sibiridugu. Above all, leaders of both states accorded full respect to matters affecting their mutual interests on the basis of reciprocity.⁵⁵

The contacts of ancient Nigeria with states or political entities professing a different civilization were thus many and well established. The act of sending ambassadors, or envoys for ad hoc missions or for short sojourns to the courts of other states (even though the modern concept of permanent embassies was not then known), was not only confined to kingdoms of the Nigerian territory, but was also practiced in relation to other states of similar kinds in foreign lands. The Nigerian institution of using the ambassador as the mouthpiece for inter-state communication commanded respect.

The attempt to make ambassadorial exchanges function effectively led to the doctrine of immunities and privileges of foreign envoys in ancient Nigeria. Apart from making an important contribution to the development

51. BASIL DAVIDSON, *THE AFRICAN PAST: CHRONICLES FROM ANTIQUITY TO MODERN TIMES* 93 (1967).

52. *Id.* at 6.

53. *Id.* at 187-188.

54. OKEKE, *supra* note 47, at 14.

55. That is from modern Bauchi State of Nigeria to the region of Segu in modern Mali. For more details, see DAVIDSON, *supra* note 51, at 92-94.

of the law on the subject of privileges and immunities, this early practice further demonstrates the application of the law of nations in pre-colonial Nigeria. Based on experience, Nigeria has had no problems whatsoever in accepting most of the diplomatic and consular rules of customary international law.

Specific examples of diplomatic contacts point to pre-colonial Nigeria's remarkably modern approach to relations with other States. Portugal was the first country outside of West Africa to have diplomatic relations with the Benin Empire of Nigeria (circa 1846).⁵⁶ Benin and Portugal exchanged ambassadors as well as diplomatic notes. The ruler of Benin sent ambassadors to Europe and also received ambassadors from other foreign countries. During the reign of Oba Esigie of Benin,⁵⁷ a Portuguese missionary, John Affonso d'Averio, travelled at least twice to Benin at the request of the King of Portugal to persuade the Oba to become a Christian (arguing that his Christianity would improve his country).

Moreover, the kingdoms of Ekiti, Ijesha and Igbomina of the former Western region of Nigeria (now split into Oyo, Ogun and Oshun states of modern Nigeria) formed between 1877 and 1893 a military alliance for the purpose of mutual defense. There was also a convention signed between the Yoruba States of Nigeria with other West African States in which market places were to be considered as neutral zones in times of war.

The above discussion shows that the ancient political units of Nigeria conducted their affairs and relations with other foreign nations in a manner and style similar to those of modern states. Although the scope of their activities were naturally limited considering the level of development at the time, those relationships were undoubtedly based on an international legal framework which was certainly international. The Nigerian states and kingdoms of the period clearly possessed sovereignty, and therefore enjoyed personality within a regime of international law.

B. Nigeria and "Colonial" International Law

A discussion of the Nigerian experience with international law during the colonial period is crucial to this inquiry. Current problems of the Nigerian State in general originated during this period. During its colonialization, Nigerian chiefdoms and kingdoms were robbed of their sovereignty and international legal personality and reduced to objects of international law. Indeed, colonial international law hardly assigned any legal status to the sovereign people and their territories, even though Nigerian territory was never declared as *terra nullius*.

The British applied various methods to colonize Nigeria. One of the

56. The Oyo Kingdom of the Yorubaland also had contacts with the neighbouring countries like Dahomey (now Republic of Benin), and Gold Coast (now Republic of Ghana). *Id.*

57. Beginning in A.D. 1504.

most effective methods of colonization, despite long-enduring resistance by Africans, was the

process of infiltration, steadily advanced until the stage of 'effective occupation' could be reached, behind the screen of 'treaties of protection,' sometimes described as 'cession' treaties. These were 'signed' with one or another European power by chiefs who could seldom or never have understood the intention of their new 'protectors'.⁵⁸

Colonial jurists turned international law of the period into an instrument of oppression, exploitation, and legitimization of colonial subjugation of the Nigerian nation. Frontier agreements were concluded with utter disregard for the cultural and national interests of the people.

King Dosunmu of Lagos, for instance, was attacked by the British when he refused to surrender sovereignty over his whole territory. After he was conquered in war, he signed a treaty, stating,

I, Dosunmu, do with the consent and advice of my Council, give, transfer, and by these presents grant and confirm unto the Queen of Great Britain, her heirs and successors for ever, the port and the island of Lagos, with all the rights, profits, territories and appurtenances whatsoever thereunto belonging (and as well the profits and revenue and the direct, full and absolute dominion and sovereignty of the said port, island, and premises, with all the royalties thereof, freely, fully, entirely, and absolutely).⁵⁹

The legality of the treaty could not have been sustained even under the extant European law of the time. Treaty law was clear about who could enter into a treaty and what conditions gave it binding authority. Treaties obtained by intimidation were invalid. Many of the treaties of protection were nonetheless obtained by intimidation, fraud, mistake or error because the parties misunderstood each other, or were made without real or mutual consent. Such treaties would certainly be illegal if judged by the principles of current treaty law (as based on the Vienna Convention on the Law of Treaties 1969).⁶⁰

Sir Frederick Lugard, the notorious former Governor of Northern Nigeria, "preceded negotiations with short military actions in order to place

58. BASIL DAVIDSON, *AFRICA IN HISTORY* 286 (1991).

59. Treaty of Cession, art. 1 (1861) [quoted in Okeke, *supra* note 47, at 22].

60. Umzurike argues that the Vienna Convention did not "create but merely re-affirmed these principles for they were in existence when the treaties were concluded with African Kings." Umzurike O. Umzurike, *International Law and Colonialism in Africa*, 3 E. Afr. L. Rev. 47 (1970). Mutua gives a succinct description of the unacceptable nature and character of the treaty signed by King Dosunmu:

The absolutist language of the "treaty", its one-sided capitulation by Dosinmu, and the complete, unconscionable "renunciation" over the sovereignty of his people, territory, and resources is of such absurdity that, if taken seriously, it would make a mockery of the notion of a treaty and the concept of freedom of contract.

Makau wa Mutua, *Why Redraw the Map of Africa: A Moral and Legal Inquiry*, 16 MICH. J. INT'L L. 6 (1995).

himself in a position of strength," while Consul Ralph Moor of the Niger Coast Protective "moved up and down the Cross River with troops shelling and destroying villages before settling down to make 'treaties of friendship' with the frightened people."⁶¹ Lugard spoke of a "valuable concession purchased by the present of an old pair of boots."⁶² King Jaja of Opobo, a Nigerian Ibo, found to his dismay that the meaning of "protection" could be elusive. He was denied trading rights even after assurances that "protection" would leave his country while still under his government.⁶³

Apart from the fact that the Chiefs of the colonial territories with whom the British representatives signed the so-called treaties of cession or protection were illiterates and ignorant, and could not therefore have reasonably understood the full implications of the terms of the treaties written by Europeans in their own technical language, they had no mandate to dispose of the people's property.⁶⁴ This fact has been eloquently made clear in one of the most celebrated cases regarding the legal effect of the Treaty of Cession by which Lagos was supposedly ceded to the British Crown by King Dosunmu in 1861.⁶⁵

The Nigerian chiefdoms, kingdoms and states thus never completely lost their international sovereign personality prior to the formal date of political independence on October 1, 1960. They enjoyed local autonomy and a substantial degree of self-government. They therefore did participate in some manner in the formulation of certain norms of international law.

C. The Place of International Law in the Nigerian Constitutional Development

The basic law of any country is its constitution. In it, the State's foreign policy objectives are either clearly expressed or implied. Although such foreign policy objectives would not necessarily articulate a State's disposition toward international law, they certainly would give a fairly clear indication of the manner of behavior of a State in specific international situations.⁶⁶ Consequently, aspects of Nigeria's disposition toward international law may be found in its constitution. The foreign policy of any state in relation to its constitution cannot be discussed without an objective examination of those policies which are within a State's sovereign purview, yet may nevertheless

61. *Id.*

62. *Id.* at 43.

63. *Id.*

64. OKEKE, *supra* note 47, at 24.

65. *Amodu Tijani v. Secretary, Southern Provinces* (1915), (1921) 3 NLR 24, (1921)2 A.C. 399. The case is regarded as the most celebrated legal action ever to have arisen in Nigeria, and indeed, in West Africa, concerning African rights to land under a colonial system. The *Tijani* case has become the locus classicus on the whole subject of the nature of Crown ownership of colonial lands. See TASLIM OLAWALE ELIAS, *NIGERIAN LAND LAW AND CUSTOM* 18 (1962).

66. Okeke, *supra* note 47, at 25.

have international repercussions.⁶⁷ A State's policy on matters like treaties, international organizations, national liberation struggles, treatment of aliens, extradition, and economic relations are all relevant in this regard.⁶⁸ Nigeria has had at least ten constitutions⁶⁹ at different stages of its political development between 1914 and 1996. A good number of them never had a chance of being officially promulgated after the appropriate Constitutional Drafting Conferences finished their work. For the sake of convenience, these constitutions will be divided into two categories: Pre-Independence Constitutions and Post-Independence Constitutions.

The 1960 Independence Constitution first provided for some general provisions of Nigeria's foreign policy (such as participation in international organizations, treaty-making and treaty-implementation,⁷⁰ as well as some provisions on international law⁷¹). Under the 1960 Constitution, Parliament was authorized to make laws for Nigeria or any other part thereof with respect "to matters not included in the legislative lists for the purpose of implementing any treaty, convention or agreement between the Federation, any other country or any agreement with or decision of an international organization of which the Federation is a member."⁷² According to this provision, the four regions of Nigeria which existed at the time⁷³ were very much involved in her treaty-implementation process.

Consequently, no treaty enacted between Nigeria and a foreign country could be implemented in a region of Nigeria absent consent of the Parliament on the one hand, and assent to the treaty by the Governor of the region. These regions, either deliberately or by default, thus made incursions into the foreign affairs of the country, particularly in matters of trade in which independent agreements were signed with foreign governments on an egalitarian basis⁷⁴ Some regions established posts of Agent's General; and in a few cases, Premiers of the regions or even Ministers of certain regions

67. Michael A. Ajomo, *International Law and Foreign Policy in the Draft Constitution*, in FOREIGN POLICY AND THE CONSTITUTION, 4 N.I.I.A. Monograph Series 53 (1979).

