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Treaty Making and Its Application under Nigerian Law: The Journey So Far

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ABSTRACT : *Treaties constitute the major means of entering into agreement at international law. The 1999 Constitution of the Federal Republic of Nigeria in its Section 12 requires the treaty so ratified to be transformed by the Nigeria legislature before it can be admitted in Nigeria's Court. The paper examines in a holistic manner treaty making and its implementation under Nigerian law vis a vis the relationship between international law and municipal law in Nigeria and concludes that treaty making procedure and its implementation was not accorded its primacy under the Nigerian Constitution.*

KEYWORDS : *Adoption, Constitution, International Law, Transformation, Treaty*

I. INTRODUCTION

At International law, the International Court of Justice (ICJ)[1] Statute made special provisions for the laws that are applicable before the court., Those specifically allowed are Treaties[2], Custom[3], general principles of law[4] and subsidiary sources[5]; which comprised of judicial decisions, teaching of the most highly publicists and other sources outside the ambit of the International Court of Justice Statute. Treaty; which was considered the closest analogy to legislation that International has to offer[6] constitutes the major means of entering into agreement at International law. It bears significant implications for national law, national institutions and the nationals of states[7]. It ended wars[8], regulated navigation[9], pledged troops[10], and at times encouraged trade[11] among others.

Nigeria is indeed a member of the International Community[12] and consequently has the capacity to enter into treaty. In fact, she has since ratified the 1961 Vienna Convention on the Law of Treaties[13] and has

[1] See Article 38 (1) of the ICJ statute.
[2] Article 38 (1)(2).
[3] Article 38 (1) (b
[4] Article 38 (1) (c)
[5] Article 38 (1) (d)
[6] See Harris DJ (1998) *Cases and Materials on International Law*. 6th ed, London, Sweet & Maxwell.
[7] See Anderson W "Treaty Making In Caribbean Law and Practice: The Question of Parliamentary Participation." Available online at: http://www.cavehill.uwi.edu/researchweek/resources/law/anderson_parliamentaryparticipation.aspx. Assessed 24th June,2013.
[88] *See, e.g.*, Treaty of Peace and Friendship Between his Britannick Majesty, the Most Christian King, and the King of Spain, Spain-U.K., Feb. 10, 1763, *available at* http://avalon.law.yale.edu/18th_century/paris763.asp. For a detailed study of the American position, see Hathaway.O *et al* (2012) "The Treaty Power: Its History, Scope, And Limits" (forthcoming Cornell Law Review) Available online at http://www.law.yale.edu/documents/pdf/Intellectual_Life/Hathaway_TreatyPower.pdf
[9] *See, e.g.*, Jay Treaty, U.S.-U.K., Nov. 19, 1794, 8 Stat. 116, *reprinted in* Hunter M. (ed) (1931) 2 Treaties and Other International Acts of The United States of America 245-67, *available at* http://avalon.law.yale.edu/18th_century/jay.asp
[10] *See, e.g.*, Treaty of Alliance Between the United States and France, Feb. 6, 1778, 8 Stat. 6, *reprinted in* 2 Treaties, *supra* note 8, at 35-47, *available at* http://avalon.law.yale.edu/18th_century/fr1788-2.asp
[11] *See, e.g.*, Treaty of Amity and Commerce Between the United States and France, Feb. 6, 1778, *reprinted in* 2 Treaties, *supra* note 16, at 3-34, *available at* http://avalon.law.yale.edu/18th_century/fr1788-1.asp; Treaty of Amity and Commerce Between His Majesty the King of Prussia, and the United States of America, Sept. 10, 1785, 8 Stat. 84, *reprinted in* 2 Treaties, *supra* note 16, at 162-84; Treaty of Amity and Commerce Between His Majesty the King of Sweden and the United States of America, Apr. 3, 1783, 8 Stat. 60, *reprinted in* 2 Treaties, *supra* note 16, at 123-49, *available at* http://memory.loc.gov/cgi-bin/query/r?ammem/bdsdcc:@field%28DOCID+@lit%28bdsdcc08701%29%29; The Barbary Treaties, U.S.-Morocco, June 28, 1786, *reprinted in 2* Treaties, *supra* note 16, at 185-227 *available at* http://avalon.law.yale.edu/18th_century/bar1786t.asp.
[12] Nigeria before it became what it is today was ceded to the British in 1861 by the then oba of Lagos; King Dosunmu (Docemo) Lagos then became a British Colony and was administered by importing their laws-common law of England, Doctrines of Equity and Statutes of General Application that were in force on or by the 1st day of January 1900. This occupation was subsequently ratified at the Berlin Conference of 1884-1885 where Africa was scrambled for, and partitioned. After series of Constitutional Developments in 1922, 1946, 1951 and 1954, Nigeria became an independent country on 1st October 1960 and later a Republic on 1st October, 1963. With the acquisition of the Independence and Republican status in 1960 and 1963 respectively, Nigeria

entered into several other bilateral[14] and multilateral[15] treaties. Consequently, any of these treaties to which Nigeria is a signatory is binding on her. The noticeable regulations regarding treaty bother on its applicability as contained in the Nigerian 1999 Constitution[16]. The other requirements regarding those who can make treaty on behalf of the country and the status of transformed treaties so made when they become domesticated vis-a-vis other statutes appear to be unsettled. This paper seek to examine the law relating to the making, application and status of the transformed treaties in a holistic manner as far as Nigerian law is concerned and the paper will end by making the requisite recommendations on how the law relating to treaty should be handled in Nigeria.

II. TREATY

The terms Treaty, Convention, Agreement, Accord, Act, Statute, Covenant or Charter are generic terms used interchangeably to define international agreement concluded between states[17]. Protocol on the other hand is a document used to modify an existing treaty[18]. A treaty is defined as an international agreement concluded between states in written form and governed by international law, whether embodied in a single instruments or in two or more related instruments and whatever its particular designation[19]. From the wordings of the conventions, states and entities proximate to states are accorded treaty making capacity[20] and such extension were grated to constituent instruments of international organization[21]. However from the wording of the convention[22], the capacity of individual to enter into treaty was finally laid to rest in *The Anglo-Iranian Oil case* [23]to the effect that individual lack capacity to make a treaty.

