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POLITICS AND THE CHALLENGES OF INTERNATIONAL LAW IN POST-COLONIAL NIGERIA

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ABSTRACT

The study examined the politics and the challenges of international law enforcement in post-colonial Nigeria as it relates to International Maritime/Environmental and Human Right law in Nigeria. The study made used of the Neo – realism theory as the intellectual frame-work and adopted the qualitative and synthesis of scientific method as its relies on secondary data collected from documentations through publish and unpublished books, journal, articles and other publications on Human Rights and maritime/Environmental treaties. The findings of the study revealed that the politics and practices of the Nigeria government with respect to implementation and enforcement of international law showed that Nigeria either lack the capacity or is unwilling to implement and enforce the provision of the policies and practices enshrined in these treaties. Based on these findings and the conclusion arising thereof, it is recommended hereby that training should be carried out for the bureaucracy and other relevant agencies to ensure effective implementation of the various international legal instruments that Nigeria is a signatory to.

Keyword : Politics, Challenges, International, Law and Post-Colonial

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1. INTRODUCTION

International law also known by a plethora of other designations (such as conventions, protocols, statutes or acts) denote agreements entered into by two or more entities (usually countries) with the aim of regulating their interest by international laws (Ajomo, 2014). Treaties provide the pedestal and the platform for the establishment of international laws for the regulation of the multiplicity of the interest of countries that make up the comity of Nations. between countries to regulate their interests through international laws. However, the enforcement of these instruments can threaten the authority, integrity, and practicability of an international judicial body. This undermines the stability of international judicial procedures and potentially international peace and security. International law has been pivotal in the emergence of global institutions and mechanisms for enforcing international law. The Rome Statute, Statute of ICJ, and other documents have provided sufficient mechanisms to put in force its rules (Balanda, 2013; Bilder, 2013).

Treaties exert moral force on states and citizens, and post-World War II dynamics have created conditions for countries to assume duties and roles established via treaties. Many developing nations, like Nigeria, have actively participated in the United Nations structure and participated in numerous international laws and conventions on global issues. This study aims to examine the politics and challenges of international law in post-colonial Nigeria, focusing on the style of inefficiency (Odoma & Aderinto, 2013). Objectives of the Study: The specific objectives of the study are to: (1) Examine the nature of the politics of implementing international law within the Nigerian state. (2) Examine the political system and the challenges confronting Nigeria in the effectively domesticating and

implementing the provisions of the African charter on Human and People's Rights. Research Questions : The following research questions will guide the study: (1) What is the nature of politics of implementing international law within the Nigeria state? (2) What are the political challenges confronting Nigeria in effectively domesticating and implementing the provisions of the African Charter on Human and Peoples Rights?

2. RESEARCH METHOD

For this study, the survey research design was adopted. The choice of the design was informed by the objectives of the study as outlined in the introduction. This research design provides efficient and accurate means of assessing information about a population of interest. It intends to study the reasons for failures of projects implementation in the power sector in Edo and Delta States. The study will be conducted in Edo and Delta States metropolis with a focus on BEDC. The population for this study will be based on the population of 134 residents in Edo metropolis and Delta State, Nigeria. A total of 100 respondents were selected from the population using Taro Yamane's formula for sample size determination. The reason for choosing Edo and Delta metropolis is because of its proximity to the researcher. The researcher shall use Taro Yamane's formula to determine the sample size from the population. Taro Yamane's formula is given as:

The linkage between politics and law is argued to be fundamental, as both are involved in creating and maintaining public peace, order, good governance, and justice (Dutton, 2012). However, the linkage can be strained when politics inadvertently causes crisis, leading to fear of government infringing on its own laws. The doctrine of covering the field in law is seen as a signpost to disaster for the judiciary. In Africa, politics and power are often linked, with the state's claim of supreme will over individuals, groups, and institutions manifested through its monopoly of law. This law does not refer to mere statutes but includes certain political decisions. In contrast, in African societies, political paramount is used to correct some defects in the law for the utilitarian benefit of the people, while the reverse has been the case in African societies. The Eurocentric view of law suggests that law should be independent of political influence for better governance and justice (Osholowu, 2013). However, this view is not realistic, as the establishment of law itself is eventually through the political process. Politics is defined as the authoritative allocation of values for a society, which must obey. The element of force in politics transcends all other institutions and processes in the state, including law adjudication. Politics takes place whenever conflict exists about goals and the method of achieving them, and decisions must be regarded as binding by both categories of citizens. In Africa, governments may take politically expedient actions that are both politically inexpedient and legally wrong. Akpotor (2015) suggests that politics is the art of the possible, the practicable, and "acceptable." The criminal justice system in African states is similar, but the way it is used or misused differs, and politics plays a significant role in these situations.

Politics involving the state can involve interactions among nations, voting, and resolving territorial disputes. Nigeria's federation system consists of the National Government and State Government, with devolution of government powers. The 1999 Constitution has concurrent and exclusive lists, with the Supreme Court clarifying that foreign affairs are considered national law matters. International law has increasingly relied on treaties and instruments for conducting world affairs, with the United Nations structure promoting a large corpus of global laws through numerous treaties and legal regimes.

Nature and Definition of International Law

The country inherits a dualist method to the application of Universal law or legal system, a culture that is common and applicable in the common law countries (Chanock, 2015). Laws and treaties entered between Nigeria and other countries do not become laws without legislative enactment. They must be passed into law by the upper legislative chambers in line with section 12 (1) of the 1999 constitution. Treaties are international instruments entered among nations and regulate through global law. They typically bind only parties who endorsed and ratified the instrument. However, some treaties enter into force upon endorsement and automatically bind parties without further ratification (Dutton, 2012). A treaty that is yet to be ratified may also be domesticated by the National Assembly. International law is the law, rules, and principles that regulate legal relations among sovereign nations and international organizations. It is a collection of consensual rules and principles

developed from customs and practices. International customary law and treaties are the two most notable sources of international law, with great moral force.

Sources of International Law

International law has no parliamentary and nothing that could really be described as legislation or code of law as compared to international Court of Justice (ICJ) and different specialised international court and tribunals. It should be noted that international law is made in large part on a decentralised foundation by the movements of the 192 States which make up the global community. The Statute of the ICJ, Art 38 identifies some resources: -

1. Customary international law derived from the practice of States;
2. Treaties between States;
3. Judicial decisions.

Customary International Law

Standard regulation is the oldest source of policies binding on all States, while customary regulation is not a written source. A rule of customary law requires two components: vast and regular Nation culture and "opiniojuris," a notion in legal obligation. Nations must feel they are in compliance with a criminal obligation to give immunity to a visiting Head of State. A new rule of domestically global law cannot be established without both factors. Practice involves not just the exercise of a State's authorities but also its courts and parliament (Koch, (2011). The ICJ's ruling in the Nicaragua case states that the conduct of Nations should generally be consistent with customary principles, and cases of State conduct inconsistent with a rule should be dealt with as abuses rather than indicators of a new rule. Once sufficient exercise and opiniojuris are present, a new law of custom will come to stay, subject to the "persistent objector" principle, which allows a Nation that has consistently rejected a new regulation to avoid its application.

Treaties

Treaties (sometimes referred to an sssagreement, exchanges of notes, conventions or protocols) between Nations – or from time to time among Nations and international institutions – are the alternative of principles and regulation. Frankly speaking, a treaty is not a source of regulation so much as a source of duty under law. Treaties are binding only on Nations who are signatory to it and the choice of whether or not to become a signatory to it, is entirely on the State - there can be no obligation to become a signatory on a treaty. Why instrument binds those Nations which have become a signatory to it? The answer is that there's a rule of international customary obligation – pactasunt servanda – which requires all Nations to obey their treaties. That is why treaties are extra accurately described as means of obligation under regulation. But many treaties also are essential as authoritative statements of customary rules (ICJ Reps, 1969, p. 43).