68. *Id.*

69. The constitutions are the Lugard Constitution of 1914, the Clifford Constitution of 1922; the Richard Constitution of 1946; the Macpherson Constitution of 1951; the Federation Constitution of 1954; the independence Constitution of 1960, the Republican Constitution of 1963 which was in operation until 15th January 1966 when the Civilian Government of Alhaji Abubakar Tafawa Balewa was overthrown in the first military coup d'etat; the 1979 Presidential Constitution overthrown four years later by the Buhari Administration; the 1989 Constitution drafted under the Babangida Administration that never took effect and the 1996 Draft Constitution under present Sani Abacha's regime, yet to come into force.

70. See OKEKE, *supra* note 47, at chs. 8, 11 [description of Nigeria's participation in international organizations, and practice in treaty-making and implementation].

71. Before then, Nigeria's foreign policy and foreign affairs were designed and conducted by Great Britain.

72. See 1960 Constitution of the Federal Republic of Nigeria 369 [hereinafter 1960 Constitution].

73. Northern, Western, Eastern, and Mid-Western.

74. See OBAFEMI AWOLOWO, THOUGHTS ON THE NIGERIAN CONSTITUTION 125 (1960); RICHARD AKINJIDE, FOREIGN POLICY AND FEDERALISM 100-105 (1974).

made foreign policy statements imputable to the Federal Government of Nigeria.⁷⁵

The 1960 Constitution also contained important provisions on citizenship⁷⁶ and fundamental human rights,⁷⁷ both of which were of great relevance to Nigeria's practice of international law. The government also enacted the Diplomatic Immunities and Privileges Act⁷⁸, the External Loans Act,⁷⁹ and the Exchange Control Act.⁸⁰ Other important legislation relevant to Nigeria's practice of international law were merely enacted by the military administration of Yakubu Gowon. These included the Extradition Act,⁸¹ the International Centre for Settlement of Investments Disputes (Enforcement of Award) Act,⁸² the Territorial Waters Act,⁸³ and the Immigration (Special Provision) Act.⁸⁴

III. GENERAL DISPOSITION TOWARD INTERNATIONAL LAW AND THE ESTABLISHED RULES OF INTERNATIONAL LAW

Having concluded that the character of a nation's legal system is inextricably linked to its socio-economic, religious, and cultural make-up, the actual disposition of Nigeria toward international law and its established rules will now be critically examined. Such an investigation is indispensable to demystifying the allegation that the crisis of international law has been created by the emergence of newly independent Afro-Asian States. The State of Nigeria has both positive and negative attitudes about certain established rules of international law. There exist, however, root causes and motives for Nigeria's positive disposition toward international law.

In examining the Nigerian disposition, a distinction should be made between old established rules of international law (which need either reform

75. *Id.*

76. See 1960 Constitution, §§ 7-16. For a discussion of the Nigerian law on Nationality and Citizenship, see OKEKE, *supra* note 47, 65-71.

77. See 1960 Constitution, §§ 16-32.

78. *Id.* at § 42. This section was to prepare the ground and bring the local law in conformity with the Vienna Convention on Diplomatic Relations done at Vienna in 1961 and to which Nigeria acceded some years after. It came into force in 1964. In 1963, the Vienna Convention on Consular Relation was adopted and Nigeria also became a party to that Convention.

79. *Id.* at § 9. According to this Act, only the Minister of Finance has the power to raise loans outside Nigeria but limited to certain amount.

80. *Id.* at § 16. This Act was intended to control all Nigeria's foreign exchange transactions. The 1962 Act was amended by the 1977 Exchange Control (Anti-Sabotage) Decree No. 57, which in turn was later repealed by the 1979 Federal Republic of Nigeria (Certain Consequential Repeals) Act, No. 105.

81. *Id.* at § 87. For a detailed discussion of the Act, see OKEKE, *supra* note 47, 103-134.

82. *Id.* at § 49.

83. *Id.* at § 5. The Act extended the territorial waters of Nigeria from three nautical miles to twelve nautical miles. In 1971, the Act was amended extending Nigerian Territorial Waters to thirty nautical miles.

84. *Id.* at § 33.

or equal application to all States), and new rules, the formulation of which must involve the participation of non-European States. The major factors responsible for Nigeria's disposition toward international law, despite the cultural, religious, social and linguistic differences of her people, include her past experiences under colonization, her desire for rapid development, and her sociological approach to international law.

At the time of her historic attainment of independence in 1960, Nigeria did not reject the rules of contemporary international law either categorically or even in greater part.⁸⁵ Nor did she accept, however, that she was obliged to be bound by all existing rules of traditional international law. Generally, she reserved the right to re-examine these rules.⁸⁶ The Nigerian State, although pragmatic and selective in its approach, is basically interested in strengthening the rules of international law. Nigeria has acted more as a radical reformist than a negative rejectionist.⁸⁷

An eloquent testimony to Nigeria State's respect for international law is shown by the provisions included in her various national constitutions giving superiority to general principles of international law and proclaiming them to be the foundation and guidance for both her domestic and international behavior.⁸⁸ However, this is more of a general declaration of recognition of the indispensability of international law than a specific commitment to the practical application or the superiority of the rules of international law nationally.

Unlike the United States and the former Soviet Union, the Nigerian State

85. For an elaborate discussion of the attitudes of the African nations towards international law, see H. Fox, *The Settlement of Disputes by Peaceful Means and the Observance of International Law: African Attitudes*, 3 INT. REL. 389 (The Davies Memorial Institute of International Studies, 1968). Tunkin further stated

The Western protagonists of the thesis mentioned earlier had extended that charge they made against the Soviet Union to the new States of Africa and Asia. They claimed that international law was the child of European and Christian civilization and culture and that the New States which did not belong to that culture and civilization were also destroying the "homogeneity" of the international society and thereby undermining the foundations of international law. But that assertion also was false, for experience had shown that the newly independent States were in favor of developing and strengthening international law, which they considered to be the best means of preserving both their independence and world peace.

TUNKIN, *supra* note 27, at 105. See also U.N. GAOR 6th Comm., 16th Sess., at 137, U.N. Doc. A/C.6/SR.713 to 730 (1961).

86. T.O. Elias stated: "As we have already insisted at the United Nations, the newly independent States of Asia and Africa reserve the right to re-examine some of those principles with a view to seeing that they are really of universal application." CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE, AFRICAN CONFERENCE ON INTERNATIONAL LAW AND AFRICAN PROBLEMS 17 (1968) [summary record of the conference, held under the auspices of the Nigerian Institute of International Affairs, Lagos and the Carnegie Endowment for International Peace, New York] [hereinafter AFRICAN CONFERENCE].

87. Wolfgang Friedmann, *The Position of Underdeveloped Countries and the Universality of International Law*, 1-2 INT'L LAW BULL. 86 (1961-1963). "New States, above all the African, all of them developing, act continually and untiringly to strengthen these positive tendencies of change in world politics and international law." Mushkat, *supra* note 12, at 345.

88. The specific examples in the Nigeria State constitutions will be examined later in this study.

did not seek to create an exclusively national or regional international law. Her effort has always been directed toward co-ordinating and making changes in the mainstream of the rules of international law, while seeking her own solutions to national, regional and continental problems. There are however, various important reasons why Nigeria and other African States rejected some of the established rules of international law.

Her successive leaders cautiously invoked the universal principles of international law in the struggle against colonialism and imperialism. Like other African nations, one of the goals of Nigeria at independence was to become a member of the international community and help bring about international peace with justice. Upon independence, Nigeria (like any other new State), was very eager to be received into the international community through recognition and admission to the United Nations and its specialized agencies. Naturally, she had to show a high degree of conformity and respect for the established rules of the community into whose membership she sought admission.

The new Nigerian State arose within an already strongly established international legal system—an international community dominated by a few powerful States. The pressures from such a legal system are overwhelming enough to compel a new State to accept the main corpus of its international law. As a newly independent State, Nigeria remains economically and militarily weaker than the rest of the developed States (mainly of European powers). The only protection she has against the intervention of the powerful States is reliance on rules of international law. Rather than reject the established rules of international law, Nigeria therefore strongly supported and continues to support the strengthening of international law. It is no wonder, then, that she regularly invokes the principles of international law in her contributions at debates in the United Nations and public statements of her accredited representatives at various international fora elsewhere.

As a matter of practical necessity for conducting her day-to-day State activities with the international community, Nigeria has to accept many of the universal principles of international law, at least provisionally. Development still remains the central concern for all new States. In order to promote her urgent national goal of rapid development and also to derive the enormous benefits resulting from international legal cooperation, the Nigerian State has accepted the rules of international law.⁸⁹

89. A number of international legal scholars with diverse intellectual backgrounds have examined critically some factors which are responsible for the acceptance by African States of many of the rules of international law. See L. Henkin, *International Law and National Behavior*, 114 RECUEIL DES COURS OF THE HAGUE ACAD. OF INT'L L. 218 (1965). Furthermore, the records of the United Nations Conference on Trade and Development contain examples of attempts by the developing nations to legally urge the standardization and the transfer of means of development from the developed and wealthy nations to the less developed and needy nations. See U.N. TDBOR, 1st Sess., U.N. Doc. E/CONF 46/141 (Geneva 1964); U.N. TDBOR, 2nd Sess., U.N. Doc. E/CONF 46/141 (New Dehli 1968); U.N. TDBOR, 3rd Sess., U.N. Doc.

The most important factor, however, explaining Nigeria's positive attitude toward established rules of international law is to be found in her colonial legal heritage. The political organization of the country from independence until 1979⁹⁰ was based on the Westminster model. Nigeria's national legal system was accordingly based on the British legal system as well. Like other new States, she maintained the channels of influence with the former colonial power by becoming a member of the Commonwealth of nations.⁹¹ Therefore, the pressures of her peer group compel her to conform to the established rules of international law.