III. MAKING OF A TREATY

It is a firm principle of international law that every state is competent to enter into treaty regarding matters that fall within its sovereignty[24], but at times, to locate the department that is responsible for negotiating and ratifying treaty in Nigeria may not be as easy as expected. Under the Nigerian Constitution the law and procedure on treaty making capacity was not documented. What is visible in the constitution is treaty implementation[25]. However, Nigerians Treaties (Making Procedure etc) Decree No 16 of 199[26] classifies treaty into three categories and conditions which they must satisfy. They are:

(a) law-making treaties which affect or modify existing legislation or powers of the National assembly; these must be enacted into law
(b) agreements which impose financial, political and social obligations or have scientific or technological importance, these must be ratified
(c) those that deal with mutual exchange of cultural and educational facilities need no ratification

The provisions of the above mentioned law is not enough. What is expected is a comprehensive law that will spell out who will be responsible for making treaty with other nations where for instance the subject matter bothers on the security of the nation. Is it going to be the responsibility of the president and commander in Chief of the Armed Forces? The Chief of Defence Staff or Minister of Defence. This has not been provided

became a member of the Committee of Nations after satisfying the requirements of Article 1 of the 1933 states. Further readings on the above, see Babatunde I.O. (2009) "English Jurisprudence and African Law Need to Revisit R V *Udo Aka Ebong*" Vol. No. 1 *OOU LJ* P 201, Obilade A.O (2001) *The Nigerian Legal System*, Ibadan, Spectrum Books Limited, pp 17-52

[13] Nigeria indeed signed and ratified the 1961 Vienna Convention on the Law of treaties

[14] A bilateral treaty is a treaty between two states (nations) for example Nigeria signed and ratified a bilateral treaty with South Africa on Extradition and several of them.

[15] A multilateral treaty is a treaty between three or more countries. Nigeria as a country have entered into several multilateral treaties among which are the third United National Convention on the law of the sea which she August 1986, Convention on the Preventions of Marine Pollution by Dumping of Wastes and Other Matters, 1972 entered into force on 18 April 1976 and Nigeria deposited instrument of ratification with the secretary General of the United Nations.

[16] See Section 12(1) of the Constitution of the federal Republic of Nigeria 1979 as amended

[17] See Amokaye G.O (2004) Environmental Law and Practice in Nigeria . 1st ed, Lagos University of Lagos Press P 86.

[18] Examples of protocols are Protocol Relating to Intervention On The High Seas in Cases of Marine Pollution by Substances other than Oil (London) 2 November 1973, in force on 30 March 1983, Protocol for Co-operation in Combating Pollution of the Mediterranean Sea by Oil and other Harmful Substances in Cases of Emergency (Barcelona) 16 February 1976, in force on 12 February, 1978.

[19] See Article 1, of the 1969 Vienna Conventions on the law of Treaties. (1969) 8 ILM 679; (1980) UKTS 58, 1155 UNTS. 331, (1969) A JIL 875, UN Docs. A/ Conf. 39/11

[20] Article 2

[21] Article 4

[22] Article 1

[23] (1952) ICJ Rep.93

[24] See The Wimbledon Case (1923) PCIJ Series A No 1

[25] See Section 12 (1)

[26] Now Cap T Vol. 16 LFN 2004

for by any legal instrument .In the United States of America, for example, the position is well spelt out. The power to make treaty resides with the president with the advice and consent of the Senate, and the concurrence of two-thirds of the senators[27]. Whereas, in the United Kingdom, the treaty- marking capacity is within the prerogative of the crown.[28]

IV. GENERAL INTERNATIONAL LAW FORMALITIES

In international law, persons representing states must produce what is termed "full powers" before being accepted as capable of representing their countries[29]. Full powers refer to documents certifying status from the competent authorities of the state in question. This provision provides security to the other parties to the treaty that they are making agreements with persons competent to do so[30] The requirement of full powers presentation however do not apply to some people for example, heads of state and government, foreign ministers, head of diplomatic missions and representatives of accredited to international conferences and organizations.[31]

V. TREATY MAKING IN NIGERIA

Nigeria is a Federal State[32] and as such, treaty making in federation is within the jurisdictional purview of the Federal government. Nwabueze led credence to this assertion when he posted that:

> *the president, as the Chief Executive of the Federal government is designated head of state… with the consequences that all his legally relevant international acts are considered to be acts of his state… it comprises in substance chiefly; reception and mission of diplomatic agents and consults, conclusion of international treaties, declaration of wars…*[33]

Speaking in similar terms, Egede noted that the president can ratify a treaty without the participation of the National Assembly, as Nigeria operates the British system whereby the executive can ratify a treaty without parliamentary participation[34] .However, from the above proposition, the fact emerges that making of treaty is the exclusive prerogative of the Federal Government in a federal system of government. A learned writer posed on rider by saying that suppose a boisterous state Governor that is not on good terms with the president may decide to exploit the uncertainty by seeking to enter into treaties with any foreign country that is willing to negotiate with his or her state[35] what happens? Although the International Law Commission pointed out that the question whether a state within a federating state possesses treaty-making capacity depends on its constitution[36], Nigerian

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[27] With regard to the presidential power to terminate a treaty, see DUSPIL 1979 PP 724 Cited by Shaw MN (2005) *International Law*. 5th ed, Cambridge, University Press, P 815. See also Goldwater v carter (1979) 617 F.2D 697 Henkin L (1980) " Restatement of the Foreign Relations Law of the United States (Revised)". 74 *AJIL*, 954. Section 11(2) of the Constitution of the United States of America provides that the president has power by and with the advice and consent of the Senate to make treaties, provided two-thirds of the Senate Present concur.

[28][28] See Smith de S and Brazier R (1989) *Constitutional and Administrative Law*, 5th ed, London P. 140. In Britain, a treaty does not become part of British domestic law unless and until it is specifically incorporated by a legislative measure-an enabling act. See Wallace, R.M (1997) *International Law*, 3rd ed, London, sweet and Maxwell, P. 35.

[29] Article 7 of Vienna Convention.

[30] See Shaw, M N, *op cit*, p 815-816

[31] Ibid

[32] A federal state is the method of dividing powers such that the federal and regional governments are each, within a sphere, coordinator and independent. Thus, a federation is a union of several states, which having assigned certain powers and functions to the federal government reserved the rest to themselves. For a detailed reading, see Livingstone W A (1952)" A Note on the Nature of Federalism". 62 *Pol. Studies Quarterly*. P, 22

[33] Nwabueze B.O. (1983) *Federalism In Nigeria Under the Presidential Constitution*. London, Sweet & Maxwell P. 255-6

[34] Egede E (2010) "Bakassi: Critical Look at the Green Tree Agreement "Available online at http://works. Bepress.com/cgi/viewcontent.cg.? article = 1007 & content = Edwin_egede. Visited 11th June, 2013.