A treaty that is freely negotiated among a big number of Nations is frequently regarded as writing down what were formerly unwritten regulations of customary law. That is glaringly the case wherein a treaty provision is supposed to be modificatory of the existing regulation; e.g the Vienna Convention on the Law of Treaties, 1969. Less than half of the Nations in the international system are parties to it however every court which has considered the issue has handled its foremost enactment as codifying customary regulation and has consequently acted upon it as applying to all Nations whether or not they are signatory to the protocol. In theory, where a treaty is in accordance with the rule of customary law the means of regulation is the unique practice of opiniojuris – the treaty provision is simply proof. But that overlooks the reality that writing down a rule which become previously unwritten modified that rule (Ese, (2017).

Judicial Decisions

Article 38 (1) (d) refers to judicial decision as a subsidiary way for the formulation of rule of law. In divergence to the position in common law Nations, there is no doctrine of binding precedent in global law. Indeed, the Statute of the ICJ expressly gives that a decision of the Court is not binding

on all people unless they are parties to the case wherein that decision is given even as such it must be restricted to that particular case (Article 59). Nevertheless, the ICJ refers frequently to its own previous ruling and most international tribunals make recourse to past cases as a guide to the content of global law, so it would be a misconception to presume that "subsidiary" showed a lack of significant. Article 38(1)(d) does not differentiate between ruling of national and international courts. The former are commonly considered the more authoritative evidence of global law on most subjects (though no longer the ones which are usually shingled by way of national courts, including the law on sovereign immunity). But decisions of a State courts are part of the practice of that State and may therefore make contributions directly to the establishment of international customary law (Mbanefo, 2017).

The Challenges of enforcing provisions of the African charter on Human and People's Rights

The establishment of human rights law in the global sphere remains one of the most important and significant developments after the Second World War. The development and expansion of global human rights law, truly, has been so notable that it has acquired significant position in legal studies. Although there is no general acceptable meaning of human rights, it is partly agreed that human rights are those basic rights one has by virtue of being human (Onuoha, 2012; Ocean Beyond Piracy, 2017). With high filing over the observance of human rights which has evidence the trial of several persons and corporate personalities, one can agree that the global system is not ready to have a repeat of the pre 1945 dark days of human rights violations and abuses (Ali, 2014). Domestic courts play a crucial role in enforcing both civil and criminal breaches of international law. However, there are barriers to using national law, particularly protocols on international law, in domestic courts. Domestic international law litigation often deals with customary international law, as governments have not ratified human rights instruments or declared them self-executing. Domestic judges often feel uncomfortable applying international law, leading to inconsistency in judicial practice. The question arises whether individuals can use international courts to obtain justice, especially when domestic remedies have failed. International forums, such as the International Court of Justice and the International Criminal Court, do not provide effective enforcement mechanisms for aggrieved individuals. Furthermore, the relevant United Nations bodies have proven to be ineffective watchdogs, highlighting the limitations of international law enforcement in domestic courts (Osinowo, 2015). The traditional view of international law primarily focuses on the rights and duties of nations, excluding individuals. This lack of procedural capacity has led to the denial of individuals having the capacity to implement international law, making it difficult to domesticate or enforce breaches of human rights under international law. While state practice increasingly recognizes individuals as direct beneficiaries of international rights, these developments are not incorporated into the statutes establishing the International Court of Justice (ICJ) or the International Criminal Court (ICC) (Onuoha, 2013).