Moreover, the administrative bureaucracy of the country has, for quite a long while, been staffed largely by the old colonial hands—hands in the habit of doing things along the lines of Western legal practices and doctrines. Consequently, there remains a certain reluctance to re-examine the rules of international law critically despite Nigeria's status as a sovereign State with her own unique national goals. Up to the present time, most of the legal departments and courts are run by European and North American officers, the majority of whom were educated in Western countries. Until the early 1970s, all the nation's faculties of law were staffed and headed entirely by either foreign teachers or indigenous teachers with West European legal training.⁹²

Because of the paternalism endemic to the colonial education of indigent populations, educated Nigerians were typically imbued with the parochial content of Western legal and philosophical thinking. This was especially true in the colonial capitols. Consequently, Nigerian legal thinking tends to be generally pro-Western.⁹³ Closely related is the fact that the Nigerian State

E/CONF 46/141 (San Diego 1972); U.N. TDBOR, 4th Sess., U.N. Doc. E/CONF 46/141 (Nairobi 1976); U.N. TDBOR, 5th Sess., U.N. Doc. E/CONF 46/141 (Manila 1979).

90. The Constitution of the Federal Republic of Nigeria 1979 was historic in that for the first time it broke away from the usual Parliamentary system of government to the Presidential system fashioned along the United States model of presidential democracy.

91. The Federal Republic of Nigeria was recently suspended from the membership of the Commonwealth of Nations following the aftermath of the execution of the Ogoni activist and environmentalist, Ken Saro Wiwa and eight others regarding prolonged environmental dispute with Shell Oil Nigeria.

92. The present writer feels extremely honored to have been the first non-Western European trained Nigerian to teach law in any Nigerian faculty of law (appointed in 1973 to the University of Nigeria), and the first to attain full professorial status, and later the founding Dean of two new law schools in the country, namely, Nnamdi Azikiwe University (1985-1991), and Enugu State University of Science and Technology, Enugu (1991-1994).

93. Professor Quincy Wright observed: "The new African States have actually been taken over by westernized Africans and these new leaders have been introducing European political concepts more rapidly than the Europeans themselves." S. D. Metzger, *Comments*, 55 *Proceedings of the American Society of International Law* 160 (1961). "Their jurists have received their legal education in Western countries and have acquired the common ambivalent attitude of most private-law oriented lawyers toward international law . . ." A. A. Fatouros, *Participation of the "New" States in International Legal Order of the Future*, in 1 *THE FUTURE OF THE INTERNATIONAL LEGAL ORDER: TRENDS AND PATTERNS* 341 (R.A. Falk and C. E. Black eds., 1969). Ohombamu of Nigeria observed:

Contributing to the debate on this question of 'over-westernization' . . . although African states professed non-alignment, they were in fact biased toward the West. The

has operated on what is called "borrowed knowledge." As in other African countries, Nigerian legal officers and jurists have had to depend on Western textbooks and reference works for their daily practice of legal business, whether in the Courts, the advising of Ministerial departments, or the legal education of the young lawyers.⁹⁴ Such borrowed knowledge seldom meets with the oftentimes uniquely non-Western interests of the Nigerian State.

Before concluding this discussion of Nigeria's general disposition toward international law and its established rules, the reasons for her opposition to aspects of both its character and application must be addressed.

Apart from an uncertainty about sources and rules which the International Court of Justice applies to international disputes, Nigeria's initially negative attitude toward the court was prompted by her concern over the inequitability of its composition. The court was for many years compositionally unrepresentative of its geographical jurisdiction.⁹⁵ It took some time before Nigeria accepted the compulsory jurisdiction of the Court without reservation, and only then on condition of reciprocity.⁹⁶ Moreover,

result was that only books published by Western scholars were generally available in their public libraries, to the exclusion of the works of scholars from the Eastern countries. An example of this bias, was the Library of the Nigerian Institute of International Affairs.

Ohombamu, African Conference, *supra* note 86, at 18. Dr. Fabunmi, the Director-General of the Nigerian Institute of International Affairs, admitted the allegation when he stated:

While it was true that, because of the facts of history and other obvious reasons, majority of the books in the Institute were published in the Western world, a considerable number of the Institute's holdings had nevertheless come from the Eastern bloc, including Poland, Yugoslavia, the Soviet Union and Czechoslovakia . . .

L.A. Fabunmi, *id.* at 19.

94. On this, Falk commented:

There is reason to suppose that the bureaucrat in the new States who is called upon to apply international law often turns for guidance to the most conventional texts produced by European international lawyers. Although the rhetoric of disaffection from the international legal order may be employed in a speech by an Afro-Asian diplomat in the United Nations, the practice of his country may reveal an exaggerated deference to traditional and conservative interpretation of the requirements of international law. Among the needs of the new States is a series of widely distributed interpretation of international law written from the distinctive perspective of the particular new State or at least interpretations self-consciously seeking to maximize the interests of the modernizing interpretation for Afro-Asian States.

R. A. Falk, *The New States and International Legal Order*, 118 RECUEIL DES COURS OF THE HAGUE ACAD. OF INT'L L. 24 (1966). We did recommend the encouragement of the production of text-books in international law written from the Nigerian experience and point of view and stressed that indigenous literature on the subject should form the primary source material supplemented by foreign materials. See OKEKE, *supra* note 47, at 288.

95. Sir Louis Mbanefo of Nigeria served only as an ad hoc Judge of the Court in 1966 in the controversial South West Africa Case (1966). Until 1964 there was no African member of the Court other than Judge A. H. Badawi of the United Arab Republic. Other Africans appointed to the Court later included: Judge J.I. Foster of Senegal (1964), Judge C.D. Onyeama of Nigeria (1967), Judge L. Ignacio- Pinto of Benin (1970), Judge T.O. Elias of Nigeria (1976), Judge A. El-Erian of Egypt (1979), Judge M. Bedjaoui of Algeria, and Keba Mbaye of Senegal (1982). Judge Bola Ajibola of Nigeria served out Elias' remaining term while Judge Abdul G. Koroma of Sierra Leone was appointed in 1994.

96. Nigeria accepted the compulsory jurisdiction of the International Court of Justice in 1965. See 16 I.C.J.Y.B. 76 (1971-1972).

Nigeria has been quite vocal since her independence in criticizing the very limited participation of African States in the law-making and application processes in international legal bodies such as the International Law Commission and the Legal Departments of International Organizations.⁹⁷ Nigeria has voiced the same concerns in recent debates on such crucial issues as the structure of the Security Council of the United Nations and the continued use of veto power by the so-called super powers.

In sum, before Nigeria's negative disposition toward the character and application of international law can improve, international law must serve the interests of the entire international community, and not merely those of its more powerful members.

IV. THE PLACE OF INTERNATIONAL LAW IN NIGERIAN MUNICIPAL LAW

The relationship between international law and municipal law is full of theoretical problems—as are most international law questions. Neither theorists, courts, nor other organs of state have found this question easy to resolve. The two principal theories on the subject are the dualist and monist doctrines.⁹⁸ A general discussion of these two theories will put the analysis of the Nigerian approach in proper context.

The dualists draw a clear distinction between international and municipal law based on their respective fundamental functions. While International law principally regulates the relationship between states and other subjects of international law, municipal law applies domestically and regulates relations of citizens with each other and with the executive. Dualism is closely connected with a positivist view of law, which tends to deny the validity of the sources of international law apart from its practice by States. International law may thus be applied by domestic courts only if it has been transformed into local law by legislation.⁹⁹

Monists, on the other hand, assert the supremacy of international law even within the sphere of municipal law. They argue that municipal courts are obliged to apply rules of international law without any further

97. Refer to debates over the expansion of the International Law Commission: Statements made by Jaja Wachuku of Nigeria in 1961, U.N. GAOR 6th Comm., 16th Sess., at 25, U.N. Doc. A/C.6/SR.692 (1961).

98. William Twining is of the view that the concept of legal literature, whether in municipal or international law, is imprecise. He interprets the terms "legal" and "literature" quite broadly to encompass any written material which contributes to the dissemination of information or ideas about matters "legal" in broad sense. The term encompasses books about law, as well as books of law, legal biographies, anthropological studies of customary law, accounts of famous trials, and, where appropriate, even legal novels, as well as law reports, digests, citators, text-books, and the statute book. Similarly, under "literature" could be included not only printed books and journals, but also unpublished records, cyclostyled educational materials, judicial circulars and so on. William Twining, *Academic Law and Legal Development*, University of Lagos Taylor Lectures 22-33 (1975).

99. See F. Morgenstern, *Judicial Practice and the Supremacy of International Law* 27 BRIT. Y.B. INT'L L. 42 (1950).

acts—either adoption by the courts or transformation by the legislature.

In addition to these two main doctrines, there exist also monist-naturalist and co-ordination theories on this question. The monist-naturalists teach that both international law and municipal legal orders are subordinate to a third legal order, postulated as natural law; supporters of the co-ordination theory see each theory as supreme in its own individual field. How is this question handled in Nigeria?

It is fair to say that Nigerian scholars of international law are divided on the issue. In discussing the transformation and incorporation doctrines of the relationship between international law and municipal law, one group of scholars hold that Nigeria should endorse the doctrine of incorporation. To them, the transformation theory is too ambitious for a developing country like Nigeria. In their opinion, it is imprudent for a nation to subordinate its own internal laws to an international legal system, thereby accepting for itself a secondary role.

The other school of thought on the matter, which this writer supports,¹⁰⁰ warns of the dangers of this line of argument. We prefer the theory which recognizes the growing interdependence of State in their relationships with one another over the dogma of absolute State sovereignty. Both in theory and practice, international law does not ignore municipal law. In many instances, municipal law may be used as evidence of international custom or general principles of law. There are, in addition, certain questions that cannot be decided by international law, and which are invariably left for municipal law.¹⁰¹

Quite unlike some states whose constitutions make clear what the relationship between international law and municipal law would be,¹⁰² the Nigerian constitutions have not clarified the matter. Although the 1963 and 1979 Nigerian Constitutions contain references regarding adherence of Nigeria to international law, the references are vague at best.