[35] See Nwapi C (2011) "International Treaties in Nigeria and Canadian Courts" African Journal of International and Comparative Law." Vol 19 (1) pp 38-65. Available online at http://www.euppublishing.com/doi/pdfplus/10.3366/ajicl.2011.0003

[36] See kindred H.M et al (2006) International Law Chiefly as Interpreted and Applied in Canada. 7th edn, Canada, Edward Montgomery Publications, p.196. In Britain, treaty making power is part of the royal prerogative over foreign affairs which the Queen may exercise without parliamentary involvement. In Canada however, the power resides in the Governor-General. See Ert G. Van (2008) *Using International Law in Canadian Courts* . The Hague. Kluwer Law International, ; J. Harrington,(2006) "Scrutiny and Approval: The Role for Westminster-Style Parliaments in Treaty-Making" 55 *ICLQ* 121, 136-41 . .See also Ert .G. Van "The Role of Domestic Courts in Treaty Enforcement" in. Sloss and Jinks (eds). Available online at http://www.litigationchambers.com/pdf/vanErt-domestic-courts.pdf . Accessed, 13th June, 2013. In *Attorney General for Canada.* v *Attorney General for Ontario* (1937) Ac 326 at 347 the Court held that it is a well established rule that the making of a treaty is an executive act, while the performance of its obligations, if they entail alteration of the existing domestic law, requires legislative action. Unlike some other countries the stipulations of a treaty duly ratified do not within the Empire, by virtue of the treaty alone, have the force of law. If the national executive, the government of the day, decide to incur the

court is so emphatic about the answer. So, the constituent states not being a sovereign state as required by international law cannot. This was beautifully captured by Ogundare JSC in *Attorney General of the Federation* v. *A.G Abia State and 35 others*[37], thus;

> *… Nigeria as a sovereign state is a member of the international community … defendant states is a member of the international community … defendant states not being a sovereign, are not either individually or collectively. In the exercise of its sovereignty, Nigeria from time to time enters into treaties-both bilateral and multilateral. The conduct of external affairs is on the exclusive legislative list. The power to conduct such affair is, therefore in the Government of the Federation to the exclusion of any other political component unit in the federation.*[38]

The reason for this according to Oyebode seems clear enough. These include avoidance of conflicts and discordance in the area of foreign policy[39], the need for a single external identity, and the broad character and constituency of foreign policy. Any contrary arrangement would most surely prove dysfunctional and counter-productive, more so since a unified foreign policy, arguably forms part of the attractions of federalism[40].

VI. LAW MAKING TREATY AND TREATY CONTRACT

A useful but material distinction exists between a law making treaty and a treaty contract. The former is normative and a direct source of inter-national law while the later is not. The reason for this explanation stem from the fact that for the purpose of this work, attention will be focused on the law making treaty and its constitutional imperative in Nigeria. The position of the law is that it is states and entities proximate to states that have capacity to make treaty in international law[41]. At times, constituent part of a federal state do enter into "treaty" with international organization or other nations either for the purpose of loan taking or other service, usually joint venture agreement. This type of other treaty" contract agreement is outside the purview of this work; instead, attention will be focused on norm creating treaty which is a direct source of international law.

VII, LEGISLATIVE PROVISIONS ON MAKING OF TREATIES IN NIGERIA.

A learned author once remarked that most of the characteristics of commonwealth constitutions are the lack of clear cut provisions on the treaty making power. Instead, the issue has usually been approached by way of treaty implementation[42]. Consequently, it is not in the least surprising that the various constitutional arrangements fashioned for Nigeria did not embody any specific reference to the treaty-making power, rather the matter was dealt with within the context of treaty-implementation and the component unit[43]

VIII. 1960 INDEPENDENCE AND 1963 REPUBLICAN CONSTITUTIONS

Nigeria became a Federal State in 1954 and this was provided for in the 1960 Independence Constitution. External Affairs which making of treaty belongs was among the matters contained in the Exclusive legislative list, so by necessary implication, through making of treaty was not expressly provided for, it nevertheless was vested in the Federal Government[44]. In 1963, the situation was not fundamentally different in that treaty making power was not vested directly in any arm of government but merely talk of treaty implementation section 74 of the 1963 constitution provides:

> *Parliament may make for Nigeria or any 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 and any other country or any arrangement with or decision of an international organization of which the federation is a member…..*

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obligations of a treaty which involve alteration of law they have to run the risk of obtaining the assent of Parliament to the necessary statute or statutes.

[37] [2002]16 I WR N. 1 Ibid at p. 75

[38] Ibid at p. 75

[39] Oyebode A (2003) "Treaty Making power in Nigeria" in Oyebode A (ed) *International law and politics: An African Perspective.* Lagos, Bolabay Publishers, P. 118.

[40] *ibid*

[41] See Article 2(1) (a) of the 169 Vienna Convention On the Law of Treaties which defines a treaty "as an international agreement concluded between states in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation."

[42] See Oyebode A (2003) " Treaty making Power….." P 119

[43] See Tobi N. *Impact of International law on the Nigerian Constitution*. (hereinafter referred to as *Impact*) Lecture Series No 31, Lagos, NIAA P. 1 at 5, Ijalaye DA (1978) *Nigeria and International Law: Today and Tomorrow.* Ile-Ife, University of Ife Press. P 1

[44] See Section 64(1) (a) & (b) of the 1960 Constitution.

IX. 1979 AND 1999 CONSTITUTIONS

The constitutions of the Federal Republic of Nigeria in 1979 and 1999 addressed the issue of treaty making and its implementation under Sections 12 of these constitutions. Section 12(1) 1979 which is in *pari materia* with Section 12 of the 1999 constitution, provides thus:

(1) No treaty between the Federal the federation and any other Country shall have the force of law except to the extent to when 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 maters 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 assert, and shall not be enacted unless it is ratified by a majority of all the House of Assembly in the federation.

The Constitution does not provide for who and under what circumstances would a treaty be entered into it equally fail to provide which arm of government that is responsible for entering into treat an behalf of the government of the Federal of the Federal Republic of Nigeria.