The International Court of Justice (ICJ) has repeatedly reiterated this view, stating that prima facie domestic disputes are outside the ICJ's jurisdiction. This exclusion is considered highly important by member States and is often reiterated in Nations' reservations to the ICJ's compulsory jurisdiction. Article 62 of the National Court of Justice (1945) allows a State to request permission to intervene in ICJ proceedings, but only if it has a legal interest that may be affected by the ruling. This serves to protect third-party States-Nations from intervening in disputes before the Court, unless they can prove they have legal rights that will be affected by the decision (Okude, 2007). The financial aid, supply of arms, training of personnel, and giving logistic aid by the United States to the bandit breaches the regulation of non-intervention. No such right generally of interference, in aid of the victims within different States, exists in the modern day international law even though this type of request for help is made by an opposition group of that State (Ali, 2015).

Theoretical Framework

This study adopted the neo-realism theory. In the study of global relations, laws and diplomacy, numerous theories have been developed to give insight into how different forces operates

in the international structure particularly the theories includes liberalism, structuralism, constructivism, realism amongst others. Liberalism carries quite a number notions and critiques about how organisational, behaviors and economic connections enclose and allay the abuses of energy of Nations. When connected to realism, it provides extra route into our floor of view – specifically a contemplation of residents and regular agencies. Most recognized, liberalism has been the customary foil of realism in international members of the family theory as it offers on extra enthusiastic global view, grounded in a different analyzing of history to that determined in realist scholarship (Akpotor, 2015). Another predominant principle utilized in international relations is the constructivist theory. Constructivist theory has been termed as a venture to the dominance of neo-liberal and neo-realist universal members of the family theories. Barnett (2006) describes constructivist international relations theories as being concerned with how ideas define global structure, how this structure defines the interests and identities of states and how states and non-state actors reproduce this structure. The key essential of constructivism is the belief that "International politics is shaped through persuasive ideas, collective values, culture, and social identities.". Constructivism contends that global fact is socially constructed through cognitive systems which provide that means to the physical world. The idea emerged from debates concerning the methodical approach of international relations theories and theories function within the invention of global authority.

The game of international politics revolves across the pursuit of power obtaining it, growing it, projecting it, and the usage of it to bend others to one's will. Accept war as normal and rejects morality as it pertains to relations between individuals. In contrast to idealist multilateralism, the realist tends to suggest that the states will act unilaterally if that is what is required (Ader, 2005). Flowing from the above, it could be infer that enforcement with respect to the duties to defend populations beyond borders from environmental hazards and human rights atrocities is a characteristic of the way the international system operates (Carr, 1983). The implementation or programs of the various provisions in international legal structure, (treaties and law) can regularly be argued as ratified through various states only in principle.

3. Result and Discussion

Very state in the global affairs is its own judge that must implement the law for itself or arrange a sympathetic posse compare to domestic policies, more so there is no international authorityto coerce states into adopting the decision of international tribunal. As Morgenthau, (2006) wrote in his book Politics Among Nations. Flowing from the above, the remaining parts of the study will be dedicated to analyzing the politics of International Law with particular emphasis to answering the following questions:

What is the nature of politics of international law protection in Nigeria?

Nigeria adopts a dualist method to accept global law, which means that agreements between Nigeria and other countries cannot be transformed into Nigerian law unless promulgated by the national assembly. This system extends the scope of the Nigerian legal structure and hinders the enforcement of treaties. The National Assembly has failed to show more commitment in discharging its constitutional duties of incorporating treaties into domestic laws, which has affected the implementation of enforcement and stripped the Nigeria legal structure of the assistance and complementarity it should derive from ratified but undomesticated treaties. Nigeria operates a federal system of government, consisting of the central government and the state government. The constitution comprises two legislature lists: the exclusive list and the concurrent list. The concurrent list stipulates legislative duties met for both the state and federal governments. However, when such laws are in conflict, federal law prevails. The position of domestic law within the international sphere differs from country to country, with some countries treating customary international treaties as part of the law of the land. The Nigerian Constitution is silent on this issue, but Section 12 of the 1999 Constitution portrays Nigeria as a Dualist State by providing for the domestication of all treaties before they can apply within the country. The confusion about the position of treaties in the country hierarchy of laws lies not in the adequacy or inadequacy of the Constitutional provision on treaties

but in the interpretation given to this provision by Nigerian courts. In the controversial case of Abacha vs. Fawehinmi, the Supreme Court held that the African Charter on People and Human Rights (Enforcement and Ratification) Act 1990 is a provision with international flavor.