100. OKEKE, *supra* note 47, at 6-8.

101. For example, in order to determine whether a person is a national of a state, international law will necessarily have to look at the local law of the state whose nationality is being claimed to determine the question.

102. The Constitution of Greece provides, "The generally accepted rules of international law (i.e. rules of customary international law) as well as international conventions from the time they are sanctioned according to each one's own terms, shall be an integral part of internal Greek law, and they shall prevail over any contrary provision of law. . ." 1975 Greece Constitution, art. 28(1).

The Constitution of the Federal Republic of Germany provides: "The general rules of public international law are an integral part of federal law. They shall take precedence over the laws and shall directly create rights and duties for the inhabitants of the federal territory." Constitution of the Federal Republic of Germany, art. 25.

The United States of America Constitution provides, "The Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all Treaties made, or which shall be the supreme Law of the Land; and the Judges in every state shall be bound thereby, and anything in the Constitution or Laws of any state to the contrary notwithstanding." United States Constitution, art. VI, cl. 2.

In Africa, *see* Constitution of the Republic of Guinea, art. 31 (1955); Constitution of the Republic of Mali, art. 38.

The lack of constitutional clarity on this important matter makes it difficult for national courts to resolve cases before them in which issues of international law are involved. This is particularly true in the area of treaty relations, which form the bulk of Nigeria's relationship with other States and other subjects of international law.¹⁰³

International law is essentially comprised of treaties (reflecting express agreements of States) and custom (which incorporates rules of international conduct to which States have given their assent, even if tacitly). To determine which of the competing doctrines Nigeria supports on the relationship between international and municipal law, some examination of her constitutional provisions with regard to treaty practice may be a good starting point.

V. NIGERIA'S TREATY-MAKING PRACTICE

Nigeria acquired her full treaty-making powers upon attainment of political independence on October 1, 1960. International law does not prescribe how a state must exercise its treaty-making power. The municipal law of each State determines who may enter into treaties on its behalf. In certain countries, the power to make treaties vests in the President and the Senate.¹⁰⁴ In Nigeria, the constitution is silent on the specific question of which organ of state has the power to make treaties, thereby binding the State internationally. Because Nigeria followed the practice of the United Kingdom for a long time after independence, however, at least until 1979, the power is effectively vested in the Executive. In terms of ratification and implementation, the power vests with both the Executive and the Legislature. Sections 12(1) - (3) of the Nigerian Constitution of 1979, provide:

- (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.

The above provisions clearly show that for a treaty validly concluded between Nigeria and any other country to have the force of law in Nigeria, it must be enacted into law by the National Assembly. Such a treaty necessarily requires, therefore, an enabling act of the country's legislative body. The interpretation of treaties in Nigeria follows the same pattern as

103. OKEKE, *supra* note 47, at 9.

104. See U.S. CONST., art. II, §2.

interpretation of statutes in municipal law.

As reflected by her treaty-making practice, Nigeria endorses acts of incorporation whereby international law is granted full legal effect by her municipal law. Accordingly, international law is not part of Nigerian law in strict sensu. This supports the dualist doctrine.

It has been our view, however, that the provisions in the Nigerian constitutions on matters of treaty-making and treaty-implementation are grossly inadequate, considering Nigeria's federalist structure of government and the inevitable demand for the creation of new states within the country.¹⁰⁵

As a Federation that has proved rather fragile since inception, the constitution remains the last hope of the people for the provision of effective arrangements for allocation of governmental powers between the central, states, and local governments of the Federation.

The practice of Nigeria with respect to succession of treaties has shown a preference for the continuity of treaty obligations, albeit with some modifications. Nigeria's response to the United Nations Secretary-General's memorandum on succession was to endorse the idea of "partial succession" as opposed to "universal succession." Nigeria thus prefers a selective approach to treaty succession in that from an entire body of treaties with another country, a certain number may be selected for succession.¹⁰⁶

Successive Nigerian Governments have generally shown positive attitude toward questions of succession. Upon independence various questions arose—regarding treaties, international claims, territorial claims, public and private property, and nationality issues. The Federal Government of Nigeria made the following declaration which was not only communicated to the Government of Great Britain, but also to other foreign powers:

- (I) All obligations and responsibilities of the Government of the United Kingdom which arise from any valid international instruments shall henceforth insofar as such instruments may be held to have application to Nigeria, be assumed by the Government of the Federation;
- (ii) That rights and benefits henceforth enjoyed by the Government of the United Kingdom in virtue of the application of any such international instrument to Nigeria shall henceforth be enjoyed by the Government

105. See Christian N. Okeke, *The Nigeria Draft Constitution, Treaty-making and Treaty-implementation* (1977) [paper delivered at the Workshop on Nigeria Draft Constitution, organized by the Department of Political Science, University of Nigeria]. At that point in time, Nigeria had a total of nineteen states. The 1989 Constitution created an additional eleven states, bringing the total number to thirty including the Federal Capital territory of Abuja. The present Government of General Sani Abacha created an additional six states in 1996, bringing the total number of Nigerian states to thirty-six. This trend is likely to continue for some time, considering the heterogeneous character of the Nigerian states.

106. See AFRICAN CONFERENCE, *supra* note 86, at 23. At the time, Judge Elias was the Attorney General And Minister of Justice of the Federal Republic of Nigeria.

of the Federation of Nigeria.¹⁰⁷

VI. APPLICABLE LAW IN SELECTED QUESTIONS OF INTERNATIONAL LAW

Nigeria has evolved a number of rules and regulations that bear significantly upon international law. This inquiry will explore a few relatively neglected topics selected from the very many that have been dealt with elsewhere. A brief examination will provide a concrete sense of the Nigerian perspective on international law. It will suffice for this purpose to note Nigeria's efforts at developing international law.

A. International Human Rights And Nigerian Law

Recent events in Nigeria, particularly the arrests and execution of opponents of certain government policies, have focused wide international attention on the country's current adherence to international human rights norms and respect for its own constitutional process. It remains one area that has suffered a major setback, particularly since the introduction of military governance into the country.

Nigeria is a party to most international human rights conventions, regional as well as universal. She is, above all, a party to the United Nations Charter. The commitment of the United Nations to human rights was made clear in the Preamble to its Charter. It affirms "faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women," thus obliging the organization to promote "universal respect for, and observance of, human rights, and fundamental freedoms for all without distinction as to race, sex, language, or religion."¹⁰⁸ "All members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in article 55."¹⁰⁹

Prior to January of 1966, the crisis of human rights violations in Nigeria had not reached the level of the previous three decades. In Nigeria's thirty-six years as an independent and sovereign nation, the military has been in power for nearly thirty of these years.¹¹⁰

Before the military regime came to power in 1966, Chapter III of the 1963 Constitution on fundamental human rights¹¹¹ operated fairly satisfacto-

107. See 384 U.N.T.S. 207-210 (1961).

108. U.N. CHARTER art. 55.

109. U.N. CHARTER art. 56.

110. The first head of the military government was Major-General Aguiyi-Ironsi who came to power in January, 1966, and was killed in a counter coup in July, 1966. General Yakubu Gowon (1966-1975); General Murtala Muhammed and General Olusegun Obasanjo (1975-1979); General Ibrahim Babangida (1985-1993); General Sani Abacha (1993 to date).

111. For a detailed examination of the provisions of the 1963 Constitution, see N. Tobi, *Human Rights in Nigeria* (1976) [paper presented at the Hague Academy of International Law, Nairobi, Kenya].

rily. Section 32 of the Constitution vested in any aggrieved persons the right to seek redress in a competent court of law in cases when their fundamental human rights were infringed upon. Moreover, there exist numerous decisions on human rights violations by the Nigerian Courts.¹¹²

The first onslaught on human rights in Nigeria was the promulgation of the Constitution (Suspension and Modification) Decree. It amended Section 1 of the 1963 Constitution and thereby removed the supremacy of the Constitution as the fundamental law of the land.¹¹³ The Decree provided as follows: "No question as to the validity of this or any other Decree or any Edict shall be entertained by any Court of law in Nigeria." With this provision the courts in Nigeria lost their competence to entertain any question as to the validity of a decree or an edict which violated human rights provisions in the 1963 Constitution. Subsequently, a number of other decrees were promulgated which directly or indirectly suspended or modified Chapter III of the 1963 Constitution. The following examples are instructive: the State Security (Detention of Persons) Decrees,¹¹⁴ the Suppression of Disorder Decree,¹¹⁵ the Curfew Decree,¹¹⁶ the Armed Forces and Police (Special Powers) Decree,¹¹⁷ the Forfeiture of Assets, etc. (Validation) Decree,¹¹⁸ the Detention Orders (Bar to Certain Civil Proceedings) Decree,¹¹⁹ the Customs and Excise Management (Disposal of Goods) Decree,¹²⁰ the Federal Military Government (Supremacy and Enforcement of Powers) Decree,¹²¹ the Robbery and Firearms (Special Provisions) Decree,¹²² and the Public Order (Scheduled Societies: Assets and Liabilities) Decree.¹²³

112. See *Olowoyin v. Attorney-General of N. Region*, ALL N.L.R. 369 (1961); *Ojiegbe and Anor v. Ubani and Anor*, 1 ALL N.L.R. 277 (1961); *Doherty v. Balewa*, 1 ALL N.L.R. 604 (1961); *Cheranci v. Cheranci*, N.R.N.L.R. 24 (1960); *DPP v. Chike Obi*, 1 ALL N.L.R. 186 (1961); *R. v. Amalgamated Press of Nigeria Ltd.*, 1 ALL N.L.R. 199 (1961); *Gokpa v. Inspector-General of Police*, 1 ALL N.L.R. 423 (1962); *Shemfe v. Commissioner of Police*, W.R.N.L.R. 87 (1963); *Chief Obafemi Awolowo v. Federal Minister of Internal Affairs and Anor*, ALL L.L.R. 177 (1962); *Ibeziako v. Commissioner of Police*, 1 ALL N.L.R. 61 (1963); *Williams v. Majekodumi*, 1 ALL N.L.R. 328 (1962).