X. TREATIES (MAKING PROCEDURE, ETC) ACT

The Nigerian national Assembly enacted an Act[45] to provide, among other things, for treaty-making procedure and the designation of the federal ministry of justice as the depository of all treaties entered into between the federation and any other country. The Act contains seven sections. The Act makes the procedure to be binding and applicable for the making of any treaty between the federation and any other country on any matter on the Exclusive Legislative List contained in the Constitution of the Federal Republic of Nigeria 1979.[46] The implication of this is that treaty making power is within the purview of the Federal government. However, there is a ride to this provision. Who can legislate on matters not contained in the Exclusive legislative list? This question comes for begging. However it is elementary principle of law that *expression unis est exclusio alterius* may have to apply here. It appears that section 1(2) of this Act intend to open a floodgate of persons and authorities that can negotiate a treats on behalf of the government of the federation without control measures in place. For instance, section 1(2) of the Act provides:

> *All treaties to be negotiated and entered into far and on behalf of the federation by any ministry, governmental agency, body or person, shall be made in accordance with the procedure specified in this Act or as may be modified, varied or amended by an Act of the National Assembly.*

The Act needed to go further by providing who can negotiate a treat on behalf of the federal government, whether the Ministry, Permanent Secretary Director General of the Agency or the supervising ministry in charge of the Agency. A further clarification of this will assist in removing area of conflict particularly between the Director General of the Agency and the supervising Minister especially in situation where they are not on terms on the issue for negotiation.

Where the treaties are law making, being agreements constituting rules which govern interstate relationship and cooperation in any area of endevour and which have the effect of altering or modifying existing legislation or which affects the legislative powers of the National assembly[47], these agreements on treaties must be enacted into law[48]. For agreements which impose financial, political and social obligations on Nigeria or which are of scientific or technological import[49], such agreements need to be ratified[50], but for agreements which deal with mutual exchange of cultural and educational facilities[51], these treaties may not to be ratified[52]. Whether the last categories of treaties mentioned can possess a force of law is very doubtful. In international law for a treaty to have a force law, it must not only be signed but must also be ratified[53], by parties to the

[45] Treaties (Making Procedure Etc.) Act, Cap T. 20 Vol. 15, LFN 2004.
[46] S.1 (1)
[47] S.3 (1) (a)
[48] S.3(2)(a)
[49] S.3(1)(b)
[50] S.3(2)(b)
[51] S.3(1)(c)
[52] S. 3(1)(C)
[53] Ratification refers to the subsequent formal confirmation a state that it is bound by a treaty. Ratification is employed by those states which are required to initiate some parliamentary process to gain approval from the state being bound by the international agreement in question. Abegunde B. (2009) *Public International Law*. Ado Ekiti, Petoa Educational Publishers. P. 181. Article 2 (1) the Vienna Convention on Law of Treaties defined ratification as the international act whereby a state establishes on the international plane its consent to be bound by a treaty".

convention. All instrument of treaties entered into by the Federal government of Nigeria and other countries shall be deposited with the Federal Ministry of Justice[54]. I am constrained to express displeasure with this law. Instead it should be more tidy if the instruments of treaties into are deposited with the office of the secretary of the Government of the federation just like what operate on international plane where the office of the secretary General of the United Nations serves as depository of treaties[55]. It is also the duty of the Federal Ministry of Justice to prepare and maintain a register of treaties[56] and have the power to give notification on the conclusion of any new treaty to the federal government printer for purposes of publication[57].

XI. IMPLEMENTATION OF INTERNATIONAL LAW IN DOMESTIC JURISDICTION – THE NIGERIAN EXPERIENCE

States implement their international obligations in three broad phases. Firstly, this can be done by adopting national implementing measures, secondly, by ensuring that to their jurisdiction and control and thirdly, by fulfilling obligations to the relevant international organizations, such as reporting the measure taken to give effect to international obligations[58]. Once a state has formally accepted an international obligation, usually following the entry into force of a treaty which it has ratified, or an act of an international organization by which it is bound or customary international law to modify national legislation, or give effect to national policies, programme or strategies by administrative or other measures[59]. Reception of international law in domestic jurisdiction is usually addressed from two broad perspectives; that is, customary international law and treaty. Different approaches are applied in dealing with these situations.

XII. CUSTOMARY INTERNATIONAL LAW

Unfortunately Nigerian Constitution does not state expressly in any of its provisions the mode of receiving international law in any of its courts[60]. This is different from what happens under some countries constitution in South Africa for example, Section 232 of the 1996 constitution of South Africa provides:
Customary international law is law in the Republic unless it is inconsistent with the constitution or an Act of Parliament[61]

A writer rightly averred that the "constitutionalization" of the rule of international law gives it additional weight and certainty in the law[62], and that it is only a provision of the Constitution or an Act of Parliament that is clearly inconsistent with customary international law will trump it. This is why section 233 of South African Constitution provides to legislate this position[63]. What is near the South African situation is contained in section 1(3) of the 1999 Constitution of the Federal Republic of Nigeria and does not refer to international law (be it customary or treaty provision) but to any enactments in general (including international law) that is inconsistent with the provision of that section of the constitution should give way[64]. Anglo-

[54] See section 4 of The Treaties (Making) Procedure Etc Act.

[55] See Article 80 of The Vienna Convention on The Law of Treaties.

[56] S 5 of the Treaties (Making Procedure Etc)Act

[57] S 6 of the Act.

[58] See generally Rest A (2004) " Enhanced Implementation of International Environmental Law for Individuals and NGOs: Efficacious Enforcement by the permanent Court of Arbitration: vol I *MqJICEL*. P.1; Cardonnery L (2005) " Implementing the Pacific Islands Regional Ocean Policy: How Difficulty is it Going to be." Vol. 32 VUWL, Rev. p 1 Available online at http://search.austilii.edu.au/nz/journals/VUWL Rev/2005/32,httml.Accessed 17th June, 2013.

[59] See Sands P (2004) *Principles of International Environmental Law 2nd ed* Cambridge University Press. P 175.

[60] See generally Hohenrelden (1963) "Transformation or Adoption of International Law and Municipal Law" 12 *ICLQ 58*; Okoye (1972) *International Law and the New States.* Sweet and Maxwell. 21-45. See also Tobi N, *Impact, op.cit* p.7.

[61] The provision of section 232 of the constitution was a legislative endorsement of what the position of the law was under the common law doctrine. For example, in *South Atlantic Islands Development Corporation Ltd V. Bucham (1971) ISA 234 at 238* where the court held that customary international law is part of South African law and courts are required to "ascertain and administer" rules of customary law and municipal law descended above the need to proof of law- as occurs in the case of foreign law. For a detailed reading in South African situation, see Dugard J (1997) "International Law and the South African Constitution" *IEJIL*. 77-92.