In conclusion, Nigeria's dualist state belief in the sovereignty of the state and the supremacy of municipal legislation over international laws necessitates the domestication of treaties before their application within the country. This decision was based on the premise that statutes with international flavor possess “a greater vigor and strength” than other domestic statutes. This position of the Supreme Court is unsupported by the Constitution of the Federal Republic of Nigeria and by established principles of law in Nigeria regarding the position of statutes in relation to one another, thankfully, the Supreme Court in Oloruntoba-Oju vs. Dopamu held per Oguntade JSC, that “any provision of an existing law which is in disputes with the section of the 1999 Constitution must be pronounced void to the extent of such inconsistency”. This pronouncement underscores the Supreme position occupied by the Nigerian Constitution in the hierarchy of laws. In the same vein, in Registered Trustees, C.S.ST vs. C.O.E., Kogi State the Court of Appeal, per Omage JCA at pg. 1562 para C-D, stated the position of the law explicitly, as follows: - It is settles law that the jurisdiction of the 1999 Constitution supersedes any other Nigerian legislation not exempted or accepted by it. See Section 1 of the 1999 Constitution which subscribes and produces the supremacy of the provisions of the 1999 Constitution throughout the Federal Republic of Nigeria. Therefore, any other view which inconsistent with its provision is void and the provision of the Constitution will prevail.

By the constitutional provision some rights such as right to freedom of expression, right to peaceful 0f association, right to freedom of movement, right to private and family life may be circumscribed or limited. Furthermore, other human rights legally guaranteed are not sacrosanct or absolute but are explicitly and definitely limited. Admittedly, there may be no absolute right without qualifications, but the constitutional provisions limiting the rights guaranteed are somehow imprecise, indeed nebulous, and as such, constitute a real drawback in the effort to promote not only human rights, but effective enforcement of international law in Nigeria.

What are the challenges confronting the country in effectively domesticating and implementing the provisions of African Charter on Human and Peoples Rights?

Nigeria is a signatory to African Charter on Human and People’ Rights (ACHPR) (hereafter African Charter) and having incorporated it as African Charter on Peoples and Human’ Rights (Enforcement and Ratification) Act, Cap. A9, Laws of the Federation of Nigeria, 2004 (hereafter Ratification Act) is part of the Nation’s domestic enactment. It may be contended therefore that the cultural and social economic rights are acknowledge in the country and the State has the legal duty in the circumstance to ensure obedience to the legitimate requirement of the order of the legislation as may be enforced by the Courts. The analysis discusses the challenges of domesticating sections of the African Charter on People and Human Rights. The African Union recognizes the need for socio-economic rights, which are statutory recognized and justiciable under the African Charter on Human and Peoples Rights. However, in Nigeria, the constitution supersedes any enactment, and any provision inconsistence with the charter is declared void. The state has a duty under global law to honor and implement the section of the African Charter, regardless of the constitutional order. The Supreme Court ruling in Abacha vs Fawehinmi states that the nation has an obligation to honor and implement the section of the African Charter.