113. Laws of the Federal Republic of Nigeria, Decree, no. 1 (1966). This Decree became the fundamental and supreme law of Nigeria.

114. Laws of the Federal Republic of Nigeria, Decree, nos. 1-15 (1966). Section 6 of the Decree provided: "Chapter III of the Constitution of the Federation is hereby suspended for the purpose of this Decree."

115. Laws of the Federal Republic of Nigeria, Decree, no. 3 (1966).

116. Laws of the Federal Republic of Nigeria, Decree, no. 45 (1966).

117. Laws of the Federal Republic of Nigeria, Decree, no. 24 (1967).

118. Laws of the Federal Republic of Nigeria, Decree, no. 45 (1968).

119. Laws of the Federal Republic of Nigeria, Decree, no. 366 (1969).

120. Laws of the Federal Republic of Nigeria, Decree, no. 14 (1970).

121. Laws of the Federal Republic of Nigeria, Decree, no. 28 (1970).

122. Laws of the Federal Republic of Nigeria, Decree, no. 47 (1970).

123. Laws of the Federal Republic of Nigeria, Decree, no. 58 (1971).

*B. The Attitude of the Nigerian Courts to the Decrees and
Edicts Derogating from Human Rights*

Various decrees and edicts effectively eliminated the jurisdiction of the Nigerian courts to adjudicate human rights violations. This is evidenced in a number of reported cases, all of which confirm a particular judicial trend. Generally, the courts denied themselves jurisdiction to challenge the right of the Federal Military Government to make decrees or the State Military Government to enact edicts. The courts also held that they lack competence to question the validity of a decree.¹²⁴ The following decided cases illustrate this trend: Council of the University of Ibadan v. Adomolekun,¹²⁵ Ogunlesi and Ors v. Attorney-General of the Federation,¹²⁶ Uwaifo v. Attorney-General of Bendel State and Ors,¹²⁷ Barclays Bank of Nigeria Limited v. Central Bank of Nigeria,¹²⁸ Attorney-General of Imo State v. Attorney-General of Rivers State,¹²⁹ and Ojokolobo and Ors v. Alamu and Anor.¹³⁰ Other such cases are: Mustafa v. Governor of Lagos State,¹³¹ Civil Service Commission of Bendel State v. Dr. Okonjo,¹³² Alhaji Kanada v. Governor of Kaduna State and Anor.¹³³

Lakanmi v. Attorney-General of Western Nigeria¹³⁴ was one case in which the Supreme Court of Nigeria questioned the vires of the Federal Military Government of Nigeria to make decrees and declared the decree ultra vires and void. The case dealt with confiscation of property by the Government without payment of compensation to the owner of the property, contrary to Section 31 of the 1963 Constitution dealing with Fundamental Human Rights. According to the court, the Decree No. 1 of the 1966 Constitution (which brought about the Federal Military Government) did not envision performance of legislative functions as a weapon for the exercise of judicial powers, nor was it intended that the Federal Military Government should, in exercise of its powers to enact Decrees, exceed the requirements or demands of necessity of a given case. It held that the Constitution remained the superior norm of the country and all laws were subject to it, excepting in so far as by necessity the Constitution was amended by a Decree

124. See N. Tobi, *The Development of Constitutional Law in Military Regimes in Nigeria*, in II ESSAYS IN HONOR OF JUDGE TASLIM OLAWALE ELIAS 707-708 (E.G. Bello & B.A. Ajibola eds., 1994).

125. 1 ALL N.L.R. 213 (1967).

126. LD/28/69 (1970).

127. 7 S.C. 124 (1982).

128. 6 S.C. 175 (1976).

129. 8 S.C. 10 (1983).

130. 3 N.W.L.R. (Pt. 61) 377 (1987).

131. 2 N.W.L.R. (Pt. 58) 539 (1987).

132. 3 N.W.L.R. (Pt. 59) 166 (1987).

133. 4 N.W.L.R. (Pt.35) 361 (1966).

134. SC/58/69 (1970).

which was supreme when it is in conflict with any provision of the constitution.

Furthermore, the Supreme Court refused to succumb to the ouster clause in the 1968 Forfeiture of Assets (Validation) Decree,¹³⁵ holding that it was a legislative act which impugned upon the sphere of the judiciary. The decree was declared *ultra vires* and void.

Even though the decrees referred to herein eliminated the jurisdiction of the courts on the validity of decrees and edicts, the courts held that, where there was a conflict between a decree and an edict, the courts will question the validity of the latter. Also, the courts decided that, where there was a conflict between the unsuspended provisions of the constitution and an edict, the courts were competent to question the validity of the edict.¹³⁶

While the courts denied themselves jurisdiction to question the right of the Federal Government to make decrees, they did assert their judicial powers regarding the wrongful exercise of executive powers under a decree or edict. The courts drew a distinction between their incompetence to question the *vires* of the military governments to promulgate decrees and edicts and consequently, hence their incompetence to rule on the decrees and edicts so promulgated, and their competence to question the legality or constitutionality of executive actions exercised under such decrees and edicts.¹³⁷

The present military regime of General Sani Abacha—following the trend of his predecessors—has promulgated numerous decrees and edicts that derogate from human rights.¹³⁸ To compare the human rights performances of the individual military governments to determine which of them performed less reprehensibly (as some distinguished Nigerian authors have done¹³⁹), is an exercise in futility. The differences, if any, may indeed lie in number, but certainly not in the effect or overall consequences on human rights development in Nigeria.

C. Implementation of International Human Rights Treaties to Which Nigeria is a Party

The most frequently used method of implementing international treaties in Nigeria is incorporation through an Act of Parliament *en banc*. Such incorporating enactments clearly state that the treaty provisions “are in force”

135. See Laws of the Federal Republic of Nigeria, Decree, no. 45, §2 (1968).

136. See *Governor of Ondo State and Anor v. Adewunmi*, 3 N.W.L.R. (Pt. 13) 372 (1985); *Chief Iffie and Ors v. Attorney-General of Bendel State*, 4 N.W.L.R. (Pt. 67) 972 (1987).

137. See *Major Ladejobi v. Attorney-General of the Federation*, 3 N.C.L.R. 563 (1982).

138. It has not been possible at this time of our writing to lay hands either on them or cases based on them decided by Nigerian courts.

139. See Tobi, *supra* note 111, at 89; B.A. Ajibola, *Human Rights under Military Rule in Africa: The Nigerian Experience*, in *ESSAYS IN HONOR OF JUDGE TASLIM OLAWALE ELIAS*, *supra* note 124, at 373 -388.

domestically.¹⁴⁰ Nigeria may be classified as a country of "mitigated dualism" because of its adoption of this method of incorporation in the implementation of treaties.¹⁴¹ Nigeria has incorporated human rights treaties to which she is a party into the domestic legal order. Certain human rights treaties, however, have been implemented by enacting domestic legislation in order to achieve normative harmony with the treaty in question.¹⁴²

All fundamental rights entrenched in the constitution and treaties on human rights are applicable throughout Nigeria by virtue of the fact that they have been ratified or acceded to by Nigeria. This point is important to make because in some federations, jurisdiction over human rights is shared with lower levels of government within the Federation.¹⁴³ Because Nigeria adopts a dualistic attitude toward treaties generally, she does not endorse application of the doctrine of self-executing treaties. Each treaty has clear objectives and aims at achieving set objectives. Different intentions govern each treaty. These intentions influence the method of implementation to be adopted.

For example, the human rights treaty on elimination of all forms of racial discrimination provides that any person, persons, or organizations located within the jurisdiction of any of the contracting parties should not conduct itself in such a manner overtly contrary to the spirit of the treaty by preventing a non-national from attending a function based on color, race or religion. The State is accordingly obliged to penalize the person, persons, or organization responsible for the offending act. To implement the treaty provisions regarding the State's obligation to penalize such acts of racial discrimination, Nigerian courts can invoke the provisions in its interpretation of the relevant domestic criminal legislation. The treaty provisions would thus be decisive for the court's judgement in for the purpose of meting out appropriate punishment under the Nigerian Criminal Law.

It has not been possible to find an explanation or justification for the constitutional adoption of the system of incorporation through an Act of the National Assembly. The Nigerian system of incorporating Acts of the

140. All the international treaties to which Nigeria is a party are published in a document titled "the Nigerian Treaties in Force."

141. Finland has been classified as one of such countries. See MARTIN SCHEIRIN, *HUMAN RIGHTS IN FINISH LAW* 349 (1991).

142. Two categories of treaties would fall into this category: the 1966 International Convention on the Elimination of all forms of Racial Discrimination (which Nigeria ratified in October, 1967), and the International Conventions of the International Labour Organization. Labour Organization.

143. For example, in Canada, jurisdiction over human rights depends on what falls within the legislative competence of either the federal government or the provincial governments--which in Nigeria are equivalent to the federal and state governments respectively. In order to determine who has jurisdiction over human rights violations in Canada, the rights at issue must be classified so as to enable a proper distribution of legislative power between the federal and provincial governments. This distinction is not practiced in Nigeria. Under the Nigerian constitutional prescriptions, the Federal Government of Nigeria reserves the right to make international treaties that are capable of having binding effects throughout the country.

National Assembly en banc should enable the direct application of treaty provisions by domestic courts and other authorities. It is important, however, to develop the practice further to avoid any ambiguities. For example, it is still necessary that the incorporating Acts of the National Assembly should be clear enough and not general in form. In other words, it must spell out whether it is only certain provisions of particular international human rights treaties that are in force in Nigeria and *ipso facto*, applicable in the domestic courts, or the entire treaty so ratified. It is not enough to accept the treaties as simply "being in force" in Nigeria.

D. Aliens Law

The question of the treatment of aliens is as controversial a subject as any in international law. Essentially, it is within the domestic jurisdiction of States to determine who is an alien under its laws, and who to admit or not to admit into its territory.