[62] Duggard J op.cit, p 79.

[63] Section 233 of the 1996 constitution of South Africa provides that when interpreting any legislation, every court must prefer any reasonable interpretation of the legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law.

[64] See *AG. Abia State* V *AG Federation* [2002] FNLR ([PT107) P 1419 at 1521; *Osho* v *Phillips* (1972)7 NSCC 172 at 178; *Att-Gen Federation* v *Abubaka*r (2007) FWLR (PT 375) p405 at 476.

American jurisprudential orbit treat an established rule of customary international law as part of the law of the land in which the relevant court has its jurisdiction. It is in this sphere that the doctrine of adoption or incorporation has become the main British Approach[65]. The adoption approach means that customary international law is deemed to form part of the common law[66]. The common law looks on customary international law as a facet of itself[67]. Thus, when a court is satisfied that a given proposition amounts to a rule of customary international law, it will apply it as a rule of common law.

The adoption theory thus invites courts not only to render decisions that are consistent with international law but to adopt international custom as the rules upon which their adjudication is based[68]. However, a state that consistently objects to the emergence of an international custom cannot be bound by it[69] .It is an old established theory dating back to the eighteen century, owning its prominence at that stage to Lord Chancellor Talbot in *Buvot v Barbuit*[70] who was reported to have remarked that: "…the law of nations in its fullest extent is and form part of the law of England…"so that the Prussian commercial agent could not be rendered liable for failing to perform a decree. Twenty Seven years later, Lord Mansfield in *Triquet v Bath*[71] endorsed this principle. This acceptance of customary international law rules as part and parcel of the common law of England, so vigorously stated in series of eighteenth century cases[72] were subject to the priority granted to Acts of parliament and tempered by the principle of *stare decisis* maintained by the British courts and ensuring that the judgments of the higher courts are bridging upon the lower courts of the hierarchal system[73]. The adoption or incorporation theory though suffered a temporary setback in *R v, Keyn*[74], however subsequent cases post *keyn* reversed back to the adoption or incorporation theory[75]. So as the law stands today, international customary law is treated as part of Nigeria law. In *Ibidapo* v. *Lufthansa Airlines*[76] the Nigerian Supreme Court held that Nigeria like any other commonwealth country inherited the English Common law rules governing the municipal application of international law.

However, Nwapi's proposition that in the event of a conflict between a rule of customary international law and a local statute, the latter prevails[77] might have been given *ex cathedra* because neither Nigerian constitution nor case law has led credence to this averment. Though the English cases of *Mortensen v. Peters*[78] and *R V. Chung Chi Cheun*[79] are to be the law in their respective jurisdictions. These cases are however of persuasive authority in Nigerian courts on the subject. Therefore, there is a need for an authentic pronouncement from Nigeria's judiciary giving a stamp of authority on this legal issue. I must state that this kind of problem has been solved by legislation.

XIII. RECEPTION OF TREATY

In Nigeria, it can be authoritatively stated that treaties are not part of the sources of Nigerian law[80]. Nigeria follows the dualist theory for the implementation of international law at domestic level. International

[65] See Shaw. M.N (2005) *International Law,* op.cit p.129, Harris D.J (1998) *Cases and Materials* supra p.68.

[66] Common law became part of the Received English law by virtue of the Interpretation Act that allowed court to receive the Common law of England, Doctrines of Equity and Statutes of General Application that were in force on or by January 1 1900.

[67] See Ert van G (2008) *Supra* at 182.

[68] *Ibid* at 84.

[69] See De Mestal. A and Fox- Decent E (2008) "Rethinking the Relationship Between International and Domestic Law" Vol. 53 *McGill Law Journal,* P 573 at 584. Available online at http://lawjournal.mcgill.ca/documents/De_Mestral_and_FoxDecent.pdf

[70] (1737) Ed. 24

[71] (1764) 3. Burr 1478

[72] *De Haber* v. *Queen of Portugal* (1851) 17 QBD 171*; De Wutz* v. *Hendrick*s (1824) Bing 314; *Emperor of Austia* v. *Day of Kossuth* (1861) 2 Giff 628.

[73] See Shaw MN (2005) Supra at p. 132

[74] [1876] 2 Ex D 63. In this case, Lord Cockburn applied the transformation theory to principles of customary international law. This decision must have been reached *per incuriam*

[75] Notable among them are *Trendtex Trading Corporation v. Central Bank of Nigeria (1977), ALL ER 881; West Rand Central Gold Mine Company v R [1905] 2 UB 391; Commercial and Estates co. of Egypt v. Board of Trade [1925] I KB 271.*

[76] [1997 4 N.W.L.R 124

[77] See Nwapi (2011), *op.cit* at p 55

[78] [1906] 14 Scotts LTR 1481.

[79] [1939] AC 160 at 168.

[80] Sources of Nigeria law are the Constitution, Nigerian legislation, judicial decisions, customary law and Received English law. International law is therefore impliedly excluded. For a detailed study of Sources of Nigeria law, see Park A.E.W (1963) *Sources of Nigerian Law*, London, Sweet & Maxwell, Tobi N (1996) *Sources of Nigerian Law*, Ibadan, MIJ Publication, Obilade A.O (1963) *Nigerian Legal System*., London, Sweet & Maxwell.

treaties do not automatically become part of national law it, therefore, requires the legislation to be made by the Parliament for the implementation of international law in Nigeria[81]. This is called the process of Transformation. Transformation of treaties into municipal law entails clothing them domestically; by making them part of the statutes of the country[82], but does not entail subjecting treaties to the vicissitudes of municipal politics[83].

In South Africa, in *Azanian Peoples Organisation (AZAPO) And others v. President of the Republic of South Africa and others*[84] the court stated that international convention and treaties do not become part of the municipal law of our country, enforceable at the instance of private individuals in our courts until and unless they are incorporated into the municipal law by legislative enactment.

In Nigeria however, S12(1) of the 1999 constitution of the Federal Republic of Nigeria provides that :
no treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly.