In the case of Socio-Economic Right and Accountability Project v Nigeria & Ors, a civil society organization sued the President of the Federal Republic of Nigeria and others for violating socioeconomic rights. The court held that the court had jurisdiction to adjudicate the case against corporate defendants, and the ruling has binding effect on Nigeria. Many African countries, including Nigeria, have no longer incorporated socioeconomic rights in their constitutions, making them non-justiciable. Economic and social discrimination and dispossession as currently predominant in utmost African states, such as Nigeria, request for an inclusive reconstruction of civil and political rights such that in the end there is correlation between the rights. For instance, the question should be asked: of what cost is proper to lifestyles without the corresponding rights to food, good

environment health, employment, shelter, and water? Human beings require socio-economic rights for the total success and enjoyment of the right to life. Thus, the right to life requires both negative and positive state obligations. It is worth nothing that the constitutional regime in Nigeria creates artificial dichotomy between civil and political rights (Fundamental Human Rights), and social, economic and cultural rights, which are accorded negative constitutionalizing. Socio-economic rights are provided for under the Fundamental Objectives and Directive Principles of State Policy. The fundamental objectives are the ideological foundation of governance in Nigeria. The objectives first seemed in the 1979 Constitution of the Nation, perhaps advanced from the Indian Constitution. Except for the negative constitutionalizing, the chapter is an essential philosophical invention in the Nations constitutional democracy. Lack of philosophical obligations by political leadership is fundamentally dangerous to policy actualization. The result is that the essence of governance is lost since there is no clear policy direction to provide the necessary ingredient for effective, efficient and meaningful governance. The desirability of the directive concepts, moreso, was an effective measure towards figuring out the objectives of promoting worthy governance and welfare of citizen built on the principles of freedom, equality and justice. The provisions handling economic subjects inside the directive concepts are not couched in the form of either negative or positive rights.

The constitutional arrangement of the Nigeria government as it relates to the policies and implementation of international laws and human rights laws revealed that, the regime appears to have failed or unable to act and enforce the polices standard and provision provided for. The Nigerian regime has played a positive role in negotiating and implementing important national treaties, such as the UN Protocol on the Law of the Sea, the UN Framework Convention on Climate Control, and the Kyoto Protocol. However, the regime needs to restructure its constitutional provisions and policies for implementing and enforcing global documents and practices in maritime and environmental protection, including human rights. The protection and respect for human rights are too precious to be relegated to the dustbin of state policy, and Nigeria should focus on creating a legal environment for ensuring the protection of economic and social rights.

4. CONCLUSION

Agreement between Nigeria and other subjects of international law do not transform into domestic laws except such agreement are categorically promulgated that is incorporated into our local laws by the Upper Legislative Chambers. But the Upper Legislative Chamber has over the years, demonstrated unwillingness or no interest in the implementation of its duties and responsibilities in discharging this significant task hence, various constitutional agreements which the regime is a signatory to have not been incorporated many years after its ratification. And this has cost untold hardship on the regime's legal system on the need to support and complementarity that ought to derive from the ratified but incorporated treaties. Suffice it therefore to say that, domesticated treaties do not only fill the gaps in the Nigerian legal system, but also expand its frontiers. Based on the findings of the study and the conclusion thereof, the following recommendations are outlined for the study. (1) The Treaties Act, of 2004 should immediately be amended to make consultations with the relevant Committees of the Upper Legislative Chambers a compulsory treaty-making procedure in Nigeria. (2) It is further recommended that to prevent the risk associated with the present arrangement, some form of co-operation is required between the President as Head of the Executive arm of Government and the National Assembly in the negotiation and eventual ratification of treaties. While it may be unwieldy to involve all the members of the National Assembly in the treaty making process, the Treaties and Protocols Committees and the relevant Committees of both Houses should be involved or at least, properly briefed and sensitized and where necessary, their approval obtained on major principles of the treaty during negotiations before it is eventually signed. Where the above recommendation is carried out, it would then be the responsibility of the relevant committees who were already part of the process, to defend and explain the utility of the provisions of the treaty to their members and colleagues. Given the beauty of the Committee system in the National Assembly, the Bill for an Act to give effect to such treaties will usually be referred to the Committee on Treaties and Protocol of both Houses, who will naturally pass it without or minimal delay or amendment.

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