Under the provisions of Nigeria's independence constitution of 1960, and later that of 1963, a Commonwealth citizen automatically acquired the status of Nigerian citizenship.¹⁴⁴ The citizenship provisions of the 1963 constitution of the Federation were amended, however, by the Constitution (Amendment) Act 1974.¹⁴⁵ By virtue of chapter III of the 1979 constitution of the Federation 1979, a Commonwealth citizen no longer acquires Nigerian citizenship automatically as before.¹⁴⁶

Under Nigerian law, an alien is a person who is not a citizen of Nigeria within the meaning of Chapter III of the suspended 1979 constitution of the Federal Republic of Nigeria. However, the notion of alien in Nigeria comprises two distinct categories: ordinary aliens and treaty aliens.

The applicable law on the question of immigration, the 1963 Immigration Act, defines an alien as "any person not a Commonwealth citizen or a citizen of Eire."¹⁴⁷ Clearly, this definition of an alien is not within the context of Nigerian citizenship. Ordinary aliens fall within the ambit of the provisions of the 1963 Act, while treaty aliens are regulated by the provisions of any relevant treaty in force in Nigeria (for example, the Treaty of Economic Community of West African States (ECOWAS)). Laws regulating the admission of aliens into Nigeria are to be found in the 1963 Immigration Act,¹⁴⁸ as amended by the 1972 Immigration (Amendment)

144. 1960 Constitution, no. 33.

145. This provision was suspended as a result of the Military coup in December, 1983.

146. See 1979 Nigerian Constitution, ch. III [suspended].

147. Laws of the Federal Republic of Nigeria, Immigration Act, §51 (1963).

148. Laws of the Federal Republic of Nigeria, Immigration Act, no. 1 (1963).

Act.¹⁴⁹

There exist two opposing views as to the standard of treatment of aliens in international law: the “international minimum standard,” and “the national treatment” rule. There is no doubt that the national treatment rule cannot conform with the minimum international standard, whose meaning Commissioner Nelson stated in the *Neer Case*:¹⁵⁰

It is clear that the domestic law and the measures employed to execute it must conform with the requirement of the supreme law of members of the family of nations, which is international law, and that any failure to meet these requirements is a failure to perform a legal duty, and as such an international delinquency. . . . The treatment of an alien, in order to constitute an international delinquency, should amount to an outrage, to bad faith, to wilful neglect of duty or to an insufficiency of governmental action so far short of international standards that every reasonable and impartial man would recognize its insufficiency. Whether this insufficiency proceeds from the deficient execution of a reasonable law or from the fact that the laws of a country do not empower the authorities to measure up to international standards is immaterial.¹⁵¹

Nigerian treatment of aliens inclines to the national standard of treatment approach. Except for a limited number of circumstances,¹⁵² aliens in Nigeria enjoy practically the same rights under the law as Nigerian citizens. They also have the same duties. The 1979 Constitution of the Federal Republic articulated a number of fundamental rights and duties shared by aliens and citizens alike.¹⁵³

Like other countries, Nigeria regulates its commercial activities. Affected business activities include employment opportunities, membership in professional bodies, and promotion of business.¹⁵⁴ There exists no law in Nigeria prohibiting the employment of aliens in public offices. There are, however, certain areas of employment to which, because of their nature, non-Nigerians cannot be appointed.¹⁵⁵ Moreover, some professional bodies in the country have discriminated against non-Nigerians by virtue of

149. Laws of the Federal Republic of Nigeria, Immigration Act, no. 8 (1972). A distinguishing characteristic of Nigerian immigration law is the lack of categorization of immigration status. The United Kingdom immigration law distinguishes between “patrials” and “non-patrials,” while United States of America law makes a distinction between immigrants and non-immigrants.

150. *Neer case* (U.S. v. Mexico), 4 R.I.A.A. 60, at 64 (1926); also in IV U.N. Report at 60 (1926).

151. *Id.*

152. For example, aliens may be, and commonly are, restricted in the ownership of property, participation in public life, participation in certain businesses, and the taking of employment.

153. These are contained under Chapter IV of the Constitution of the Federal Republic.

154. In the case of employment, the policy of Nigeria is that strictly all jobs which were originally held by foreigners and can be filled up by the indigenous must be retrieved from such aliens.

155. For example, the Nigerian Armed Forces and the Nigerian Security Organization.

laws regulating their activities.¹⁵⁶

The Nigerian Immigration Act provides for the expulsion of prohibited immigrants. According to the Act, any person within any of the following categories is deemed to be a prohibited immigrant and liable to be refused admission into the country or to be deported.¹⁵⁷ Such persons include

- (a) Any person who is without visible means of support or is likely to become a public charge;
- (b) Any idiot, insane person or person suffering from any other mental disorder;
- (c) Any person convicted in any country of any crime wherever committed, which is an extraditable offence within the provision of the Extradition Act.¹⁵⁸
- (d) Any person whose admission would in the opinion of a Ministry of State be contrary to the interest of national security.¹⁵⁹
- (e) Any person against whom an order of deportation from Nigeria is in force;
- (f) Any person who has not in possession a valid passport or being a person under, the age of sixteen years has not in his possession a valid passport or is unaccompanied by an adult on whose valid passport particulars of such a person appears;¹⁶⁰
- (g) Any prostitute;¹⁶¹
- (h) Any person who is or has been a brothel keeper,¹⁶² a house holder permitting the defilement of a young girl on his premises, a person allowing a person under thirteen years of age to be in brothel, a person causing or encouraging the seduction or prostitution of a girl under thirteen years of age, a person trading in prostitution,¹⁶³ or a procurer.¹⁶⁴

The Minister can, in the public interest, make a deportation order whether or not the person has been prosecuted for an offence.¹⁶⁵ Equally, if the Minister opines that any persons in Nigeria ought at any time after their entry to be classed as a prohibited immigrant, they may be deported

156. Prominent among these bodies are the Architects Association of Nigeria, Nigerian Bar Association, and the Chartered Accountants Association of Nigeria.

157. Laws of the Federal Republic of Nigeria, Immigration Act, no. 33, §17 (1969).

158. Laws of the Federal Republic of Nigeria, Immigration Act, no. 33, §87 (1969).

159. *See* Shugaba Abdurahman v. Federal Minister of Internal Affairs and Another, 1 N.C.L.R. 25 (1981).

160. Laws of the Federal Republic of Nigeria, Immigration Act, no. 33, §37 (1969) [empowers an Immigration Officer to allow any person under the age of 16 years to enter the country without a permit provided such person is with his/her parents. Such a person, if admitted, may not live anywhere else in the country without the permission of the Immigration Officer].

161. Laws of the Federal Republic of Nigeria, Immigration Act, no. 33, §17(3)(g) (1969).

162. Laws of the Federal Republic of Nigeria, Immigration Act, no. 33, §17(a) (1969) (defines brothel keeper).

163. Laws of the Federal Republic of Nigeria, Immigration Act, no. 33, §17(3)(e) (1969).

164. Laws of the Federal Republic of Nigeria, Immigration Act, no. 33, §17(3)(g) (1969) (Minister of Internal Affairs reserves the right to add to or amend any clause on prohibited immigrants by giving notice on such amendment).

165. Laws of the Federal Republic of Nigeria, Immigration Act, no. 33, §18(2) (1969).

accordingly.¹⁶⁶ Any person who has entered Nigeria pursuant to a visitor's or transit permit, but remains in the country beyond the time permitted, or breaks any other condition subject to which such permit was issued, will come under the ambit of Section 18 provisions.¹⁶⁷

Where persons convicted of an offence by any court are committed for sentence to another court, any power to recommend deportation must be exercisable by the convicting court.¹⁶⁸ A deportation order may be revoked at any time, either before or after the person has left or been removed from the country. Such a revocation will not affect the validity of anything previously done under the deportation order.¹⁶⁹ Pending the deportation, the Minister may detain the deportee.¹⁷⁰

The treatment of treaty aliens is limited by treaties and international law rules recognized by Nigeria. Member States of ECOWAS have enacted various legislation which deal with the entry and sojourn of aliens in their respective jurisdictions. In furtherance of their relationships, member states of ECOWAS signed a treaty that eliminates all obstacles to the entry and free movement of aliens. It states,

Citizens of member states shall regard as Community citizens and accordingly member states undertake to abolish all obstacles to their freedom of movement and residence within the Community.¹⁷¹

The Treaty does not define the term "Community Citizen." Pursuant to Articles 27 and 2 of the Treaty, however, the Heads of States and Governments of the Community signed a Protocol on the Free Movement of Persons at a meeting held in Dakar, Senegal in 1979. Under the Protocol, a "Community Citizen" is defined as "a citizen of any member state."¹⁷² The legal significance of Article 27 is that once the treaty comes into force, all citizens of member states become community citizens. Furthermore, Article 27 (1) of the treaty imposes a legal obligation on member states to abolish all obstacles to the freedom of movement of ECOWAS citizens. The enjoyment of the freedom by ECOWAS citizens is subject to agreements between the member States.¹⁷³

In recent times, Nigeria has experienced immigration problems. This has been due to a crisis in the African economy. Successive Nigerian

166. Laws of the Federal Republic of Nigeria, Immigration Act, no. 33, §18(3) (1969).

167. Laws of the Federal Republic of Nigeria, Immigration Act, no. 33, §18(4) (1969).

168. Laws of the Federal Republic of Nigeria, Immigration Act, no. 33, §19(1) (1969).

169. Laws of the Federal Republic of Nigeria, Immigration Act, no. 33, §20(3) (1969).

170. Laws of the Federal Republic of Nigeria, Immigration Act, no. 33, §22(1) (1969).

171. ECOWAS Treaty, art. 27(1).

172. Protocol Relating to Free Movement of Persons, Residence and Establishment, art. 1, done on May, 1979: 1 Official Journal of ECOWAS (June 1979).

173. ECOWAS Treaty, art. 27(1).

governments have consequently adopted strict measures to control the movement of persons within the territory. Aliens from neighboring African countries, hitherto having easy access to Nigeria in search of better economic life, no longer find it so easy to cross Nigerian borders. Nigeria has imposed a number of measures designed to limit immigration (for example, stringent document checks and even border closure). Neither the Treaty nor the Protocol provides for the immigration of Community Citizens, however, inasmuch as national law governs this matter.¹⁷⁴

E. Extradition

Extradition is the delivery of accused or convicted persons to the State where they have been accused or convicted of a crime by the state in whose territory they happen to be at the time. Under international law, there exists no duty placing an obligation upon a State to extradite in the absence of a treaty provision for extradition.