This Constitutional prohibition on executive law making means that any treaty concluded by the Federal Republic of Nigeria would not be regarded *eo nomine* as sources of domestic law, until such has been transformed in accordance with the provision of this law. In *The Registered Trustees of National Association of Community Health Practitioners of Nigeria & Ors* v. *Medical and Health Workers Union of Nigeria*[85], the Supreme Court of Nigeria held that the International Labour Organization Convention, having not been domesticated in Nigeria, had no binding effect in Nigeria. Transformation may be achieved through two methods; by re enactment and by reference[86].The rationale behind domestication of treaty by legislatures, according to a learned writer, is to afford them an opportunity of providing a prominent role, even domineering role in the treaty making process[87]. Since the making of the treaty is within the jurisdictional provisions of the executive, the legislature sees the domestication process as a means of checking the activities of the executive apparently because law making function is that of the legislature and not that of the executive.
Section 12(2) of the Constitution provided that :

The National Assembly may make laws for the Federation or any part thereof with respect to matters not ***INCLUDED***[88] *in the Exclusive Legislative List for the purpose of implementing a treaty*[89].

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[81] Similar situation applied in India. For a detailed examination of the relationship between international law and treaty in India, see Agarwal S.K "Implementation of International Law in India: Role of judiciary." Available online at : http://oppenheimer.mcgill.ca/IMG/pdf/SK_Agarwal.pdf

[82] See generally Mwagiru M (2011)"From Dualism to Monism: The Structure of Revolution in Kenya's Constitutional Practice" vol 3, *Journal of Language, Technology Enterprenueship in Africa.* No. 1 p 140 at 146. Available online at http://www.ajol.info/index.php/jolte/article/viewFile/66714/54979. *see also* Viljoen F (2007) *International Human Rights in Africa,* Oxford University Press, p 12. For a detailed study of the situation in China, see Bjorn Ahl. (2007) Summary: The Application of International Treaties in China. Available online at http://www.mpil.de/shared/data/pdf/beitr207.pdf . Chenwi. L (2011) "Using International Human Rights Law to Promote Constitutional Rights: The (Potential) Rule of the South Africa Parliament". Vol. 15 *Law Democracy and Development p.1 Available online at :*http://www.ajol.info/index.php/ldd/article/viewFile/71581/60521

[83] Mwagiru M, Supra at p 149.

[84] [1996] 8 ECLR 1015 (cc) at para 26. In Kenya, the situation is fundamentally different. There, section 2(6) of the Kenya Constitution provides that any treaty or convention ratified by Kenya shall form Part of the law of Kenya. This provision has expressly done with the issue of domestication of treaty in Kenya. The process here is that the executive negotiate the treaty, before ratification the treaty provision is debated by the legislatures, voted for the treaty ratification, then the executive proceed to ratify the treaty and it automatically becomes the law of the land. See Mwagiru.M. supra . Available online at http://www.ajol.info/index.php/jolte/article/viewFile/66714/54979

[85] [2008] 2 NWLR (Pt 1075) p 575.

[86] Transformation by re-enactment or "force of law" is when the implementing statute directly enacts specific provisions or the entire treaty usually in the form of a schedule to the Statute, whereas transformation by reference is usually contained either in the long and short titles of the Statutes or in the preamble or schedules. See Oyebode A.O (2011) *Of Norms,Values and Attitudes; The Cogency of International Law*. An Inaugural Lecture delivered at the University of Lagos, Lagos, University of Lagos Press. P 40-41 (hereinafter referred to as "*Inaugural lecture*").

[87] See Mwagiru M (*Supra*) at p 150.

[88] Emphasis added.

[89] For ease of reference, there are usually three Lists in respect of which subject matter of Legislation can be divided. There is the Exclusive legislative List which contains matters on which the National Assembly (Senate and House of Representative) has EXCLUSIVE power to pass legislation. States Houses of Assembly are not allowed to make laws in respect of matters contained in this List. See Part 1 to the Second Schedule. The second is the Concurrent legislative List; This contain matters on which the Federal and State legislatures can both legislate. See Part II to the Second Schedule. Though the "third" list, the Residual is not contained anywhere in the Constitution but only as an assumption that has acquired the force of law. These are matters that affect the Local Governments in respect of which it is only the States Houses of Assemblies that can legislate thereon. See Section 7 of the 1999 Constitution.

The intendment of this Section is that the legislative competence of the States would be interfered with where the proposed legislation seeks to implement a treaty, and where there is a conflict between the position of the National Assembly and any State House of Assembly that bother on implementing a treaty or any law whatsoever, Section 4(5) of the Constitution of Nigeria empowers that Federal Law to prevail and that state law shall subject to its inconsistency be void. The provision of Section 12(2) is however qualified by Section 12(3) which provides thus:

> *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.*

From the provision of Section 12, implementation of treaties can be divided into two major headings. First are those that deal with matters in the Exclusive legislative lists governed by Section 12 (1) and the one that deals with concurrent legislative list governed by Section 12(2) and (3). While the former situation is straightforward and less problematic but for the latter, the situation is different, problematic, unclear[90] and there is protraction in the treaty making process arising from the subsections[91]. It is suggested that the best way out of this quagmire is to adopt the view of Nwapi where he posited that in getting the state legislatures to ratify implementing legislation enacted by the federal legislature, Canada's position under C-486 should be adopted. There, sates would be allowed to participate in the treaty-making process where the treaty's subject matter affects their jurisdiction[92], instead of "winners take all" approach adopted by the Federal Government in the making of treaty. This is what Harrington's work criticizes and referred to as "democratic deficit[93]." However, I would not subscribe to the suggestion offered that ALL states should partake in the negotiating of treaties because that will amount to an unnecessary usurpation of the function and role of the Federal Government by the State Governments. This is capable of breeding anarchy and takes governance at that level out of focus.

XIV. RELATIONSHIP BETWEEN INTERNATIONAL LAW AND NIGERIAN LAW

Research shows that none of the various Constitutions in Nigeria regarding customary international law and treaty implementation in Nigeria addressed the question of the relationship between international law and municipal law[94]. Not even does section 12[95] of the Constitution. This is unlike what transpired in some other jurisdictions[96]. International Law related with municipal tribunals in two forms. Customary International Law and Treaty. As reiterated earlier, Customary International Law is treated as the law of the land; using the adoption or incorporation principle. This was inherited from English common law approach being Nigeria's colonial master[97]. In Nigeria today, no part of its Constitution make express or implied reference to the reception of customary law. However, the situation was different in some jurisdictions. For example, South Africa[98], Germany[99], Russia[100], and the US[101], established in their respective Constitutions that Customary International

[90] See Nwapi *supra* at P 48 where he observed that the provision of Section 12 (2) in particular remains unclear and problematic.

[91] See Tobi N *Impact*…supra at p 6.

[92] Nwapi *supra* p50. See also Ert G. V. "The Role of Domestic Courts in Treaty Enforcement." P 1-46 Available online at **http://www.litigationchambers.com/pdf/vanErt-domestic-courts.pdf**.Accessed on 16th September,2013.

[93] See Harrington, J. [2005] "Redressing the Democratic Deficit in Treaty Law Making: (Re-) Establishing a Role of Parliament," McGill Law Journal, Vol. 50, 2005, pp.465-509. Harrington's work criticizes the traditional executive branch-centric treaty-making process as a system with a "democratic deficit."As we have seen above, treaties are not necessarily ratified by the legislative body. Moreover, Harrington pointed out that the federal government usually concludes international treaties without the consent of local governments. "Democratic deficit" is a concept which criticizes the treaty-making system whereby the will and interests of the people as the sovereign can be ignored. For a better understanding of this , see further AOKI-OKABE M (2012) "Increasing Popular Participation in the Treaty-making Process The Legislative Process of Section 190 of the 2007 Constitution of Thailand." Available online at http://www.icird.org/2012/files/papers/Maki%20AOKI-OKABE.pdf

[94] See Oyebode A (2012) *Inaugural Lecture,* p40, see further Lauterpacht ( ) "Is International Law a part of the Law of England. " 25 *Transcriptions of the Grotius Society* P. 51, Hohenreldem. (1963) "Transformation or Adoption of International Law and Municipal Law." 12 *I C L Q* 58.

[95] Tobi N *Impact Supra* at p7. See also Sorenson (1968) "Obligation of a State Party to a Treaty as Regards its Municipal Law" in Robertson (ed.) *Human Rights in National and International Law*. Oceana Publishers, P 11-46.

[96] For example Articles 26, 27 and 28 of the French Constitution.

[97] See Okoye P. C. (1972) *International Law and the New African State* . P 32.

[98] The proposition that customary International laws forms part of the common law of South Africa is well entrenched in Section 232 of the *Constitution of the Federal Republic of South Africa* 1996 No. 108 of 1996 which provides that "Customary International law is the law in the Republic unless it is inconsistent with the constitution or an Act of parchment. "see also Duggard J. ***(1997)*** "International Law and the South Africa Constitution" ***1 EJIL*** p. 77 at 79. Available online at http://www.ejil.org/pdfs/8/1/1426.pdf

[99] Article 25 of the Constitution of the Federal Republic of Germany states that; "the general rules of Public International Law shall be an integral part of the Federal Law. It shall take precedence over the laws and shall directly create rights and duties for the inhabitants of the Federal territory. See also Hilf G. (1987) "General Problems of Relations Between Constitutional Law and

law is part of domestic law. One thing that is certain is that in Nigerian jurisprudence if there is a conflict between a rule of customary international law and local statues, the latter prevails[102]. In respect of treaties, apart from the fact that section 12 (1) (2) and (3) of the Constitution of the Federal Republic of Nigeria only specify the process through which a treaty has to pass before it is applicable, it does not state anything about the status of the transformed treaty. As a matter of practice, a transformed treaty may either be below, at par or superior to other laws of the land, but there is nothing to show for Nigeria position in its Constitution, rather such is left at the whims and caprices of Nigerian Courts. However, this situation is clearly spelt in other jurisdictions for example in Cyprus, Article, 169 (3) of the Constitution of Cyprus provided that:

> *treaties concluded in accordance with the provision as from publication in the official Gazette of the Republic have SUPERIOR force to any municipal law on condition that such treaties, conventions and agreements are applied by the other party*[103].

The situation is the same in Russia[104], and France[105]. In the Netherlands, Articles 93 and 94 of its Constitution treat the self-executing provisions of treaties and decisions of international organizations on equal footing[106], but the Constitution is silent on customary international law[107]. To provide answer to the Nigerian position, judicial attitude of the Nigerian Courts will be examined. In *Oshevire* v. *British Caledonia Airways Ltd*[108]. Ogundere JCA held that… "thus, any domestic legislation in conflict with the Convention is void." The implication of this is that such a convention/ treaty is higher in status than a municipal legislation. A similar decision was held by another Nigerian Court in *UAC (Nig) Ltd* v. *Global Transport SA*[109]. When Muhammad JCA held:

> *I quite agree that an international agreement embodied in a convention such as the Hague Rules is autonomous and above the domestic legislation of the subscribing countries and that the* ***provisions of such conventions cannot be suspended or interpreted*** *even by the agreement of the parties*[110].

The relationship between treaty and Nigerian law became the subject matter for examinations before the Nigerian Supreme Court in *Fawehinmi* v. *Sani Abacha*[111]. In that case the Applicant (Chief Gani Fawehinmi) a legal practitioner was arrested without warrant at his residence by men of the State Security Service (SSS) and Policemen. He sought to enforce his fundamental rights pursuant to the Fundamental Rights (Enforcement Procedure) Rules 1979 and in accordance with Articles 4, 5, 6 and 12 of the African Charter on Human & Peoples Rights (Ratification and Enforcement) Act. The respondent argued that the various Decrees of the then Federal Military Government ousted the jurisdiction of the court. While the trial court upheld the ouster clause, both the Court of Appeal and the Supreme Court rejected the clause.
The area that became source of worry was the court's decision per pats-Acholonu (JCA) when he posited that:

International Law" in Starke C (ed) *Rights, Institutions and Impact of International Law According to the German Basic Law,* Baden, Nomos,177 at 185.

[100] In Russia, both treaty law and customary law are incorporated into Russia Law, while treaty rules have a highest status than domestic laws. See Article 5, Russian Federal Law on International Treaties adopted an 16 June 1995, 34 ILM 1995 p. 1370.

[101] The only reference to Customary International Law in the US Constitution is in Article 1 (US Constitution Art 1) paragraph 8 of Art 1 gives the United States Congress the power to define and punish practices and Felonies committed on the High Sea and Offences against the Law of Nations.

[102] See the English cases of *Mortensen* v. *Peters* (1906) 14 Scolts LTR 1481 and *R*.v. *Chung Chi Cheun* (1939) AC 160 at 160 these authorities are persuasive and not *stricto sensu* binding because on authoritative decision of Nigeria Supreme Court overruling them becomes the law.

[103] See *Malachtou* v. *Armefti and Armefti* 88 ILR 199.

[104] See note 100 above.