Prior to Nigeria becoming a Republic, extradition between Nigeria and other Commonwealth countries was regulated by the British Fugitive Offenders Act of 1881.¹⁷⁵ Nigeria has not since developed extensive extradition law. From the few extradition cases that have been tried, however, it is possible to infer what may be regarded as the Nigerian practice in extradition matters.¹⁷⁶

Since 1960, there have been five instances in which Nigeria had to deal with extradition issues.¹⁷⁷ Owing to space and time, these will not be discussed in detail here.¹⁷⁸ But it is useful that we explain the salient features of Nigeria's extradition law.

The extradition law of Nigeria is to be found in the 1966 Extradition Act.¹⁷⁹ The relevant provision of the Act will be applied to a country by an order where a treaty exists between Nigeria and that country on the prosecution or punishment of wanted persons.¹⁸⁰ The law requires that an order made in pursuance of Section 1(I) should embody the terms of the extradition agreement. The provisions of the Act will apply to the country subject to such conditions, exceptions, and qualifications as may be specified in the order.¹⁸¹ While an order is in force, the provisions of the Act will

174. OKEKE, *supra* note 47, at 99.

175. 44 & 45 Vict c 69 (1881).

176. OKEKE, *supra* note 47, at 125.

177. The first case arose in 1962 in Brixton Prison (Governor) and Anor v. Exparte Enahoro ALL E.R. 477 (1963); the other three cases of interest involved Generals Ojukwu, Gowon, and Umaru Dikko. Another interesting but unreported case was that of Andre Sabbe v. Etim Ekong Inyang. It dealt with a section of the Nigerian Extradition Act in respect of transit of surrendered fugitives.

178. See OKEKE, *supra* note 47, at 125-135.

179. Laws of the Federal Republic of Nigeria, Extradition Act, no. 87 (1966).

180. Laws of the Federal Republic of Nigeria, Extradition Act, no. 87, §1(1) (1966).

181. Laws of the Federal Republic of Nigeria, Extradition Act, no. 87, §1(2), 2(4) (1966).

apply to that country subject to the provisions of the order and to the terms of the extradition agreement as recited or embodied therein.¹⁸²

An interesting element of Section 1 of the Act is that it envisages both existing and future extradition treaties and agreements between Nigeria and any foreign country or countries.¹⁸³ The Act applies to member states and non-member states of the United Nations. It also applies to every separate country within the Commonwealth.¹⁸⁴ The term "separate country" as used in the Act includes each sovereign and independent territory.¹⁸⁵ The sovereign and independent country must inform the Nigerian Government that the territories are designated as forming part of the independent country for the purposes of the Act.¹⁸⁶ The Nigerian Government extended the application of the Act, for example, to all the dependent territories of the United Kingdom of Great Britain and Northern Ireland.¹⁸⁷

The Act specifically enumerates extraditable offenses.¹⁸⁸ It provides for surrender of fugitives, discharge of fugitives, restrictions on surrender, seizure and surrender of property, and transit of surrendered fugitives. A fugitive criminal will not be surrendered if either the Attorney-General or the court is satisfied extradition law and practice exempts the fugitive from extradition as a political offender. Nigerian extradition law thus recognizes the political offence exception. Overall, the Act demonstrates a bold move in dealing with a good number of issues affecting the problem of extradition.

Nigeria has extradition treaties with certain countries of the West African Sub-region. More recently, Nigeria negotiated extradition treaties with Benin, Ghana, Nigeria and Togo to promote peace, security, solidarity, and harmony for the economic, social, and cultural developments of their respective countries.¹⁸⁹ Extradition treaties also exist between Nigeria, Liberia and the United States of America. No extradition can be effected with non-Commonwealth countries in the absence of an extradition treaty between such a country and Nigeria. Extradition agreements to which Nigeria is a party generally exempt the political offender from extradition. The 1984 Extradition Treaty with the Republics of Benin, Togo, and Ghana, for example, prohibit the grant of extradition for crimes or offenses of a political nature, or if it is proved that request for surrender has been made to try the accused for a crime or offence of a political nature.¹⁹⁰ Extradition will also be refused if, in the opinion of the requested State, the request

182. Laws of the Federal Republic of Nigeria, Extradition Act, no. 87, §1(4) (1966).

183. OKEKE, *supra* note 47, at 109.

184. Laws of the Federal Republic of Nigeria, Extradition Act, no. 87, §2(1) (1966).

185. Laws of the Federal Republic of Nigeria, Extradition Act, no. 87, §2(2)(a) (1966).

186. Laws of the Federal Republic of Nigeria, Extradition Act, no. 87, §2(3) (1966).

187. *See* Laws of the Federal Republic of Nigeria, Extradition Order, no. 24, §1 (1973).

188. Laws of the Federal Republic of Nigeria, Extradition Act, no. 87, §2 (1966).

189. Extradition Treaty, Dec. 10, 1984, People's Republic of Benin-Republic of Ghana-Federal Republic of Nigeria-Republic of Togo.

190. *Id.* at art. 4.

is to persecute or punish persons on account of their race, religion, or political opinion.¹⁹¹ The law governing extradition of the fugitive criminal under the Treaty shall be carried out in the requested state in conformity with the laws of the requested state.¹⁹²

F. Extradition and Human Rights

Extradition has serious human rights implications. There exists in fact a close relationship between the two concepts. The extradition process is designed to ensure that the human rights of the fugitive are protected. The 1984 Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, for example, prohibits extradition of fugitives if they are in danger of being subjected to torture by the requesting state.

The United Nations Model Treaty on Extradition not only adopts these principles, but encourages States to refuse extradition of fugitives to states that will not accord them basic fair-trial guarantees.¹⁹³ A Nigerian court may refuse to extradite fugitives to a State where they will likely be subjected to torture, inhuman, or degrading treatment or punishment, or to be denied a fair trial, despite silence of the extradition treaty on such matters.

Under traditional international law, States were less receptive to criticisms, even by their own subjects, of the treatment they accord their citizens. They are still even less receptive to complaints by the citizens of other countries about activities relating to their own subjects within their borders on the ground that they fall within their domestic jurisdiction. Happily, such arguments are no longer acceptable today. One reason for this shift lies in the fact that the world is increasingly becoming smaller and smaller, and emphasis is increasingly placed upon the interdependence of peoples and nations rather than on their independence.

At the very least, States have been compelled to explain or justify their acts to the outside world. There is no government in the world that is not to some extent concerned about its image within the international community. Without exception, all States wish to avoid condemnation.

VII. TEACHING, DISSEMINATION, AND WIDER APPRECIATION OF INTERNATIONAL LAW

Almost ninety years ago, following the two Hague Peace Conferences of 1899 and 1907, Oppenheim commented that the rudiments of international

191. *Id.*

192. *Id.* at art. 6.

193. The United Nations approved a Model Treaty on Extradition which contains many principles on extradition, which states are enjoined to see as "a useful framework" in negotiating and revising bilateral agreements. G.A. Res. 45/116 (1990). See 30 I.L.M. 1407 (1991). Nigeria is yet to ratify the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

law "ought also to be taught in all secondary schools, and the teachers of history are the proper persons to undertake [the task]."¹⁹⁴ The final objective of the United Nations Decade of International Law referred to earlier is the teaching, dissemination, and wider appreciation of international law. This resolution was enthusiastically supported by most member states of the Organization, including the United States of America.¹⁹⁵ The Bush Administration proposed that an effort be made to develop model curriculums and materials for the teaching of international law at primary and secondary levels of education. The United Nations, again by resolution, recognized that "lasting solutions to the grave problems that confront humanity can be achieved only by understanding, mutual co-operation, and strengthening of International Law and its application in the relations among nations. . . ."¹⁹⁶

The study of international law in Nigeria should consequently assume much greater importance not only in the legal education of young Nigerian lawyers, but also in the general education of the public. The importance of international law in Nigeria will endure for a long time as Nigeria occupies her leadership position in African affairs and as she continues to play an important and noticeable role in the shaping of modern international law.

[T]he teaching of international law in Nigeria aims at fulfilling the following basic objectives, namely

- (I) To expose the students to clear understanding of the fact of interdependence that in contemporary world, states and other subjects of international law, do not live in isolation, but rather must necessarily be interdependent;
- (ii) To teach the students to appreciate the universal principles and rules designed to ensure normal relations between states and other subjects of international law irrespective of the differences in their [legal status], economic, political and social systems;
- (iii) To educate the students in the spirit of humanism, democracy and respect for the sovereignty of all nations and peoples;
- (iv) To make the students to be constantly aware of the need to fight for the extermination of the remnants (traces) of colonialism and all forms of racial and national oppression."¹⁹⁷

The movement to broaden the study of international law in Nigeria has been consistent and in keeping with the foreign policy of the country since independence. This objective should be kept alive, the literature and methodology of imparting the subject should be kept in constant review; and the government should do everything possible to encourage research and publications in the field of international law.

194. Lassa Oppenheim, *The Science of International Law: Its Task and Method*, 2 AM. J. INT'L L. 323-324 (1908).

195. UN Doc. A/45/430/Add.2, at 14.

196. G.A. Res. 1816 (1962).

197. OKEKE, *supra* note 47, at 277-278.

It is not possible here to attempt to give a comprehensive account of the various avenues for the formal and informal teaching of international law in Nigeria. The subject is in fact taught in some form by virtually all faculties of law and departments of political science in Nigerian Universities,¹⁹⁸ the Nigerian Foreign Service Academy, the Nigerian Institute of International Affairs, the Federal Ministry of Justice, and the Ministry of International Affairs.¹⁹⁹

The Nigerian Society of International Law has made a significant contribution in the development of the public awareness of international law and in the study and dissemination of the subject in the country. It is a prestigious academic society whose membership includes jurists, political scientists, diplomats, economists, and experts in the field of international relations. One of the founders of the Society—and its guiding spirit until his death a few years ago—was Judge Taslim Olawale Elias.²⁰⁰ The Society has the following objectives:

- (a) To foster the study, dissemination and advancement of Public and Private International Law, Comparative Law and Institutions, International Relations and Related subjects;
- (b) In particular the Society will:
 - (i) Promote research,
 - (ii) Encourage publications.
 - (iii) Organize conferences, seminars and colloquia,
 - (iv) Cooperate with societies and organizations with similar aims and objects, and
 - (v) Engage in such other activities as are considered necessary for the achievement of these purposes.

As far as the teaching, study, and research in international law is concerned, commendable progress has been made. As has been noted, all faculties of law in Nigerian Universities teach international law. This is apart from other non-legal institutions in which it is studied. The course is compulsory in some institutions and many students (running into hundreds

198. Nigeria has about thirty Universities, some funded by the Federal Government and some funded by State Governments. Although the need for the establishment of private Universities has been officially recognized and relevant law and required guidelines set, they are yet to take off.

199. See OKEKE, *supra* note 47, at 278-291 [comprehensive discussion of the teaching of international law in these establishments in Nigeria].

200. The late Judge Taslim Olawale Elias (who was both a mentor and friend to this author) stood apart as a legal giant among other men. He was a former Attorney-General, Minister of Justice, and Chief Justice of the Federal Republic of Nigeria; Professor and Dean of Law, Faculty of Law, University of Lagos; one time President of the International Court of Justice, The Hague, and a judge at the Court until his death. He has been described as "the most learned lawyer in a century of lawyers."

in large faculties of law) register for the subject.²⁰¹

Room certainly exists for criticism and improvement in the teaching, dissemination, and wider appreciation of international law.²⁰² The subject should also be studied in the more advanced institutions like the Nigerian Defense Academy, the Nigerian Police and Air Force Academies, the Nigerian Institute for Policy and Strategic Studies, the Administrative Staff College of Nigeria, and other similar educational and research establishments. A good number of these institutions perform functions that have direct bearing with issues in international law.

Another area that requires urgent attention has to do with the kind of primary source materials used in teaching international law in Nigeria. Until recently, Nigeria has relied heavily on foreign textbooks and journals with a West European and American bias. An effort must consequently be made to produce a body of international legal literature with emphasis on Nigerian and African perspectives—an effort that requires support by the Nigerian government and other public bodies. This is not, of course, to denigrate the importance of foreign textbooks and legal materials. But in their procurement, there should exist neither discrimination in terms of the part of the world from which the publications come, nor insistence on the predominance of one ideology over another. Knowledge has no boundaries. The world is now fast becoming an integrated village.

VIII. PROSPECTS FOR THE PROGRESSIVE DEVELOPMENT OF INTERNATIONAL LAW IN NIGERIA

This inquiry has attempted to outline the diverse areas of Nigeria's activities in which international law plays an indispensable role and which therefore reflect the way international law is perceived and interpreted by Nigeria. International law is largely the creation of governments. In that creative process, different categories of persons—by virtue of their official functions and assignments—contribute to the formulation of international law.

Those who teach, research, and publish in the area of international law play a critical role. So too do those who serve in a representative capacity as ambassadors in the country's foreign missions abroad. The forces which shape international law, like the forces which shape international affairs, are many and complex. But what is singular and clear is that those who advise governments on what international law is and should be exert a particular, perhaps at times a paramount, influence on the formation of international

201. The course is an elective in majority of law schools. However, it is a compulsory course in a good number of faculties of law. Much depends on the academic orientation of the Dean or Departmental Head. For example, international law is compulsory in at the University of Calabar, the Anambra State University of Technology (now renamed: Nnamdi Azikiwe University), and the Enugu State University of Science and Technology (the latter two of which this author had the singular opportunity and privilege of serving as the founding Dean 1985-1991, and 1991-1994 respectively).

202. See OKEKE, *supra* note 47, at 289-291 [details of our recommendations].

law.²⁰³ And all such persons—teachers, scholars, ambassadors, governmental advisors—have an important role to play in the development of international law in Nigeria.

Before making a general statement on the prospects for development of international law in Nigeria, a few obvious caveats are necessary. In most developing countries, money may be short, the number of legal scholars may be few, potential authors may be subject to many competing demands and diversions, source material may be inaccessible, political impediments may be imposed upon freedom of communication, and less obviously, the pace of social political and legal change may be so great that many works may be overtaken by events shortly after they are published or even earlier. Given these constraints and problems, the situation in Nigeria must be carefully assessed. A plethora of problems may inhibit meaningful contribution to the development of international law in Nigeria.

Judging from the educational foundation she has laid, however, Nigeria possesses a solid foundation upon which to develop a sensitive and sophisticated disposition toward international law. Unlike some of her African sisters, she emerged into an independent State with a sizable number of well qualified lawyers, some of whom had specialized in international law. She presently has a total of thirty universities. International law is studied in most of them. There are universities in nearly all states of the Nigerian federation and one in the federal capital of Abuja. International law is also taught in other quasi-legal institutions for advanced studies at varying levels.

During her thirty-six years as an independent and sovereign State, Nigeria has made positive contributions in exporting international legal expertise to other nations (particularly the developing nations), and international law-making and law-adjudicating bodies at regional, continental, and international levels.²⁰⁴

In academia, the present generation of international lawyers have not fared badly either. They have made laudable contributions through teaching, research, and publications in the field. However, their efforts must be redoubled in building upon this foundation so as to facilitate their succession by the younger generation.

Difficult problems challenge the continued development of international law in Nigeria. These are areas in which the government and public-spirited individuals and bodies must lend visible financial support in order to make the progressive contribution to international law in the country more meaningful and satisfactory. Although not exhaustive, a number of methods

203. See Stephen M. Schwebel, *Government Legal Advising in the Field of Foreign Affairs*, in THE PROCEEDINGS OF THE AFRICAN CONFERENCE ON INTERNATIONAL LAW AND AFRICAN PROBLEMS 70 (1967).

204. A number of Nigerian jurists have served as Chief Justices of sister African and Caribbean States; as legal advisors in special commissions and international law bodies such as the International Labour Organization and the International Law Commission; as members on Commissions on Human Rights; and as Judges of the International Court of Justice (either as Judge Ad hoc or substantive judges for prescribed full terms).

for reaching this goal should be noted. These are the ones which have been the subject of concern, discussion, analysis, and application in different programs.

1. *Legal Libraries*: Two main problems arise from the establishment of legal libraries: the provision of books and material and the training of legal librarians. To have a good library is not only to have a collection of books (and requisite funds for increasing this collection), but knowing how best to use the resources of such a library. The number of books in Nigeria devoted to international law is increasing yearly by the thousand. Although the various institutions in which international law is taught in Nigeria have libraries, their stock of relevant international law books and materials is still very limited and mostly out of date. There has been little financial supplementation to update the holdings. The result is that both the institution and its students depend on the personal resources of the professors (which in turn are generally not current as they cannot mobilize sufficient foreign exchange to subscribe for the relevant journals in the field).

2. *Subsidies*: Direct subsidies to universities and institutions of higher studies is the traditional way to promote the study of international law. As practiced in Europe and the United States, the endowment of permanent chairs in international law—by which Professors devote full time to its teaching and research—is an excellent way to promote the study of international law. This is one area in which wealthy and public-spirited individuals and corporations could be helpful.

3. *Seminars*: Seminars are very useful for eminent scholars and high governmental officials in order to interchange opinions on important problems of international law. Personal acquaintance is a very important factor in communication between professors or officials from different countries. In addition, any particular point under discussion is an opportunity to evaluate the experience of others as well as one's own.

4. *Training and Refresher Courses*: The importance of training and refresher courses in the promotion of international law cannot be overemphasized. The purpose of such courses is to widen the knowledge of professors, post-graduate students, and junior officials by attending classes taught by eminent professors. This could readily be organized from time to time in Nigeria to accommodate the interest of scholars in international law.

In order to accomplish all of the above, money is very much needed. In these times of serious economic crisis, funding becomes difficult. Ultimately, however, the governments has the responsibility to solve these problems.

CONCLUSION

During the course of the last century, the legal world has witnessed international law develop far beyond the imagination of most practitioners. This has been so much so that the most attentive publicists can not keep up with its rapid pace of codification and progressive development through the

processes of multi-lateral law-formulating and norm-generating treaties.

To a large extent, the crisis in international law has been ascribed to the emergence of the new Afro-Asian States. This stance presupposes that these new States never had their own independent and pre-existent sense of international law, that the character of international law is what the West has conceived it to be, and that the new Afro-Asian States therefore either lack respect for international law, or accept it only for financially and other self-aggrandizing reasons.

These presuppositions ignore the fact that law is culturally contexted. The Afro-Asian nations have their own, independent conception of international law, practiced by some long before their colonization by the West. As these new States gain official membership in the international community, the character of international law should, and will, change accordingly. The claim that there exists a crisis in international law due to the advent of so many new States is perhaps to ignore the inevitable change in the very character of international law prompted by its expanding cultural context.

Nigeria is a prime example of this. Nigeria has not only critically implemented existing international law, but has exercised an impact on it as well. This is true historically, and will continue to be so. Further such development of international law will depend upon the international appreciation of the role of new States as meaningfully contributing to the cultural expansion of the international community.

The alleged crisis of international law, then, will not be resolved by imposing existing law upon new States. It will be resolved by allowing international law to be affected by these new States, both culturally and therefore legally. New States are not obliged merely to listen; they have something to say. They must be heard, however, in respect of the unique difficulties faced by new States—lack of funding, scholarship, education, and the seemingly interminable political conflicts that so impede the productive development of a legal regime.

In the opinion of this Nigerian author, however, many persons—including academic scholars—have contributed significantly to overcoming the many and varied impediments to the development of international law in the new Afro-Asian States. Teachers especially play a key role not only in influencing the attitudes and values—not to mention the technical competence—of young lawyers, but in helping to demystify international law among those who will come to occupy positions of authority. Such persons are better placed than any other group to assist in the development of national policy. Legal theorists thus have a crucial role to play in setting the appropriate context for their exercise of political and legal authority. This inquiry into international law is simply one more step toward this goal.