[105] Article 26 of the French Constitution of 1946 provides that diplomatic treaties duly ratified and published are SUPERIOR in authority to French Internal legislation both prior and subsequent to the treaty. See further *Lambert* v. *Jourdan*. [1948] *Annual Digest and Reports of Public International Law Cases*, case No 111.

[106] See, Alkema E.A(2010) "International Law in Domestic Systems" Vol.. 14.3 *Electronic Journal of Comparative Law*, Available online at http://www.ejcl.org/143/art143-1.pdf. Visited on 10th January, 2014.

[107] *Ibid* p 12.

[108] [1990] 7 N W L R (Pt 163) p. 507 at 519-520.

[109] [1996] 7 NWLR (Pt 448) P. 291 at 300.

[110] Emphasis added; See also *Labiyi* v. *Anretiola* [1992] 8NWLR (Pt 258) p 139.

[111] [2000] F W L R (Pt 4) page 533.

> *…by not merely adopting the African charter but enacting it into our organic law, tenor and intendment of the preamble and section seem to vest that (ie African charter) with a greater vigour and strength than mere Decree* ***for it has been elevated to a higher pedestal***[112]**..**

The question that readily comes to mind is by which court and by what Law was it so elevated? The position adumbrated by Acholonu was seriously criticized by a learned writer[113] that the decision could not stand the test of time and therefore advocated the need for a revisit of the decision by the Apex court on this decision of utmost legal importance. Ogundare JSC varied the matter differently when he held that:

> *no doubt, cap 10 is a statute with international flavour. Being so, therefore, I would think that if there is conflict between it and another statute, Its provisions will* ***prevail over those of other statutes*** *for the reason that it is presumed that the legislature does not intend to breach an international obligation. To this extent, I agree with their Lordships of the Court below that the Charter possesses a* ***greater vigour and strength*** *than any other domestic statute. But that is not to say that the Charter is superior to the Constitution*[114].

This position of law is true in part and that is in respect of the Supremacy of the Constitution. The Constitution provides for its bidingness over all persons and authority throughout the Federal Republic of Nigeria[115]. And where there is a conflict between the Constitution and any other law (including transformed treaty) that such law shall subject to its inconsistency be void[116]. The dissenting opinion of Achike JSC is however preferred to the view expressed by Ogundare JSC. Achike JSC held:

> *The general rule is that a treaty which has been incorporated into the body of the municipal laws ranks* ***at par*** *with the municipal laws. It is rather startling that a law passed to give effect to a treaty should stand on a* ***higher pedestal*** *above all other municipal laws, without more in the absence of any express provision in the law that incorporated the treaty into the municipal law*[117].

This view was lauded as the correct position of the law by Enabulele when he submitted that the view expressed by Ogundare JSC that treaty-implementing legislation stands on a higher pedestal than other laws is un-constitutional, and therefore preferred Achike's view[118].

XIV. .CONCLUSION AND RECOMMENDATIONS

No doubt, the place of treaty in international relations cannot be underestimated. It is the bedrock of so many international agreements. As such it should be accorded its *primus* position in the affairs of state within the municipal system. It was deciphered that Nigeria as a nation has participated in a number of international treaties including but not limited to the 1982 United Nations Convention on the Law of the Sea and several of them. It has also caused many of them to be domesticated while plethoras of them were yet to be domesticated. To those that were domesticated, they can be applied in Nigerian Courts while those that have been domesticated does not have locus before Nigerian Courts. There is the need to revisit the treaty making process. It is advocated that where for example the subject matter of the treaty will affect some of the constituent states of the federation or some local governments, those entities that will be affected by the outcome of the treaties should partake in its making. It is also imperative to carry the legislatures along while entering into treaties as

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[112] Emphasis added.

[113] See Babatunde I.O. (2005) "International Law Before Municipal Tribunal: Has the Last Been said by the Nigerian Supreme Court?" Vol .3 *Igbinedion University Law Journal,* p 91-99. The author was of the opinion that the lead judgment by Ogundare JSC could not have been law but preferred the view of the dissenting judgment of Achike JSC where his Lordship held that: *indeed, in enacting the African Charter as an Act of our of municipal law and as a schedule to the only two sections of the Act i.e Cap 10 LFN 1990, a close study of that Act* ***does not demonstrate, directly or directly, that it had been elevated to the highest pedestal in relation to other municipal legislations.*** Ibid at p; 613.The writer concluded that the Supreme Court of Nigeria need to revisit the matter and straighten the record in the interest of the development of International law.

[114] Emphasis added (2000) F W L R pt 4 p 533 at 587.

[115] S 1 (1) of the Constitution of the F R N 1999 as amended.

[116] See S. 1. (3) .

[117] *Fawehinmi* V. *Abacha. supra* at p 613.

[118] Enabulele A. O. (2009) "Implementation of Treaties in Nigeria and the Status Questions; Whither Nigerian Courts." 17 (2) *African Journal of International and Comparative Law* P. 326 at P. 336

this will serve as an advanced notice preparatory for its transformation so that when the time for it eventually turns up they will not be in the dark.

The respect that Nigeria has for international law necessitated the allowance of its implementation of treaties through its Section 12 of its Constitution but without stating in this important document, who are entitled to commit the country by way of treating making as well as the status of such transformed treaties. Although this is contained in the Treaty Making Procedure and Etc Decree, it is submitted that a matter of this magnitude should be entrenched in the Constitution and not in such a lesser document that cannot withstand the Constitution in case of conflict. It only provide for its implementation without more. Apart from the above, the Constitution does not contain any section in the entire document that provides for the relationship between International law and Nigerian law, whether Customary or treaty. Worse still, the Constitution fails to state the status of transformed treaty viz-a-viz other domestic legislations. It ought to provide like in some other jurisdictions Constitution whether such transformed treaty is below, at par or superior to other domestic legislation rather than leaving such to the whims and caprices of the Courts. As it was canvassed in this work that there is still the need for the Apex Court in the land to revisit the decision in *Abacha* v *Fawehinmi* because it was observed that the lead judgment cannot be the correct position of the law. This is in view of the dissenting opinion of the same court. If the relationship between International law and Nigerian law is well entrenched in the Constitution, the problem of status would have been finally addressed and better still, whatever is granted by the Constitution cannot be taken away by any subsidiary legislation including transformed treaty. It is finally advocated that Nigeria's legislature should as a matter of urgency look into this matter and should not hesitate to seek the assistance of experts in international law to achieve this feat.